

Utah

## Utah Code Ann.

### Utah Code Ann. § 10-8-41. Prostitution, lewd or perverted acts, gambling, and obscene or lewd publications

- (1) Boards of commissioners and city councils of cities may suppress and prohibit the keeping of disorderly houses, houses of ill fame or assignation, or houses kept by, maintained for, or resorted to or used by, one or more persons for acts of perversion, lewdness, or prostitution within the limits of the city and within three miles of the outer boundaries thereof, and may prohibit resorting thereto for any of the purposes aforesaid; they may also make it unlawful for any person to commit or offer or agree to commit an act of sexual intercourse for hire, lewdness, or moral perversion within the city, or for any person to secure, induce, procure, offer, or transport to any place within the city any person for the purpose of committing an act of sexual intercourse for hire, lewdness, or moral perversion, or for any person to receive or direct or offer or agree to receive or direct any person into any place or building within the city for the purpose of committing an act of sexual intercourse for hire, lewdness, or moral perversion, or for any person to aid, abet, or participate in the commission of any of the foregoing; and they may also suppress and prohibit gambling houses and gambling, lotteries and all fraudulent devices and practices, and all kinds of gaming, playing at dice or cards, and other games of chance, and the sale, distribution, or exhibition of obscene or lewd publications, prints, pictures, or illustrations.
- (2)
  - (a) A woman's breast feeding, including breast feeding in any place where the woman otherwise may rightfully be, does not under any circumstance constitute an obscene or lewd act, irrespective of whether or not the breast is covered during or incidental to feeding.
  - (b) Boards of commissioners and city councils of cities may not prohibit a woman's breast feeding in any location where she otherwise may rightfully be, irrespective of whether the breast is uncovered during or incidental to the breast feeding.

### § 10-8-41.5. Regulation of sexually oriented business

- (1) As used in this section:
  - (a) "Adult service" means dancing, serving food or beverages, modeling, posing, wrestling, singing, reading, talking, listening, or other performances or activities conducted by a nude or partially denuded individual for compensation.
  - (b) "Compensation" means:
    - (i) a salary;
    - (ii) a fee;
    - (iii) a commission;
    - (iv) employment;
    - (v) a profit; or
    - (vi) other pecuniary gain.
  - (c) (i) "Escort" means a person who, for compensation, dates, socializes with, visits, consorts with, or accompanies another, or offers to date, consort with, socialize with, visit, or accompany another:

(A) to a social affair, entertainment, or a place of amusement; or

(B) within:

- (I) a place of public or private resort;
- (II) a business or commercial establishment; or
- (III) a private quarter.

(ii) "Escort" does not mean a person who provides business or personal services, including:

(A) a licensed private nurse;

(B) an aide for the elderly or a person with a disability;

(C) a social secretary or similar service personnel:

- (I) whose relationship with a patron is characterized by a contractual relationship having a duration of 12 hours or more; and
- (II) who provides a service not principally characterized as dating or socializing; or

(D) a person who provides services such as singing telegrams, birthday greetings, or similar activities:

- (I) characterized by an appearance in a public place;
- (II) contracted for by a party other than the person for whom the service is being performed; and
- (III) of a duration not to exceed one hour.

(d) "Escort service" means any person who furnishes or arranges for an escort to accompany another individual for compensation.

(e) "Nude or partially denuded individual" means an individual with any of the following less than completely and opaquely covered:

(i) genitals;

(ii) the pubic region; or

(iii) a female breast below a point immediately above the top of the areola.

(f)

(i) "Sexually oriented business" means a business at which any nude or partially denuded individual, regardless of whether the nude or partially denuded individual is an employee of the sexually oriented business or an independent contractor, performs any service for compensation.

(ii) "Sexually oriented business" includes:

- (A) an escort service; or
- (B) an adult service.

- (2) A person employed in a sexually oriented business may not work in a municipality:

(a) if the municipality requires that a person employed in a sexually oriented business be licensed individually; and

(b) if the person is not licensed by the municipality.

- (3) A business entity that conducts a sexually oriented business may not conduct business in a municipality:

(a) if the municipality requires that a sexually oriented business be licensed; and

(b) if the business entity is not licensed by the municipality.

