

1 **ARTIFICIAL PORNOGRAPHIC IMAGES AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ariel Defay

Senate Sponsor: Chris H. Wilson

3 **LONG TITLE**

4 **General Description:**

5 This bill amends provisions in Title 76, Chapter 5b, Sexual Exploitation Act.

6 **Highlighted Provisions:**

7 This bill:

- 8 ▸ clarifies that certain prohibited materials in Title 76, Chapter 5b, Sexual Exploitation
- 9 Act, includes computer-generated videos; and
- 10 ▸ makes technical and conforming changes.

11 **Money Appropriated in this Bill:**

12 None

13 **Other Special Clauses:**

14 None

15 **Utah Code Sections Affected:**

16 **AMENDS:**

17 **76-5b-103**, as last amended by Laws of Utah 2023, Chapter 231

18 **76-5b-203**, as last amended by Laws of Utah 2022, Chapter 181

19 **76-5b-204**, as last amended by Laws of Utah 2022, Chapters 181, 184 and last amended by

20 Coordination Clause, Laws of Utah 2022, Chapter 184

21 **76-5b-205**, as last amended by Laws of Utah 2022, Chapters 112, 181 and 185 and last

22 amended by Coordination Clause, Laws of Utah 2022, Chapter 185

24 *Be it enacted by the Legislature of the state of Utah:*

25 Section 1. Section **76-5b-103** is amended to read:

26 **76-5b-103 . Definitions.**

27 As used in this chapter:

28 (1) "Child sexual abuse material" means any visual depiction, including any live

- 29 performance, photograph, film, video, picture, or computer or computer-generated image[
 30 ~~or~~], picture, or video, whether made or produced by electronic, mechanical, or other
 31 means, of sexually explicit conduct, where:
- 32 (a) the production of the visual depiction involves the use of a minor engaging in
 33 sexually explicit conduct;
- 34 (b) the visual depiction is of a minor engaging in sexually explicit conduct; or
- 35 (c) the visual depiction has been created, adapted, or modified to appear that an
 36 identifiable minor is engaging in sexually explicit conduct.
- 37 (2) "Distribute" means ~~[the selling, exhibiting, displaying, wholesaling, retailing,~~
 38 ~~providing, giving, granting admission to, or otherwise transferring or presenting child~~
 39 ~~sexual abuse material or vulnerable adult sexual abuse material with or without~~
 40 ~~consideration]~~ , with or without consideration, to sell, exhibit, display, provide, give,
 41 grant admission to, provide access to, or otherwise transfer.
- 42 (3) "Identifiable minor" means ~~[a person]~~ an individual:
- 43 (a) (i) who was a minor at the time the visual depiction was created, adapted, or
 44 modified; or
- 45 (ii) whose image as a minor was used in creating, adapting, or modifying the visual
 46 depiction; and
- 47 (b) who is recognizable as an actual ~~[person]~~ individual by the ~~[person's]~~ individual's
 48 face, likeness, or other distinguishing characteristic, such as a birthmark, or other
 49 recognizable feature.
- 50 (4) "Identifiable vulnerable adult" means ~~[a person]~~ an individual:
- 51 (a) (i) who was a vulnerable adult at the time the visual depiction was created,
 52 adapted, or modified; or
- 53 (ii) whose image as a vulnerable adult was used in creating, adapting, or modifying
 54 the visual depiction; and
- 55 (b) who is recognizable as an actual ~~[person]~~ individual by the ~~[person's]~~ individual's
 56 face, likeness, or other distinguishing characteristic, such as a birthmark, or other
 57 recognizable feature.
- 58 (5) "Lacks capacity to consent" ~~[is as]~~ means the same as that term is defined in Section
 59 76-5-111.4.
- 60 (6) "Live performance" means any act, play, dance, pantomime, song, or other activity
 61 performed by live actors in person.
- 62 (7) "Minor" means ~~[a person]~~ an individual younger than 18 years old.

