

BILL ANALYSIS

C.S.H.B. 496
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Advancements in technology often present challenges for the law, especially with respect to crimes committed using new technologies. Interested parties contend that current law does not adequately address a person's purposeful disclosure of intimate images of a previous partner with the intent to cause harm to the partner, also known as "revenge porn." In this situation, intimate images are shared online without the consent of the person portrayed and sometimes include the unauthorized disclosure of a wide range of personal information, leading to harassment of a victim and exposure of the victim to identity theft issues. The parties note that a revenge porn website can make money from advertising, membership dues, and charging a victim a fee to withdraw the images and express concern that current law does not provide a method to effectively address this breach of privacy.

The purpose of C.S.H.B. 496 is to provide a mechanism for a victim of this type of unauthorized disclosure to pursue justice through a civil or criminal process and to create a deterrent for offenders.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 496 amends the Penal Code to create the Class A misdemeanor offense of unlawful disclosure or promotion of intimate visual material for a person who, without the effective consent of the depicted person, intentionally discloses visual material depicting another person engaged in sexual conduct under the following conditions: the visual material was obtained by the person or created under circumstances in which the depicted person had a reasonable expectation that the visual material would remain private, the disclosure of the visual material causes harm to the depicted person, and the disclosure of the visual material reveals the identity of the depicted person in any manner, including through any accompanying or subsequent information or material related to the visual material or information or material provided by a third party in response to the disclosure of the visual material. The bill also makes it such an offense to intentionally threaten to disclose, without the consent of the depicted person, visual material depicting another person engaged in sexual conduct, if the actor makes the threat to obtain a benefit in return for not making the disclosure or in connection with the threatened disclosure. The bill makes it such an offense to promote intimate visual material, knowing the

character and content of the material, on a website or other forum for publication that is owned or operated by the actor.

C.S.H.B. 496 specifies that it is not a defense to prosecution for such an offense that the depicted person created or consented to the creation of the visual material or voluntarily transmitted the visual material to the actor. The bill establishes an affirmative defense to prosecution for conduct constituting the offense involving the disclosure or promotion of the visual material that the disclosure or promotion is made in the course of lawful and common practices of law enforcement or medical treatment; reporting unlawful activity; or a legal proceeding, if the disclosure or promotion is permitted or required by law. The bill further establishes an affirmative defense to prosecution for that conduct that the disclosure or promotion consists of visual material depicting only a voluntary exposure of sexual conduct in a public or commercial setting, or that the actor is an interactive computer service as defined by federal law, and the disclosure or promotion consists of visual material provided by another person. The bill authorizes the prosecution of an actor under all applicable law if the actor's conduct constituting an unlawful disclosure or promotion of intimate visual material offense also constitutes an offense under another law.

C.S.H.B. 496 amends the Civil Practice and Remedies Code to make a defendant liable to a person depicted in intimate visual material for damages arising from the disclosure of the material if the defendant discloses the intimate visual material without the effective consent of the depicted person, the intimate visual material was obtained by the defendant or created under circumstances in which the depicted person had a reasonable expectation that the material would remain private, the disclosure of the intimate visual material causes harm to the depicted person, and the disclosure of the intimate visual material reveals the identity of the depicted person in any manner. The bill makes a defendant liable to a person depicted in intimate visual material for damages arising from the promotion of the material if, knowing the character and content of the material, the defendant promotes intimate visual material on a website or other forum for publication that is owned or operated by the defendant.

C.S.H.B. 496 sets out the damages to be awarded to a claimant who prevails in such a liability suit, including exemplary damages, and authorizes a court in which such a suit is brought, on the motion of a party, to issue a temporary restraining order or a temporary or permanent injunction to restrain and prevent the disclosure or promotion of intimate visual material with respect to the person depicted in the material. The bill sets out the damages amounts that the court may award to the party who brought the motion, depending on whether the disclosure or promotion of intimate visual material is wilful or intentional and specifies that the cause of action created by the bill's civil liability provisions is cumulative of any other remedy provided by common law or statute. The bill grants a court personal jurisdiction over a defendant in a suit brought under the those provisions if the defendant or claimant depicted in the intimate visual material resides in Texas, the material is stored on a server that is located in Texas, or the material is available for view in Texas. The bill requires its civil liability provisions to be liberally construed and applied to promote its underlying purpose to protect persons from, and provide adequate remedies to victims of, the disclosure or promotion of intimate visual material. The bill exempts from its provisions relating to the unlawful disclosure or promotion of intimate visual material a claim brought against an interactive computer service, as defined by federal law, for a disclosure consisting of intimate visual material provided by another person.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 496 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences

between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 98B to read as follows:

CHAPTER 98B. LIABILITY FOR PROMOTION OF INTIMATE VISUAL MATERIAL

Sec. 98B.001. DEFINITIONS. In this chapter:

- (1) "Intimate visual material" means visual material that depicts a person engaged in sexual conduct.
- (2) "Promote" and "sexual conduct" have the meanings assigned by Section 43.25, Penal Code.
- (3) "Visual material" has the meaning assigned by Section 43.26, Penal Code.