## § 67-5-18. Obscenity and Pornography Complaints Ombudsman -- Powers

- (1) As used in this section, "pornography" means material or a performance that meets the requirements of Subsection 76-10-1203(1).
- (2)
  - (a) There is created an Obscenity and Pornography Complaints Ombudsman in the Office of the Attorney General.
  - (b) The attorney general shall hire an attorney licensed to practice law in Utah who has knowledge of obscenity and pornography law and, if possible, who has a background or expertise in investigating and prosecuting obscenity and pornography law violations to fill the position.
  - (c) The person hired to fill the position is an exempt employee.
  - (d) The attorney general may hire clerks, interns, or other personnel to assist the pornography complaints ombudsman.
- (3) The Obscenity and Pornography Complaints Ombudsman shall:
  - (a) develop and maintain expertise in and understanding of laws designed to control or eliminate obscenity and pornography and the legal standards governing the regulation or elimination of obscenity and pornography;
  - (b) advise citizens and local governments about remedies to address instances of obscenity and pornography in their communities;
  - (c) advise local governments about ways to strengthen local laws and ordinances addressing obscenity and pornography;
  - (d) advise local governments about strategies to restrict, suppress, or eliminate obscenity and pornography in their communities;
  - (e) at the request of the attorney general or a local government, assist a local government in investigating and prosecuting state and local laws and ordinances addressing obscenity or pornography;
  - (f) before beginning an investigation:
    - (i) contact the county, district, or city attorney within whose jurisdiction an investigation by the Obscenity and Pornography Complaints Ombudsman will take place and inform that county, district, or city attorney of the investigation; and
    - (ii) coordinate efforts and share records, in accordance with Section 63G-2-206, with the county, district, or city's attorney referred to in Subsection (3)(f)(i) throughout the investigation;
  - (g) advise citizens about their options to address specific complaints about obscenity or pornography in their communities;
  - (h) when requested by a citizen or local government official, arbitrate between citizens and businesses to resolve complaints about obscenity or pornography;
  - (i) provide information to private citizens, civic groups, government entities, and other interested parties about the dangers of obscenity and pornography, the current laws to restrict, suppress, or eliminate pornography, and their rights and responsibilities under those laws;
  - (j) draft model ordinances that contain:
    - (i) various degrees of regulation of sexually-oriented businesses; and
    - (ii) options for local communities that can be used to regulate pornography and obscenity;
  - (k) assist political subdivisions in:
    - (i) drafting model rules, regulations, and policies; and
    - (ii) providing recommendations for enforcing those rules, regulations, and policies;
  - (l) in conjunction with Utah's county and municipal prosecuting attorneys:
    - (i) review Utah's and Idaho's moral nuisance law;
    - (ii) draft a comprehensive moral nuisance law for Utah and a model ordinance for municipalities and counties to provide an effective

- mechanism to abate and discourage obscenity and pornography; and
- (iii) present the draft to the Legislature's Judiciary Interim Committee before October 25, 2001; and
- (m) establish a program to combat Internet pornography and to assist parents in protecting their children from Internet pornography.

#### **§ 67-5-1.5. Special duties -- Employment of staff**

- (1) The attorney general may undertake special duties and projects as follows:
  - (a) employment of child protection services investigators under Section 67-5-16;
  - (b) employment of an Obscenity and Pornography Complaints Ombudsman under Section 67-5-18;
  - (c) administration of the Internet Crimes Against Children Task Force under Section 67-5-20;
  - (d) administration of the Internet Crimes Against Children (ICAC) unit under Section 67-5-21;
  - (e) administration of the Identity Theft Reporting Information System (IRIS) Program under Section 67-5-22;
  - (f) administration of the Attorney General Crime and Violence Prevention Fund under Section 67-5-24; and
  - (g) administration of the Safety Net Initiative as provided under Section 67-5-26.
- (2) As permitted by the provisions of this chapter, the attorney general may employ or contract with investigators, prosecutors, and necessary support staff to fulfill the special duties undertaken under this section.