- 63 (8) "Nudity or partial nudity" means any state of dress or undress in which the human
64 genitals, pubic region, buttocks, or the female breast, at a point below the top of the
65 areola, is less than completely and opaquely covered.
- 66 (9) "Produce" means:
- 67 (a) the photographing, filming, taping, directing, producing, creating, designing, or
68 composing of child sexual abuse material or vulnerable adult sexual abuse material; or
- 69 (b) the securing or hiring of [persons] individuals to engage in the photographing,
70 filming, taping, directing, producing, creating, designing, or composing of child
71 sexual abuse material or vulnerable adult sexual abuse material.
- 72 (10) "Sexually explicit conduct" means actual or simulated:
- 73 (a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,
74 whether between [persons] individuals of the same or opposite sex;
- 75 (b) masturbation;
- 76 (c) bestiality;
- 77 (d) sadistic or masochistic activities;
- 78 (e) lascivious exhibition of the genitals, pubic region, buttocks, or female breast of any [
79 person] individual;
- 80 (f) the visual depiction of nudity or partial nudity for the purpose of causing sexual
81 arousal of any [person] individual;
- 82 (g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or
- 83 (h) the explicit representation of the defecation or urination functions.
- 84 (11) "Simulated sexually explicit conduct" means a feigned or pretended act of sexually
85 explicit conduct which duplicates, within the perception of an average person, the
86 appearance of an actual act of sexually explicit conduct.
- 87 (12) "Vulnerable adult" [~~is-as~~] means the same as that term is defined in Subsection 76-5-111
88 (1).
- 89 (13) "Vulnerable adult sexual abuse material" means any visual depiction, including any
90 live performance, photograph, film, video, picture, or computer or computer-generated
91 image or picture, whether made or produced by electronic, mechanical, or other means,
92 of sexually explicit conduct, where:
- 93 (a) the production of the visual depiction involves the use of a vulnerable adult engaging
94 in sexually explicit conduct;
- 95 (b) the visual depiction is of a vulnerable adult engaging in sexually explicit conduct; or
- 96 (c) the visual depiction has been created, adapted, or modified to appear that an

97 identifiable vulnerable adult is engaging in sexually explicit conduct.

98 Section 2. Section **76-5b-203** is amended to read:

99 **76-5b-203 . Distribution of an intimate image -- Penalty.**

100 (1) (a) As used in this section:

101 [~~(i) "Distribute" means selling, exhibiting, displaying, wholesaling, retailing,~~
 102 ~~providing, giving, granting admission to, providing access to, or otherwise~~
 103 ~~transferring or presenting an image to another individual, with or without~~
 104 ~~consideration.]~~

105 [(~~ii~~) (i) "Intimate image" means any visual depiction, photograph, film, video,
 106 recording, picture, or computer or computer-generated image~~[-or-]~~, picture, or
 107 video, whether made or produced by electronic, mechanical, or other means, that
 108 depicts:

109 (A) exposed human male or female genitals or pubic area, with less than an
 110 opaque covering;

111 (B) a female breast with less than an opaque covering, or any portion of the
 112 female breast below the top of the areola; or

113 (C) the individual engaged in any sexually explicit conduct.

114 [(~~iii~~) (ii) "Sexually explicit conduct" means actual or simulated:

115 (A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or
 116 oral-anal, whether between [~~persons~~] individuals of the same or opposite sex;

117 (B) masturbation;

118 (C) bestiality;

119 (D) sadistic or masochistic activities;

120 (E) exhibition of the genitals, pubic region, buttocks, or female breast of any
 121 individual;

122 (F) visual depiction of nudity or partial nudity;

123 (G) fondling or touching of the genitals, pubic region, buttocks, or female breast;
 124 or

125 (H) explicit representation of the defecation or urination functions.

126 [(~~iv~~) (iii) "Simulated sexually explicit conduct" means a feigned or pretended act of
 127 sexually explicit conduct that duplicates, within the perception of an average
 128 person, the appearance of an actual act of sexually explicit conduct.

129 [(~~v~~) (iv) "Single criminal episode" means the same as that term is defined in Section
 130 76-1-401.

