

By: Garcia, et al.

S.B. No. 1135

A BILL TO BE ENTITLED

AN ACT

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

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

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 parts," "promote," "sexual conduct," and "visual material" have the meanings assigned by Section 21.16, Penal Code.

(2) "Intimate visual material" means visual material that depicts a person:

(A) with the person's intimate parts exposed; or

(B) engaged in sexual conduct.

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 (1) the defendant discloses the intimate visual
2 material without the effective consent of the depicted person;

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

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

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

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

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

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

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

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

1 (2) court costs; and

2 (3) reasonable attorney's fees.

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

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

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

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

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

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

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

27 (1) the defendant resides in this state;

1 (2) the claimant who is depicted in the intimate
2 visual material resides in this state;

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

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

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

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

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

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

20 (1) "Intimate parts" means the naked genitals, pubic
21 area, anus, buttocks, or female nipple of a person.

22 (2) "Promote" means to procure, manufacture, issue,
23 sell, give, provide, lend, mail, deliver, transfer, transmit,
24 publish, distribute, circulate, disseminate, present, exhibit, or
25 advertise or to offer or agree to do any of the above.

26 (3) "Sexual conduct" means sexual contact, actual or
27 simulated sexual intercourse, deviate sexual intercourse, sexual

1 bestiality, masturbation, or sadomasochistic abuse.

2 (4) "Simulated" means the explicit depiction of sexual
3 conduct that creates the appearance of actual sexual conduct and
4 during which a person engaging in the conduct exhibits any
5 uncovered portion of the breasts, genitals, or buttocks.

6 (5) "Visual material" means:

7 (A) any film, photograph, videotape, negative,
8 or slide or any photographic reproduction that contains or
9 incorporates in any manner any film, photograph, videotape,
10 negative, or slide; or

11 (B) any disk, diskette, or other physical medium
12 that allows an image to be displayed on a computer or other video
13 screen and any image transmitted to a computer or other video screen
14 by telephone line, cable, satellite transmission, or other method.

15 (b) A person commits an offense if:

16 (1) without the effective consent of the depicted
17 person, the person intentionally discloses visual material
18 depicting another person with the person's intimate parts exposed
19 or engaged in sexual conduct;

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

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

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

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

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

5 (c) A person commits an offense if the person intentionally
6 threatens to disclose, without the consent of the depicted person,
7 visual material depicting another person with the person's intimate
8 parts exposed or engaged in sexual conduct and the actor makes the
9 threat to obtain a benefit:

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

11 (2) in connection with the threatened disclosure.

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

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

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

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

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

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

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

1 (B) reporting unlawful activity; or

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

4 (2) the disclosure or promotion consists of visual
5 material depicting in a public or commercial setting only a
6 person's voluntary exposure of:

7 (A) the person's intimate parts; or

8 (B) the person engaging in sexual conduct; or

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

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

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

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

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

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