#### **§ 76-10-1201. Definitions**

- For the purpose of this part:
  - (1) "Blinder rack" means an opaque cover that covers the lower 2/3 of a material so that the lower 2/3 of the material is concealed from view.
  - (2) "Contemporary community standards" means those current standards in the vicinage where an offense alleged under this part has occurred, is occurring, or will occur.
  - (3) "Distribute" means to transfer possession of materials whether with or without consideration.
  - (4) "Exhibit" means to show.
  - (5) (a) "Harmful to minors" means that quality of any description or representation, in whatsoever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it:
    - (i) taken as a whole, appeals to the prurient interest in sex of minors;
    - (ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
    - (iii) taken as a whole, does not have serious value for minors.
      - (b) Serious value includes only serious literary, artistic, political or scientific value for minors.
  - (6)
    - (a) "Knowingly," regarding material or a performance, means an awareness, whether actual or constructive, of the character of the material or performance.
    - (b) As used in this Subsection (6), a person has constructive knowledge

if a reasonable inspection or observation under the circumstances would have disclosed the nature of the subject matter and if a failure to inspect or observe is either for the purpose of avoiding the disclosure or is criminally negligent as described in Section 76-2-103.

(7) "Material" means anything printed or written or any picture, drawing, photograph, motion picture, or pictorial representation, or any statue or other figure, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects.

(8) "Minor" means any person less than 18 years of age.

(9) "Negligently" means simple negligence, the failure to exercise that degree of care that a reasonable and prudent person would exercise under like or similar circumstances.

(10) "Nudity" means:

(a) the showing of the human male or female genitals, pubic area, or buttocks, with less than an opaque covering;

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

(c) the depiction of covered male genitals in a discernibly turgid state.

(11) "Performance" means any physical human bodily activity, whether engaged in alone or with other persons, including singing, speaking, dancing, acting, simulating, or pantomiming.

(12) "Public place" includes a place to which admission is gained by payment of a membership or admission fee, however designated, notwithstanding its being designated a private club or by words of like import.

(13) "Sado-masochistic abuse" means:

(a) flagellation or torture by or upon a person who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume; or

(b) the condition of being fettered, bound, or otherwise physically restrained on the part of a person clothed as described in Subsection (13)(a).

(14) "Sexual conduct" means acts of masturbation, sexual intercourse, or any touching of a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is a female, breast, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent or actual sexual stimulation or gratification.

(15) "Sexual excitement" means a condition of human male or female genitals when in a state of sexual stimulation or arousal, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

### **§ 76-10-1203. Pornographic material or performance -- Expert testimony not required**

- (1) Any material or performance is pornographic if:
  - (a) The average person, applying contemporary community standards, finds that, taken as a whole, it appeals to prurient interest in sex;
  - (b) It is patently offensive in the description or depiction of nudity, sexual conduct, sexual excitement, sado-masochistic abuse, or excretion; and
  - (c) Taken as a whole it does not have serious literary, artistic, political or scientific value.
- (2) In prosecutions under this part, where circumstances of production, presentation, sale, dissemination, distribution, exhibition, or publicity indicate that the matter is

being commercially exploited by the defendant for the sake of its prurient appeal, this evidence is probative with respect to the nature of the matter and can justify the conclusion that, in the context in which it is used, the matter has no serious literary, artistic, political, or scientific value.

- (3) Neither the prosecution nor the defense shall be required to introduce expert witness testimony as to whether the material or performance is or is not harmful to adults or minors or is or is not pornographic, or as to any element of the definition of pornographic, including contemporary community standards.

#### **§ 76-10-1204. Distributing pornographic material -- Penalties -- Exemptions for Internet service providers and hosting companies**

- (1) A person is guilty of distributing pornographic material when the person knowingly:
  - (a) sends or brings any pornographic material into the state with intent to distribute or exhibit it to others;
  - (b) prepares, publishes, prints, or possesses any pornographic material with intent to distribute or exhibit it to others;
  - (c) distributes or offers to distribute, or exhibits or offers to exhibit, any pornographic material to others;
  - (d) writes, creates, or solicits the publication or advertising of pornographic material;
  - (e) promotes the distribution or exhibition of material the person represents to be pornographic; or
  - (f) presents or directs a pornographic performance in any public place or any place exposed to public view or participates in that portion of the performance which makes it pornographic.
- (2) Each distributing of pornographic material as defined in Subsection (1) is a separate offense.
- (3) It is a separate offense under this section for:
  - (a) each day's exhibition of any pornographic motion picture film; and
  - (b) each day in which any pornographic publication is displayed or exhibited in a public place with intent to distribute or exhibit it to others.
- (4) (a) An offense under this section committed by a person 18 years of age or older is a third degree felony punishable by:
  - (i) a minimum mandatory fine of not less than \$ 1,000, plus \$ 10 for each article exhibited up to the maximum allowed by law; and
  - (ii) incarceration, without suspension of sentence in any way, for a term of not less than 30 days.
    - (b) An offense under this section committed by a person 16 or 17 years of age is a class A misdemeanor.
    - (c) An offense under this section committed by a person younger than 16 years of age is a class B misdemeanor.
    - (d) Subsection (4)(a) supersedes Section 77-18-1.
- (5) A person 18 years of age or older who knowingly solicits, requests, commands, encourages, or intentionally aids another person younger than 18 years of age to engage in conduct prohibited under Subsection (1), (2), or (3) is guilty of a third degree felony and is subject to the penalties under Subsection (4)(a).
- (6) (a) This section does not apply to an Internet service provider, as defined in Section 76-10-1230, if:
  - (i) the distribution of pornographic material by the Internet service provider occurs only incidentally through the Internet service provider's function of:
    - (A) transmitting or routing data from one person to another person; or