- 131 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 132 (2) (a) An actor commits the offense of distribution of an intimate image if:
- 133 (i) the actor knowingly or intentionally distributes to a third party, or knowingly
- 134 duplicates or copies an intimate image of an individual who is 18 years old or
- 135 older and knows or should know that the distribution, duplication or copying
- 136 would cause a reasonable person to suffer emotional distress or harm;
- 137 (ii) the actor has not received consent from the individual depicted in the image to
- 138 distribute the intimate image;
- 139 (iii) the intimate image was created by or provided to the actor under circumstances
- 140 in which the individual depicted in the image has a reasonable expectation of
- 141 privacy; and
- 142 (iv) except as provided in Subsection (2)(b), actual emotional distress or harm is
- 143 caused to the individual depicted in the image as a result of the distribution.
- 144 (b) Subsection (2)(a)(iv) is not an element of the offense described in Subsection (2)(a)
- 145 if:
- 146 (i) the individual depicted in the intimate image was the victim of a crime;
- 147 (ii) the intimate image was provided to law enforcement as part of an investigation or
- 148 prosecution of a crime committed against the victim;
- 149 (iii) the intimate image was distributed without a legitimate law enforcement or
- 150 investigative purpose by an individual who had access to the intimate image due
- 151 to the individual's association with the investigation or prosecution described in
- 152 Subsection (2)(b)(ii); and
- 153 (iv) the victim is incapacitated or deceased.
- 154 (3) (a) A violation of Subsection (2) is a class A misdemeanor.
- 155 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third degree
- 156 felony on a second or subsequent conviction for an offense under this section that
- 157 does not arise from a single criminal episode.
- 158 (4) This section does not apply to:
- 159 (a) except as provided in Section 76-5b-203.5:
- 160 (i) lawful practices of law enforcement agencies;
- 161 (ii) prosecutorial agency functions;
- 162 (iii) the reporting of a criminal offense;
- 163 (iv) court proceedings or any other judicial proceeding; or
- 164 (v) lawful and generally accepted medical practices and procedures;

165 (b) an intimate image if the individual portrayed in the image voluntarily allows public
166 exposure of the image;

167 (c) an intimate image that is portrayed in a lawful commercial setting; or

168 (d) an intimate image that is related to a matter of public concern or interest.

169 (5) (a) This section does not apply to an Internet service provider or interactive computer
170 service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic
171 communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications
172 service, information service, or mobile service as defined in 47 U.S.C. Sec. 153,
173 including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable
174 operator as defined in 47 U.S.C. Sec. 522, if:

175 (i) the distribution of an intimate image by the Internet service provider occurs only
176 incidentally through the provider's function of:

177 (A) transmitting or routing data from one person to another person; or

178 (B) providing a connection between one person and another person;

179 (ii) the provider does not intentionally aid or abet in the distribution of the intimate
180 image; and

181 (iii) the provider does not knowingly receive from or through a person who
182 distributes the intimate image a fee greater than the fee generally charged by the
183 provider, as a specific condition for permitting the person to distribute the intimate
184 image.

185 (b) This section does not apply to a hosting company, as defined in Section 76-10-1230,
186 if:

187 (i) the distribution of an intimate image by the hosting company occurs only
188 incidentally through the hosting company's function of providing data storage
189 space or data caching to a person;

190 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution
191 of the intimate image; and

192 (iii) the hosting company does not knowingly receive from or through a person who
193 distributes the intimate image a fee greater than the fee generally charged by the
194 provider, as a specific condition for permitting the person to distribute, store, or
195 cache the intimate image.

196 (c) A service provider, as defined in Section 76-10-1230, is not negligent under this
197 section if it complies with Section 76-10-1231.

198 Section 3. Section **76-5b-204** is amended to read:

199 **76-5b-204 . Sexual extortion -- Penalties.**

200 (1) (a) As used in this section:

201 (i) "Adult" means an individual 18 years ~~[of age]~~ old or older.

202 (ii) "Child" means any individual under the age of 18.

203 [~~(iii) "Distribute" means the same as that term is defined in Section 76-5b-203.]~~204 [~~(iv)~~] (iii) "Intimate image" means the same as that term is defined in Section

205 76-5b-203.

206 [~~(v)~~] (iv) "Position of special trust" means the same as that term is defined in Section

207 76-5-404.1.

208 [~~(vi)~~] (v) "Sexually explicit conduct" means the same as that term is defined in

209 Section 76-5b-203.

210 [~~(vii)~~] (vi) "Simulated sexually explicit conduct" means the same as that term is

211 defined in Section 76-5b-203.

212 [~~(viii) "Vulnerable adult" means the same as that term is defined in Section 76-5-111.]~~

213 (b) Terms defined in Section 76-1-101.5 apply to this section.

