By:  Smith H.B. No. 2508

A BILL TO BE ENTITLED

AN ACT

relating to Creating a Criminal Offense for the unlawful disclosure of an autopsy photograph.

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

SECTION 1.  Article 49, Code of Criminal Procedure, is amended by adding Article 49.105 to read as follows:

Art. 49.105.  UNLAWFUL DISCLOSURE OF AN AUTOPSY PHOTOGRAPH.

(a)  In this section:

(1)  "Photograph" 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 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 or the legal representative of the depicted person, the person discloses a photograph from an autopsy;

(2)  the disclosure of the photograph reveals the identity of the depicted person in any manner, including through:

(A)  any accompanying or subsequent information or material related to the photograph; or

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

(c)  A person commits an offense if, knowing the character and content of the photograph, the person promotes the photgraph described by Subsection (b) on an Internet website or other forum for publication that is owned or operated by the person.

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

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

(A)  reporting unlawful activity; or

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

(2)  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.

(e)  An offense under subsection (b)(1) or (b)(2)is a Class A Misdemeanor. An offense under subsection (c) is a State Jail Felony.

(f)  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.

SECTION 2.  The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 3.  This Act takes effect September 1, 2021.