(B) providing a connection between one person and another person;  
(ii) the Internet service provider does not intentionally aid or abet in the distribution of the pornographic material; and  
(iii) the Internet service provider does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute the pornographic material.

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

- (i) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;
- (ii) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and
- (iii) the hosting company does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute, store, or cache the pornographic material.

#### **§ 76-10-1205. Inducing acceptance of pornographic material -- Exemptions for Internet service providers and hosting companies**

- (1) A person is guilty of inducing acceptance of pornographic material when he knowingly:
  - (a) requires or demands as a condition to a sale, allocation, consignment, or delivery for resale of any newspaper, magazine, periodical, book, publication, or other merchandise that the purchaser or consignee receive any pornographic material or material reasonably believed by the purchaser or consignee to be pornographic; or
  - (b) denies, revokes, or threatens to deny or revoke a franchise, or to impose any penalty, financial or otherwise, because of the failure or refusal to accept pornographic material or material reasonably believed by the purchaser or consignee to be pornographic.
- (2) (a) An offense under this section is a third degree felony punishable by:
  - (i) a minimum mandatory fine of not less than \$ 1,000 plus \$ 10 for each article exhibited up to the maximum allowed by law; and
  - (ii) incarceration, without suspension of sentence in any way, for a term of not less than 30 days.

(b) This Subsection (2) supersedes Section 77-18-1.
- (3) (a) This section does not apply to an Internet service provider, as defined in Section 76-10-1230, if:
  - (i) the distribution of pornographic material by the Internet service provider occurs only incidentally through the Internet service provider's function of:
    - (A) transmitting or routing data from one person to another person; or
    - (B) providing a connection between one person and another person;
  - (ii) the Internet service provider does not intentionally aid or abet in the distribution of the pornographic material; and
  - (iii) the Internet service provider does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute the pornographic material.

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

- (i) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;
- (ii) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and
- (iii) the hosting company does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute, store, or cache the pornographic material.

**§ 76-10-1206. Dealing in material harmful to a minor -- Penalties -- Exemptions for Internet service providers and hosting companies**

- (1) A person is guilty of dealing in material harmful to minors when, knowing or believing that a person is a minor, or having negligently failed to determine the proper age of a minor, the person intentionally:
  - (a) distributes or offers to distribute, or exhibits or offers to exhibit, to a minor or a person the actor believes to be a minor, any material harmful to minors;
  - (b) produces, performs, or directs any performance, before a minor or a person the actor believes to be a minor, that is harmful to minors; or
  - (c) participates in any performance, before a minor or a person the actor believes to be a minor, that is harmful to minors.
- (2) (a) Each separate offense under this section committed by a person 18 years of age or older is a third degree felony punishable by:
  - (i) a minimum mandatory fine of not less than \$ 1,000, plus \$ 10 for each article exhibited up to the maximum allowed by law; and
  - (ii) incarceration, without suspension of sentence, for a term of not less than 14 days.
    - (b) Each separate offense under this section committed by a person 16 or 17 years of age is a class A misdemeanor.
    - (c) Each separate offense under this section committed by a person younger than 16 years of age is a class B misdemeanor.
    - (d) Subsection (2)(a) supersedes Section 77-18-1.
- (3) (a) If a defendant 18 years of age or older has been previously convicted or adjudicated to be under the jurisdiction of the juvenile court under this section, each separate subsequent offense is a second degree felony punishable by:
  - (i) a minimum mandatory fine of not less than \$ 5,000, plus \$ 10 for each article exhibited up to the maximum allowed by law; and
  - (ii) incarceration, without suspension of sentence, for a term of not less than one year.
    - (b) If a defendant younger than 18 years of age has been previously convicted or adjudicated to be under the jurisdiction of the juvenile court under this section, each separate subsequent offense is a third degree felony.
    - (c) Subsection (3)(a) supersedes Section 77-18-1.
    - (d) (i) This section does not apply to an Internet service provider, as defined in Section 76-10-1230, a provider of an electronic communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service, information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:



