

By: González

H.B. No. 496

A BILL TO BE ENTITLED

AN ACT

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

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

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.

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

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

5 (2) court costs; and

6 (3) reasonable attorney's fees.

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

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

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

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

24 Sec. 98B.007. LIBERAL CONSTRUCTION AND APPLICATION;
25 CERTAIN CONDUCT EXCEPTED. (a) This chapter shall be liberally
26 construed and applied to promote its underlying purpose to protect
27 persons from, and provide adequate remedies to victims of,

1 promotion of intimate visual material.

2 (b) This chapter does not apply to a claim brought against
3 an interactive computer service, as defined by 47 U.S.C. Section
4 230, for a disclosure consisting of intimate visual material
5 provided by another person.

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

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

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

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

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

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

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

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

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

25 (4) discloses the visual material with the intent to
26 cause harm to the depicted person, including mental anguish,
27 emotional distress, actual or threatened physical violence,

1 economic harm, harm to reputation, or harassment by a third party.

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

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

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

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

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

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

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

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

27 (b) Section 21.16, Penal Code, as added by this Act, applies

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

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