214 (2) (a) An actor commits the offense of sexual extortion if the actor:

215 (i) with an intent to coerce a victim to engage in sexual contact, in sexually explicit
216 conduct, or in simulated sexually explicit conduct, or to produce, provide, or
217 distribute an image, video, or other recording of any individual naked or engaged
218 in sexually explicit conduct, communicates by any means a threat:

219 (A) to the victim's person, property, or reputation; or

220 (B) to distribute an intimate image or video of the victim;

221 (ii) knowingly causes a victim to engage in sexual contact, in sexually explicit
222 conduct, or in simulated sexually explicit conduct, or to produce, provide, or
223 distribute any image, video, or other recording of any individual naked or engaged
224 in sexually explicit conduct by means of a threat:

225 (A) to the victim's person, property, or reputation; or

226 (B) to distribute an intimate image or video of the victim; or

227 (iii) with intent to obtain a thing of value from a victim communicates, by any means,
228 a threat to distribute an intimate image or video of the victim.229 (b) An actor commits aggravated sexual extortion when, in conjunction with the offense
230 described in Subsection (2)(a), any of the following circumstances have been charged
231 and admitted or found true in the action for the offense:

232 (i) the victim is a child or vulnerable adult;

- 233 (ii) the offense was committed by the use of a dangerous weapon or by violence,
234 intimidation, menace, fraud, or threat of physical harm, or was committed during
235 the course of a kidnapping;
- 236 (iii) the actor caused bodily injury or severe psychological injury to the victim during
237 or as a result of the offense;
- 238 (iv) the actor was a stranger to the victim or became a friend of the victim for the
239 purpose of committing the offense;
- 240 (v) the actor, before sentencing for the offense, was previously convicted of any
241 sexual offense;
- 242 (vi) the actor occupied a position of special trust in relation to the victim;
- 243 (vii) the actor encouraged, aided, allowed, or benefitted from acts of prostitution or
244 sexual acts by the victim with any other individual, or sexual performance by the
245 victim before any other individual, human trafficking, or human smuggling; or
- 246 (viii) the actor caused the penetration, however slight, of the genital or anal opening
247 of the victim by any part or parts of the human body, or by any other object.
- 248 (3) (a) If the actor is an adult:
- 249 (i) A violation of Subsection (2)(a) is a third degree felony.
- 250 (ii) A violation of Subsection (2)(b) in which the victim is an adult is a second degree
251 felony.
- 252 (iii) A violation of Subsection (2)(b) in which the victim is a child or a vulnerable
253 adult is a first degree felony.
- 254 (b) If the actor is a child:
- 255 (i) A violation of Subsection (2)(a) is a class A misdemeanor.
- 256 (ii) A violation of Subsection (2)(b) is a third degree felony if there is more than a
257 two-year age gap between the actor and the victim.
- 258 (c) An actor commits a separate offense under this section:
- 259 (i) for each victim the actor subjects to the offense outlined in Subsection (2)(a); and
260 (ii) for each separate time the actor subjects a victim to the offense outlined
261 Subsection (2)(a).
- 262 (d) This section does not preclude an actor from being charged and convicted of a
263 separate criminal act if the actor commits the separate criminal act while the
264 individual violates or attempts to violate this section.
- 265 (4) An interactive computer service, as defined in 47 U.S.C. Sec. 230, is not subject to
266 liability under this section related to content provided by a user of the interactive

267 computer service.

268 Section 4. Section **76-5b-205** is amended to read:

269 **76-5b-205 . Unlawful distribution of a counterfeit intimate image -- Penalty.**

270 (1) (a) As used in this section:

271 (i) "Child" means an individual under 18 years old.

272 (ii) "Counterfeit intimate image" means any visual depiction, photograph, film, video,
273 recording, picture, or computer or computer-generated image [øŕ] , picture,or
274 video, whether made or produced by electronic, mechanical, or other means, that
275 has been edited, manipulated, or altered to depict the likeness of an identifiable
276 individual and purports to, or is made to appear to, depict that individual's:

277 (A) exposed human male or female genitals or pubic area, with less than an
278 opaque covering;

279 (B) a female breast with less than an opaque covering, or any portion of the
280 female breast below the top of the areola; or

281 (C) the individual engaged in any sexually explicit conduct or simulated sexually
282 explicit conduct.

283 [~~(iii)~~] "~~Distribute~~" means the same as that term is defined in Section 76-5b-203.].

284 [~~(iv)~~] (iii) "Sexually explicit conduct" means the same as that term is defined in
285 Section 76-5b-203.

286 [~~(v)~~] (iv) "Simulated sexually explicit conduct" means the same as that term is defined
287 in Section 76-5b-203.

288 [~~(vi)~~] (v) "Single criminal episode" means the same as that term is defined in Section
289 76-1-401.

290 (b) Terms defined in Section 76-1-101.5 apply to this section.