Sec. 98B.002. LIABILITY FOR PROMOTION OF CERTAIN INTIMATE VISUAL MATERIAL. A defendant is liable, as provided by this chapter, to a person depicted in intimate visual material for damages arising from promotion of the intimate visual material if the defendant knowingly or intentionally:

- (1) engaged in conduct that violates Section 21.16(c), Penal Code, with respect to the intimate visual material; or
- (2) promoted the intimate visual material without obtaining the applicable information required by 18 U.S.C. Section 2257 or 2257A.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. This Act shall be known as the Relationship Privacy Act.

SECTION 2. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 98B to read as follows:

CHAPTER 98B. UNLAWFUL DISCLOSURE OR PROMOTION OF INTIMATE VISUAL MATERIAL

Sec. 98B.001. DEFINITIONS. In this chapter:

- (1) "Intimate visual material" means visual material that depicts a person engaged in sexual conduct.
- (2) "Promote" and "sexual conduct" have the meanings assigned by Section 43.25, Penal Code.
- (3) "Visual material" has the meaning assigned by Section 43.26, Penal Code.

Sec. 98B.002. LIABILITY FOR UNLAWFUL DISCLOSURE OR PROMOTION OF CERTAIN INTIMATE VISUAL MATERIAL. (a) A defendant is liable, as provided by this chapter, to a person depicted in intimate visual material for damages arising from the disclosure of the material if:

- (1) the defendant discloses the intimate visual material without the effective consent of the depicted person;
 - (2) the intimate visual material was obtained by the defendant or created under circumstances in which the depicted person had a reasonable expectation that the material would remain private;
 - (3) the disclosure of the intimate visual material causes harm to the depicted person; and
 - (4) the disclosure of the intimate visual material reveals the identity of the depicted person in any manner, including through:
 - (A) any accompanying or subsequent information or material related to the intimate visual material; or
 - (B) information or material provided by a third party in response to the disclosure of the intimate visual material.
- (b) A defendant is liable, as provided by this chapter, to a person depicted in intimate visual material for damages arising from the promotion of the material if, knowing the

Sec. 98B.003. DAMAGES. (a) A claimant who prevails in a suit under this chapter shall be awarded:

(1) actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown;

(2) court costs; and

(3) reasonable attorney's fees.

(b) In addition to an award under Subsection (a), a claimant who prevails in a suit under this chapter may recover exemplary damages.

Sec. 98B.004. INJUNCTIVE RELIEF. A court in which a suit is brought under this chapter, on the motion of a party, may issue a temporary restraining order or a temporary or permanent injunction to restrain and prevent the promotion of intimate visual material with respect to the person depicted in the material.

Sec. 98B.005. CAUSE OF ACTION CUMULATIVE.

Sec. 98B.006. JOINT AND SEVERAL LIABILITY. A person who engages in conduct described by Section 98B.002 and is found liable under this chapter or other law for any amount of damages arising from that conduct is jointly and severally liable with any other defendant for the entire amount of damages arising from that conduct.

character and content of the material, the defendant promotes intimate visual material described by Subsection (a) on an Internet website or other forum for publication that is owned or operated by the defendant.

Sec. 98B.003. DAMAGES. (a) A claimant who prevails in a suit under this chapter shall be awarded:

(1) actual damages, including damages for mental anguish;

(2) court costs; and

(3) reasonable attorney's fees.

(b) In addition to an award under Subsection (a), a claimant who prevails in a suit under this chapter may recover exemplary damages.

Sec. 98B.004. INJUNCTIVE RELIEF. (a) A court in which a suit is brought under this chapter, on the motion of a party, may issue a temporary restraining order or a temporary or permanent injunction to restrain and prevent the disclosure or promotion of intimate visual material with respect to the person depicted in the material.

(b) A court that issues a temporary restraining order or a temporary or permanent injunction under Subsection (a) may award to the party who brought the motion damages in the amount of:

(1) \$1,000 for each violation of the court's order or injunction, if the disclosure or promotion of intimate visual material is wilful or intentional; or

(2) \$500 for each violation of the court's order or injunction, if the disclosure or promotion of intimate visual material is not wilful or intentional.

Sec. 98B.005. CAUSE OF ACTION CUMULATIVE.

Sec. 98B.006. JURISDICTION. A court has personal jurisdiction over a defendant in a suit brought under this chapter if:

(1) the defendant resides in this state;

(2) the claimant who is depicted in the

Sec. 98B.007. LIBERAL CONSTRUCTION AND APPLICATION; CERTAIN CONDUCT EXCEPTED. (a)

This chapter shall be liberally construed and applied to promote its underlying purpose to protect persons from, and provide adequate remedies to victims of, promotion of intimate visual material.

(b) This chapter does not apply to a claim brought against an interactive computer service, as defined by 47 U.S.C. Section 230, for a disclosure consisting of intimate visual material provided by another person.