- (A) the distribution of pornographic material by the Internet service provider occurs only incidentally through the provider's function of:
        - (I) transmitting or routing data from one person to another person; or
        - (II) providing a connection between one person and another person;
      - (B) the provider does not intentionally aid or abet in the distribution of the pornographic material; and
      - (C) the provider does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute the pornographic material.
    - (ii) This section does not apply to a hosting company, as defined in Section 76-10-1230, if:
      - (A) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;
      - (B) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and
      - (C) the hosting company does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute, store, or cache the pornographic material.
  - (4) A service provider, as defined in Section 76-10-1230, is not negligent under this section if it complies with Section 76-10-1231.
  - (5) A person 18 years of age or older who knowingly solicits, requests, commands, encourages, or intentionally aids another person younger than 18 years of age to engage in conduct in violation of Subsection (1) is guilty of a third degree felony and is subject to the penalties under Subsection (2)(a).

**§ 76-10-1207. Use of real property by tenant or occupant -- Voiding of lease -- Allowance of such use by owner or lessor**

- (1) If a tenant or occupant of real property uses this property for an activity for which he or his employee is convicted under any provision of this part, the conviction makes void the lease or other title under which he holds at the option of the fee owner or any intermediate lessor; and 10 days after the fee owner or any intermediate lessor gives notice in writing to the tenant or occupant that he is exercising the option, the right of possession to the property reverts in the person exercising the option. This option does not arise until all avenues of direct appeal from the conviction have been exhausted or abandoned by the tenant or occupant, or his employee.
- (2) It shall be unlawful for a fee owner or intermediate lessor of real property to knowingly allow this property to be used for the purpose of distributing or exhibiting pornographic materials, or for pornographic performances, by a tenant or occupant if the tenant or occupant, or his employee, has been convicted under any provision of this part of an offense occurring on the same property and all avenues of direct appeal from the conviction have been exhausted or abandoned.

(a) "Allow" under this Subsection (2) means a failure to exercise the option arising under Subsection (1) within 10 days after the fee owner or lessor receives notice in writing from the county attorney of the county where the property is situated, or if situated in a city of the first or second class, from the city attorney of that city, that the property is being used for a purpose prohibited by this Subsection (2).

(b) A willful violation of this Subsection (2) is a class A misdemeanor and any fine assessed, if not paid within 30 days after judgment, shall become a lien upon the property.

- (3) Any tenant or occupant who receives a notice in writing that the fee owner or intermediate lessor is exercising the option provided by Subsection (1) and who does not quit the premises within 10 days after the giving of that notice is guilty of a class A misdemeanor.

### **§ 76-10-1207.5. Exemption -- Corrections treatment, programs**

This part does not apply to the Department of Corrections or any treatment program by or under contract with the department when the use of sexually explicit material that is pornographic is limited to the assessment or treatment of an offender as defined under Section 64-13-1.

### **§ 76-10-1208. Affirmative defenses**

- (1) It is an affirmative defense to prosecution under this part that the distribution of pornographic material is restricted to institutions or persons having scientific, educational, governmental, or other similar justification for possessing pornographic material.
- (2) It is not a defense to prosecution under this part that the actor is a motion picture projectionist, usher, ticket-taker, bookstore employee, or otherwise is required to violate this part incident to the person's employment.
- (3) It is an affirmative defense to prosecution under Section 76-10-1206, 76-10-1227, or 76-10-1228 for displaying or exhibiting an outer portion of material, that the material is:
  - (a) in a sealed opaque wrapper that covers at least the lower 2/3 of the material so that the lower 2/3 of the material is concealed from view;
  - (b) placed behind a blinder rack; or
  - (c) displayed in an area from which a minor is physically excluded if the material cannot be viewed by the minor from an area in which a minor is allowed.