291 (2) (a) An actor commits the offense of unlawful distribution of a counterfeit intimate
292 image if the actor knowingly or intentionally distributes a counterfeit intimate image
293 that the actor knows or should reasonably know would cause a reasonable person to
294 suffer emotional or physical distress or harm, if:

295 (i) the actor has not received consent from the depicted individual to distribute the
296 counterfeit intimate image; and

297 (ii) the counterfeit intimate image was created or provided by the actor without the
298 knowledge and consent of the depicted individual.

299 (b) An actor who is 18 years old or older commits aggravated unlawful distribution of a
300 counterfeit intimate image if, in committing the offense described in Subsection

- 301 (2)(a), the individual depicted in the counterfeit intimate image is a child.
- 302 (3) (a) (i) A violation of Subsection (2)(a) that is knowing or intentional is a class A
303 misdemeanor.
- 304 (ii) Notwithstanding Subsection (3)(a)(i), a violation of Subsection (2)(a) that is
305 knowing or intentional is a third degree felony on a second or subsequent
306 conviction for an offense under this section that does not arise from a single
307 criminal episode.
- 308 (b) (i) A violation of Subsection (2)(b) that is knowing or intentional is a third degree
309 felony.
- 310 (ii) Notwithstanding Subsection (3)(b)(i), a violation of Subsection (2)(b) that is
311 knowing or intentional is a second degree felony on a second or subsequent
312 conviction for an offense under this section that does not arise from a single
313 criminal episode.
- 314 (c) This section does not apply to an actor who engages in conduct that constitutes a
315 violation of this section to the extent that the actor is chargeable, for the same
316 conduct, under Section 76-5b-201, sexual exploitation of a minor, or Section
317 76-5b-201.1, aggravated sexual exploitation of a minor.
- 318 (4) This section does not apply to:
- 319 (a) (i) lawful practices of law enforcement agencies;
320 (ii) prosecutorial agency functions;
321 (iii) the reporting of a criminal offense;
322 (iv) court proceedings or any other judicial proceeding; or
323 (v) lawful and generally accepted medical practices and procedures;
- 324 (b) a counterfeit intimate image if the individual depicted in the image voluntarily
325 allows public exposure of the image;
- 326 (c) a counterfeit intimate image that is portrayed in a lawful commercial setting; or
327 (d) a counterfeit intimate image that is related to a matter of public concern or interest or
328 protected by the First Amendment to the United States Constitution or Article I,
329 Sections 1 and 15 of the Utah Constitution.
- 330 (5) (a) This section does not apply to an Internet service provider or interactive computer
331 service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic
332 communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications
333 service, information service, or mobile service as defined in 47 U.S.C. Sec. 153,
334 including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable

- 335 operator as defined in 47 U.S.C. Sec. 522, if:
- 336 (i) the distribution of a counterfeit intimate image by the Internet service provider
- 337 occurs only incidentally through the provider's function of:
- 338 (A) transmitting or routing data from one person to another person; or
- 339 (B) providing a connection between one person and another person;
- 340 (ii) the provider does not intentionally aid or abet in the distribution of the counterfeit
- 341 intimate image; and
- 342 (iii) the provider does not knowingly receive from or through a person who
- 343 distributes the counterfeit intimate image a fee greater than the fee generally
- 344 charged by the provider, as a specific condition for permitting the person to
- 345 distribute the counterfeit intimate image.
- 346 (b) This section does not apply to a hosting company, as defined in Section 76-10-1230,
- 347 if:
- 348 (i) the distribution of a counterfeit intimate image by the hosting company occurs
- 349 only incidentally through the hosting company's function of providing data storage
- 350 space or data caching to a person;
- 351 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution
- 352 of the counterfeit intimate image;
- 353 (iii) the hosting company does not knowingly receive from or through a person who
- 354 distributes the counterfeit intimate image a fee greater than the fee generally
- 355 charged by the provider, as a specific condition for permitting the person to
- 356 distribute, store, or cache the counterfeit intimate image; and
- 357 (iv) the hosting company immediately removes the counterfeit intimate image upon
- 358 notice from a law enforcement agency, prosecutorial agency, or the individual
- 359 purportedly depicted in the counterfeit intimate image.
- 360 (c) A service provider, as defined in Section 76-10-1230, is not negligent under this
- 361 section if it complies with Section 76-10-1231.

362 **Section 5. Effective date.**

363 This bill takes effect on May 1, 2024.