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S.B. No. 1135

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 material if the defendant knowingly or intentionally engaged in conduct that violates Section 21.16(c), Penal Code, with respect to the material.

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;

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 court in which a suit is
7 brought under this chapter, on the motion of a party, may issue a
8 temporary restraining order or a temporary or permanent injunction
9 to restrain and prevent the promotion of intimate visual material
10 with respect to the person depicted in the material.

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

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

20 Sec. 98B.007. LIBERAL CONSTRUCTION AND APPLICATION;
21 CERTAIN CONDUCT EXCEPTED. (a) This chapter shall be liberally
22 construed and applied to promote its underlying purpose to protect
23 persons from, and provide adequate remedies to victims of,
24 promotion of intimate visual material.

25 (b) This chapter does not apply to a claim brought against
26 an interactive computer service, as defined by 47 U.S.C. Section
27 230, for a disclosure consisting of intimate visual material

1 provided by another person.

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

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

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

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

10 (b) A person commits an offense if:

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

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

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

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

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

24 (B) information or material provided by a third
25 party in response to the person's disclosure of the visual
26 material.

27 (c) A person commits an offense if, knowing the character

1 and content of the visual material, the person promotes visual
2 material described by Subsection (b) on an Internet website or
3 other forum for publication that is owned or operated by the person.

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

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

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

10 (e) It is an affirmative defense to prosecution under this
11 section that:

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

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

16 (B) reporting unlawful activity; or

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

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

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

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

26 (g) If conduct that constitutes an offense under this
27 section also constitutes an offense under another law, the actor

1 may be prosecuted under this section, the other law, or both.

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

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

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