### **§ 76-10-1209. Injunctive relief -- Jurisdiction -- Consent to be sued**

- (1) The district courts of this state shall have full power, authority, and jurisdiction, upon application by any county attorney or city attorney within their respective jurisdictions or the attorney general, to issue any and all proper restraining orders, preliminary and permanent injunctions, and any other writs and processes appropriate to carry out and enforce the provisions of this part. No restraining order or injunction, however, shall issue except upon notice to the person sought to be enjoined. That person shall be entitled to a trial of the issues commencing within three days after filing of an answer to the complaint and a decision shall be rendered by the court within two days after the conclusion of the trial. If a final order or

judgment of injunction is entered against the person sought to be enjoined, this final order or judgment shall contain a provision directing the person to surrender to the sheriff of the county in which the action was brought any pornographic material in the person's possession which is subject to the injunction; and the sheriff shall be directed to seize and destroy this material.

- (2) Any person not qualified to do business in the state who sends or brings any pornographic material into the state with the intent to distribute or exhibit it to others in this state consents that the person may be sued in any proceedings commenced under this section.

### **§ 76-10-1210. Relation to other laws**

- (1)
  - (a) It is not the intent of this part to prescribe or limit the regulation of pornographic materials or materials harmful to minors, and counties, cities, and other political subdivisions are specifically given the right to further regulate the materials.
  - (b) Without limitation, a political subdivision may further regulate materials by ordinances relating to:
    - (i) zoning;
    - (ii) licensing;
    - (iii) public nuisances;
    - (iv) a specific type of business such as adult bookstores or drive-in movies; or
    - (v) use of blinder racks.
- (2) It is not the intent of this part to preclude the application of other laws of this state to pornographic materials or materials harmful to minors. Specifically, without limitation, this part is not in derogation of Sections 76-10-803 and 76-10-806.
- (3) The commission of a crime under this part shall be considered to offend public decency under Section 76-10-803. It is the intent of this part to give the broadest meaning permissible under the federal and state constitutions to the words "offends public decency" in Section 76-10-803.

### **§ 76-10-1211. Separability clause**

If any clause, sentence, paragraph, or part of this part or its application to any person or circumstance shall for any reason be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder of this part or its application to other persons or circumstances but shall be confined in its operation to the clause, sentence, paragraph, persons, or circumstances, or part thereof directly involved in the controversy in which the judgment shall have been rendered.

### **§ 76-10-1212. Search and seizure -- Affidavit -- Issuance of warrant -- Hearing upon claim that material seized not pornographic or harmful to minors -- Procedures cumulative**

- (1) An affidavit for a search warrant shall be filed with the magistrate describing with specificity the material sought to be seized. Where practical, the material alleged to be pornographic or harmful to minors shall be attached to the affidavit for search warrant to afford the magistrate the opportunity to examine this material.
- (2) Upon the filing of an affidavit for a search warrant, the magistrate shall

determine, by examination of the material sought to be seized if attached, by examination of the affidavit describing the material, or by other manner or means that he finds necessary, whether probable cause exists to believe that the material is pornographic or harmful to minors and whether probable cause exists for the immediate issuance of a search warrant. Upon making this determination, he shall issue a search warrant ordering the seizure of the material described in the affidavit for a search warrant according to the provisions of the Utah Rules of Criminal Procedure.

- (3)
  - (a) If a search warrant is issued and material alleged to be pornographic or harmful to minors is seized under the provisions of this section, any person claiming to be in possession of this material or claiming ownership of it at the time of its seizure may file a notice in writing with the magistrate within ten days after the date of the seizure, alleging that the material is not pornographic or harmful to minors.
  - (b) The magistrate shall set a hearing within seven days after the filing of this notice, or at another time to which the claimant might agree. At this hearing evidence may be presented as to whether there is probable cause to believe the material seized is pornographic or harmful to minors, and at the conclusion of the hearing the magistrate shall make a further determination of whether probable cause exists to believe that the material is pornographic or harmful to minors.
  - (c) A decision as to whether there is probable cause to believe the seized material is pornographic or harmful to minors shall be rendered by the court within two days after the conclusion of the hearing.
  - (d) If at the hearing the magistrate finds that no probable cause exists to believe that the material is pornographic or harmful to minors, then the material shall be returned to the person or persons from whom it was seized.
  - (e) If the material seized is a film, and the claimant demonstrates that no other copy of the film is available to him, the court shall allow the film to be copied at the claimant's expense pending the hearing.
- (4) If a motion to suppress the evidence is granted on the grounds of an unlawful seizure, the property shall be restored unless it is subject to confiscation as contraband, in which case it may not be returned.
- (5)
  - (a) Procedures under this section for the seizure of allegedly pornographic material or material harmful to minors are cumulative of all other lawful means of obtaining evidence as provided by the laws of this state.
  - (b) This section does not prevent the obtaining of allegedly pornographic material or material harmful to minors by purchase, subpoena duces tecum, or under injunction proceedings as authorized by this act or by any other provision of law of the state.

