

By: González

H.B. No. 496

Substitute the following for H.B. No. 496:

By: Herrero

C.S.H.B. No. 496

A BILL TO BE ENTITLED

1 AN ACT

2 relating to civil and criminal liability for the unlawful  
3 disclosure or promotion of certain intimate visual material;  
4 creating an offense.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

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

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

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

13 (1) "Intimate visual material" means visual material  
14 that depicts a person engaged in sexual conduct.

15 (2) "Promote" and "sexual conduct" have the meanings  
16 assigned by Section 43.25, Penal Code.

17 (3) "Visual material" has the meaning assigned by  
18 Section 43.26, Penal Code.

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

24 (1) the defendant discloses the intimate visual

1 material without the effective consent of the depicted person;

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

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

8 (4) the disclosure of the intimate visual material  
9 reveals the identity of the depicted person in any manner,  
10 including through:

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

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

16 (b) A defendant is liable, as provided by this chapter, to a  
17 person depicted in intimate visual material for damages arising  
18 from the promotion of the material if, knowing the character and  
19 content of the material, the defendant promotes intimate visual  
20 material described by Subsection (a) on an Internet website or  
21 other forum for publication that is owned or operated by the  
22 defendant.

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

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

27 (2) court costs; and

1           (3) reasonable attorney's fees.

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

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

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

14           (1) \$1,000 for each violation of the court's order or  
15 injunction, if the disclosure or promotion of intimate visual  
16 material is wilful or intentional; or

17           (2) \$500 for each violation of the court's order or  
18 injunction, if the disclosure or promotion of intimate visual  
19 material is not wilful or intentional.

20           Sec. 98B.005. CAUSE OF ACTION CUMULATIVE. The cause of  
21 action created by this chapter is cumulative of any other remedy  
22 provided by common law or statute.

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

26           (1) the defendant resides in this state;

27           (2) the claimant who is depicted in the intimate

1 visual material resides in this state;

2 (3) the intimate visual material is stored on a server  
3 that is located in this state; or

4 (4) the intimate visual material is available for view  
5 in this state.

6 Sec. 98B.007. LIBERAL CONSTRUCTION AND APPLICATION;  
7 CERTAIN CONDUCT EXCEPTED. (a) This chapter shall be liberally  
8 construed and applied to promote its underlying purpose to protect  
9 persons from, and provide adequate remedies to victims of, the  
10 disclosure or promotion of intimate visual material.

11 (b) This chapter does not apply to a claim brought against  
12 an interactive computer service, as defined by 47 U.S.C. Section  
13 230, for a disclosure consisting of intimate visual material  
14 provided by another person.

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

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

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

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

23 (b) A person commits an offense if:

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

27 (2) the visual material was obtained by the person or

1 created under circumstances in which the depicted person had a  
2 reasonable expectation that the visual material would remain  
3 private;

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

6 (4) the disclosure of the visual material reveals the  
7 identity of the depicted person in any manner, including through:

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

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

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

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

17 (2) in connection with the threatened disclosure.

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

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

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

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

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

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

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

7                   (B) reporting unlawful activity; or

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

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

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

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

17       (h) If conduct that constitutes an offense under this  
18 section also constitutes an offense under another law, the actor  
19 may be prosecuted under this section, the other law, or both.

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

26       (b) Section 21.16, Penal Code, as added by this Act, applies  
27 to visual material disclosed or promoted, or threatened to be

1 disclosed, on or after the effective date of this Act, regardless of  
2 whether the visual material was created or transmitted to the actor  
3 before, on, or after that date.

4 SECTION 5. This Act takes effect September 1, 2015.