

## **BILL ANALYSIS**

Senate Research Center  
86R15151 KJE-F

H.B. 98  
By: González, Mary; Meyer (Huffman)  
State Affairs  
5/3/2019  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

#### **BACKGROUND**

- In the 84th Session, the Legislature passed statute aimed at criminalizing "revenge porn."
- The statute imposes civil and criminal liability for the disclosure of intimate photos of a person without the consent of the person depicted in the photo.
- Recent lawsuits have challenged the constitutionality of the "revenge porn" statute, and the law was recently struck down by the Texas 12th Court of Appeals.
- The court said the law lacked consideration of intent, and a lack of knowledge and context for third party participants who may be found liable under the law.
- The case is currently pending at the Texas Court of Criminal Appeals.

#### **H.B. 98**

- H.B. 98 would protect the Texas "revenge porn" law against constitutional challenges by providing clearer language to specify that the intent of the defendant was to cause harm.
- The bill specifies that a person commits a civil or criminal offense if: without consent, an individual intentionally disclosed intimate visual material with the intent to harm the depicted individual; the material was obtained or created under the circumstances in which the depicted individual had a reasonable expectation the material would remain private; the disclosure of the material caused harm to the depicted individual; and the disclosure revealed the identity of the depicted individual—either through accompanying/subsequent information or information provided by a third party in response to the disclosure.
- The bill passed unanimously in the House Committee on Criminal Jurisprudence and on the House floor with a vote of 136-0.

H.B. 98 amends current law relating to civil and criminal liability for the unlawful disclosure of intimate visual material.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 98B.002(a), Civil Practice and Remedies Code, as follows:

(a) Provides that a defendant is liable, as provided by this chapter (Unlawful Disclosure or Promotion of Intimate Visual Material), 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 and with the intent to harm that person, rather than without the effective consent of the depicted person;

(2) at the time of the disclosure, the defendant knows or has reason to believe that 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, rather than the intimate visual material was obtained by the defendant or created under circumstances in which the depicted person has a reasonable expectation that the material would remain private; and

(3)–(4) makes no changes to these subdivisions.

SECTION 2. Amends Section 21.16(b), Penal Code, as follows:

(b) Provides that a person commits an offense if:

(1) without the effective consent of the depicted person and with the intent to harm that person, the person discloses visual material, rather than 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) at the time of the disclosure, the person knows or has reason to believe that 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, rather than 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; and

(3)–(4) makes no changes to these subdivisions.

SECTION 3. (a) Makes application of Section 98B.002 (Liability For Unlawful Disclosure or Promotion of Certain Intimate Visual Material), Civil Practice and Remedies Code, as amended by this Act, prospective.

(b) Makes application of Section 21.16 (Unlawful Disclosure or Promotion of Intimate Visual Material), Penal Code, as amended by this Act, prospective. Provides that, for purposes of this subsection, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 4. Effective date: September 1, 2019.