**§ 76-9-702.** Lewdness -- Sexual battery -- Public urination

(1) A person is guilty of lewdness if the person under circumstances not amounting to rape, object rape, forcible sodomy, forcible sexual abuse, aggravated sexual assault, or an attempt to commit any of these offenses, performs any of the following acts in a public place or under circumstances which the person should know will likely cause affront or alarm to, on, or in the presence of another who is 14 years of age or older:

(a) an act of sexual intercourse or sodomy;

(b) exposes his or her genitals, the female breast below the top of the areola, the buttocks, the anus, or the pubic area;

(c) masturbates; or

(d) any other act of lewdness.

(2) (a) A person convicted the first or second time of a violation of Subsection (1) is guilty of a class B misdemeanor, except under Subsection (2)(b).

(b) A person convicted of a violation of Subsection (1) is guilty of a third degree felony if at the time of the violation:

(i) the person is a sex offender as defined in Section 77-27-21.7;

(ii) the person has been previously convicted two or more times of violating Subsection (1); or

(iii) the person has previously been convicted of a violation of Subsection (1) and has also previously been convicted of a violation of Section 76-9-702.5.

(3) A person is guilty of sexual battery if the person under circumstances not amounting to rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, aggravated sexual assault, or an attempt to commit any of these offenses intentionally touches, whether or not through clothing, the anus, buttocks, or any part of the genitals of another person, or the breast of a female, and the actor's conduct is under circumstances the actor knows or should know will likely cause affront or alarm to the person touched.

(4) Sexual battery is a class A misdemeanor.

(5) A person is guilty of public urination if the person urinates or defecates:

(a) in a public place, other than a public rest room; and

(b) under circumstances which the person should know will likely cause affront or alarm to another.

(6) Public urination is a class C misdemeanor.

7) A woman's breast feeding, including breast feeding in any location where the woman otherwise may rightfully be, does not under any circumstance constitute a lewd act,

irrespective of whether or not the breast is covered during or incidental to feeding.

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#### FILTERING LAWS:

#### **Utah Code Ann. § 9-7-215. Internet and online access policy required**

- (1) As used in this section:
  - (a) "Child pornography" is as defined in Section 76-5b-103.
  - (b) "Harmful to minors" is as defined in Section 76-10-1201.
  - (c) "Obscene" is as defined in 20 U.S.C. Sec. 9101.
  - (d) "Technology protection measure" means a technology that blocks or **filters Internet** access to visual depictions.
- (2) State funds may not be provided to any public **library** that offers use of the **Internet** or an online service to the public unless the **library**:
  - (a) (i) has in place a **policy of Internet** safety for minors including the operation of a technology protection measure:
    - (A) with respect to any publicly accessible computer with **Internet** access; and
    - (B) that protects against access to visual depictions that are:
      - (I) child pornography;
      - (II) harmful to minors; or
      - (III) obscene; and
    - (ii) is enforcing the operation of the technology protection measure described in Subsection (2)(a)(i) during any use of a computer by a minor; and
  - (b) (i) has in place a **policy of Internet** safety including the operation of a technology protection measure:
    - (A) with respect to any publicly accessible computer with **Internet** access; and
    - (B) that protects against access to visual depictions that are:
      - (I) child pornography; or
      - (II) obscene; and
    - (ii) is enforcing the operation of the technology protection measure described in Subsection (2)(b)(i) during any use of a computer.
- (3) This section does not prohibit a public **library** from limiting **Internet** access or otherwise protecting against materials other than the materials specified in this section.
- (4) An administrator, supervisor, or other representative of a public **library** may disable a technology protection measure described in Subsection (2):
  - (a) at the request of a **library** patron who is not a minor; and
  - (b) to enable access for research or other lawful purposes.