SECTION 2. Chapter 21, Penal Code, is amended by adding Section 21.16 to read as follows:

Sec. 21.16. UNLAWFUL DISCLOSURE OR PROMOTION OF INTIMATE VISUAL MATERIAL. (a) In this section:

(1) "Intimate relationship" means a marriage relationship or a relationship of a romantic or intimate nature between two persons.

(2) "Promote" and "sexual conduct" have the meanings assigned by Section 43.25.

(3) "Visual material" has the meaning assigned by Section 43.26.

(b) A person commits an offense if the person:

(1) by electronic means, intentionally discloses visual material depicting another person engaged in sexual conduct;

(2) was in an intimate relationship with the depicted person when the visual material was created or transmitted to the person;

(3) knows or should have known that the depicted person has not consented to the disclosure; and

(4) discloses the visual material with the intent to cause harm to the depicted person, including mental anguish, emotional distress, actual or threatened physical violence, economic harm, harm to reputation, or harassment by a third party.

intimate visual material resides in this state;
(3) the intimate visual material is stored on a server that is located in this state; or
(4) the intimate visual material is available for view in this state.

Sec. 98B.007. LIBERAL CONSTRUCTION AND APPLICATION; CERTAIN CONDUCT EXCEPTED. (a)

This chapter shall be liberally construed and applied to promote its underlying purpose to protect persons from, and provide adequate remedies to victims of, the disclosure or promotion of intimate visual material.

(b) This chapter does not apply to a claim brought against an interactive computer service, as defined by 47 U.S.C. Section 230, for a disclosure consisting of intimate visual material provided by another person.

SECTION 3. Chapter 21, Penal Code, is amended by adding Section 21.16 to read as follows:

Sec. 21.16. UNLAWFUL DISCLOSURE OR PROMOTION OF INTIMATE VISUAL MATERIAL. (a) In this section:

(1) "Promote" and "sexual conduct" have the meanings assigned by Section 43.25.

(2) "Visual material" has the meaning assigned by Section 43.26.

(b) A person commits an offense if:

(1) without the effective consent of the depicted person, the person intentionally discloses visual material depicting another person engaged in sexual conduct;

(2) the visual material was obtained by the person or created under circumstances in which the depicted person had a reasonable expectation that the visual material would remain private;

(3) the disclosure of the visual material causes harm to the depicted person; and

(4) the disclosure of the visual material reveals the identity of the depicted person in

(c) A person commits an offense if, knowing the character and content of the visual material, the person promotes visual material described by Subsection (b) on an Internet website or other forum for electronic publication that is owned or operated by the person.

(d) It is not a defense to prosecution under this section that the depicted person:

(1) created or consented to the creation of the visual material; or

(2) voluntarily transmitted the visual material to the actor.

(e) It is an affirmative defense to prosecution under this section that the actor is an interactive computer service, as defined by 47 U.S.C. Section 230, and the disclosure consisted of visual material provided by another person.

(f) An offense under this section is a Class A misdemeanor.

(g) If conduct that constitutes an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law,

any manner, including through:

(A) any accompanying or subsequent information or material related to the visual material; or

(B) information or material provided by a third party in response to the disclosure of the visual material.

(c) A person commits an offense if the person intentionally threatens to disclose, without the consent of the depicted person, visual material depicting another person engaged in sexual conduct and the actor makes the threat to obtain a benefit:

(1) in return for not making the disclosure; or

(2) in connection with the threatened disclosure.

(d) A person commits an offense if, knowing the character and content of the visual material, the person promotes visual material described by Subsection (b) on an Internet website or other forum for publication that is owned or operated by the person.

(e) It is not a defense to prosecution under this section that the depicted person:

(1) created or consented to the creation of the visual material; or

(2) voluntarily transmitted the visual material to the actor.

(f) It is an affirmative defense to prosecution under Subsection (b) or (d) that:

(1) the disclosure or promotion is made in the course of:

(A) lawful and common practices of law enforcement or medical treatment;

(B) reporting unlawful activity; or

(C) a legal proceeding, if the disclosure or promotion is permitted or required by law;

(2) the disclosure or promotion consists of visual material depicting only a voluntary exposure of sexual conduct in a public or commercial setting; or

(3) the actor is an interactive computer service, as defined by 47 U.S.C. Section 230, and the disclosure or promotion consists of visual material provided by another person.

(g) An offense under this section is a Class A misdemeanor.

(h) If conduct that constitutes an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law,

or both.

SECTION 3. (a) Chapter 98B, Civil Practice and Remedies Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

(b) Section 21.16, Penal Code, as added by this Act, applies to visual material disclosed or promoted on or after the effective date of this Act, regardless of whether the visual material was created or transmitted to the actor before, on, or after that date.

SECTION 4. This Act takes effect September 1, 2015.

or both.

SECTION 4. (a) Chapter 98B, Civil Practice and Remedies Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

(b) Section 21.16, Penal Code, as added by this Act, applies to visual material disclosed or promoted, ~~or threatened to be disclosed,~~ on or after the effective date of this Act, regardless of whether the visual material was created or transmitted to the actor before, on, or after that date.

SECTION 5. Same as introduced version.