

House Bill 603
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

No equivalent provision.

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

No equivalent provision.

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) 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

House Bill 603
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

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 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

House Bill 603
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

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. The cause of action created by this chapter is cumulative of any other remedy provided by common law or statute.

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 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 or promotion consisting of intimate

House Bill 603
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Chapter 21, Penal Code, is amended by adding Section 21.16 to read as follows:

Sec. 21.16. UNLAWFUL DISSEMINATION OF CERTAIN VISUAL MATERIAL. (a) In this section:

(1) "Exposed intimate parts" means a person's intimate parts that are:

(A) entirely unclothed; or

(B) clothed in a manner that leaves any portion of those parts uncovered or visible through less than fully opaque clothing.

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

(3) "Sexual conduct" has the meaning assigned by Section 43.25.

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

SENATE VERSION (CS)

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

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

(3) "Sexual conduct" means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse.

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

(5) "Visual material" means:

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

(B) any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen

CONFERENCE

House Bill 603
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(b) A person commits an offense if:

(1) the person intentionally disseminates visual material depicting the other person:

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

(B) engaged in sexual conduct;

(2) the person obtained the visual material under circumstances in which a reasonable person should have known or understood that the visual material was to remain private;

(3) the person knows or should have known that the depicted person did not consent to the dissemination;

(4) the depicted person is identifiable from the content of the visual material or from any information displayed in connection with the visual material; and

(5) the person disseminates the visual material with the intent to:

(A) harass, abuse, or torment the depicted person; or

(B) obtain a benefit in return for or in connection with the dissemination.

No equivalent provision.

SENATE VERSION (CS)

by telephone line, cable, satellite transmission, or other method.

(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 with the person's intimate parts exposed or 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 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 with the person's intimate parts exposed or 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

CONFERENCE

House Bill 603
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

(c) It is a defense to prosecution under this section that:
(1) the dissemination 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 dissemination was permitted or required by law;
(2) the dissemination consists of visual material depicting only a voluntary exposure of intimate parts or 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, or a provider of an information service, as defined by 47 U.S.C. Section 153, and the dissemination consists of visual material provided by another person.

(d) An offense under this section is a state jail felony.

No equivalent provision.

SENATE VERSION (CS)

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 in a public or commercial setting only a person's voluntary exposure of:
(A) the person's intimate parts; or
(B) the person engaging in sexual conduct; 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.

CONFERENCE

House Bill 603
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SECTION 2. This Act takes effect September 1, 2015.

SENATE VERSION (CS)

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 House version.

CONFERENCE