#### **§ 9-7-216. Process and content standards for policy**

- (1)
  - (a) Each library's policy shall be developed under the direction of the library board, adopted in an open meeting, and have an effective date. The library board shall review the policy at least every three years, and a footnote shall be added to the policy indicating the effective date of the last review.
  - (b) Notice of the availability of the policy shall be posted in a conspicuous place within the library for all patrons to observe. The library board may issue any other public notice it considers appropriate to inform the community about the policy.
- (2) The policy shall:
  - (a) state:
    - (i) that it restricts access to Internet or online sites that contain material described in Section 9-7-215; and
    - (ii) how the library board intends to meet the requirements of Section 9-7-215;
  - (b) inform patrons that administrative procedures and guidelines for the staff to follow in enforcing the policy have been adopted and are available for review at the library; and
  - (c) inform patrons that procedures for use by patrons and staff to handle complaints about the policy, its enforcement, or about observed patron behavior have been adopted and are available for review at the library.

**§ 53A-3-422. Internet and online access policy required**

State funds may not be provided to any local **school** board that provides access to the **Internet** or an online service unless the local **school** board adopts and enforces a **policy** to restrict access to **Internet** or online sites that contain obscene material.

**§ 53A-3-423. Process and content standards for policy**

- (1) "Policy" as used in this section means the elementary and secondary school online access policy adopted by a local school board to meet the requirements of Section 53A-3-422.
- (2)
  - (a) Each policy shall be developed under the direction of the local school board, adopted in an open meeting, and have an effective date. The local school board shall review the policy at least every three years, and a footnote shall be added to the policy indicating the effective date of the last review.
  - (b) Notice of the availability of the policy shall be posted in a conspicuous place within each school. The local school board may issue any other public notice it considers appropriate.
- (3) The policy shall:
  - (a) state that it restricts access to Internet or online sites that contain obscene material and shall state how the local school board intends to meet the requirements of Section 53A-3-422;
  - (b) inform the public that administrative procedures and guidelines for the staff to follow in enforcing the policy have been adopted and are available for review at the school; and
  - (c) inform the public that procedures to handle complaints about the policy, its enforcement, or about observed behavior have been adopted and are available for review at the school.

**76-10-1231. Data service providers -- Internet content harmful to minors**

- (1)
  - (a) Upon request by a consumer, a service provider shall filter content to prevent the transmission of material harmful to minors to the consumer.
  - (b) A service provider complies with Subsection (1)(a) if it uses a generally accepted and commercially reasonable method of filtering.
- (2) At the time of a consumer's subscription to a service provider's service, or at the time this section takes effect if the consumer subscribes to the service provider's service at the time this section takes effect, the service provider shall notify the consumer in a conspicuous manner that the consumer may request to have material harmful to minors blocked under Subsection (1).
- (3) (a) A service provider may comply with Subsection (1) by:
  - (i) providing in-network filtering to prevent receipt of material harmful to minors, provided that the filtering does not affect or interfere with access to Internet content for consumers who do not request filtering under Subsection (1); or
  - (ii) providing software, engaging a third party to provide software, or referring users to a third party that provides filtering software, by providing a clear and conspicuous hyperlink or written statement, for installation on the consumer's computer that blocks, in an easy-to-enable and commercially reasonable manner, receipt of material harmful to minors.(b) A service provider may charge a consumer for providing filtering under Subsection (3)(a).
- (4) If the attorney general determines that a service provider violates Subsection (1) or (2), the attorney general shall:
  - (a) notify the service provider that the service provider is in violation of Subsection (1) or (2); and
  - (b) notify the service provider that the service provider has 30 days to comply with the provision being violated or be subject to Subsection (5).
- (5) A service provider that intentionally or knowingly violates Subsection (1) or (2) is subject to a civil fine of \$ 2,500 for each separate violation of Subsection (1) or (2), up to \$ 10,000 per day.
- (6) A proceeding to impose a civil fine under Subsection (5) may only be brought by the attorney general in a court of competent jurisdiction.
- (7)
  - (a) The Division of Consumer Protection within the Department of Commerce shall, in consultation with other entities as the Division of Consumer Protection considers appropriate, test the effectiveness of a service provider's system for blocking material harmful to minors under Subsection (1) at least annually.
  - (b) The results of testing by the Division of Consumer Protection under Subsection (7)(a) shall be made available to:
    - (i) the service provider that is the subject of the test; and
    - (ii) the public.
  - (c) The Division of Consumer Protection shall make rules in accordance with Title 63G, Chapter 3, **Utah** Administrative Rulemaking Act, to fulfil its duties under this section.