

BILL ANALYSIS

Senate Research Center

C.S.S.B. 997
By: West
State Affairs
4/17/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A nationally publicized civil lawsuit involving the widow of the late basketball star Kobe Bryant has brought to light the fact that, in an age where most people have a digital device in their pocket with a camera, photographs of human remains from crime and accident scenes can end up in the public domain and cause significant mental and emotional harm to surviving family and friends.

S.B. 977 addresses the publication of photographs of human remains by first responders, coroners, medical examiners, law enforcement, and others who would, in their official capacity, have access to the scene of an accident or crime at which a dead or dismembered body is likely to be present.

This proposed legislation creates a criminal offense—a state jail felony—if a person publishes a photograph of human remains that the person obtained while acting as a first responder, coroner, medical examiner, or employee of those offices.

The legislation defines publication of the photograph as:

- Displaying it to another person
- Sending it to another person by text message
- Publishing it on a social media platform
- Selling it to a news publication
- Using it in a movie or documentary

The legislation also creates an affirmative defense for first responders and medical examiners and others covered under the legislation if the photo is published for official law enforcement or medical purposes. This protects the use of such photographs in court, the transmission of photos digitally between first responders, and the use of such photographs in academic pursuits connected to work as a first responder, coroner, etc.

The legislation further creates a civil cause of action for persons who are victimized by the publication of photos of human remains of a loved one. Governmental units are jointly and severally liable for damages resulting from the unlawful distribution of photos containing human remains, with a damages cap of \$100,000 proposed to be enshrined in statute.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 997 amends current law relating to the publication of certain photographs of human remains by certain individuals for a purpose other than an authorized purpose and provides a civil penalty.

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. Requires that this Act be known as the Kobe and Gianna Bryant Act.

SECTION 2. Amends Subtitle A, Title 8, Health and Safety Code, by adding Chapter 672A, as follows:

CHAPTER 672A. PROHIBITED PUBLICATION OF CERTAIN PHOTOGRAPHS OF HUMAN REMAINS

Sec. 672A.001. DEFINITIONS. Defines "human remains" and "publish."

Sec. 672A.002. PROHIBITED PUBLICATION OF CERTAIN PHOTOGRAPHS DEPICTING HUMAN REMAINS. (a) Prohibits an individual from publishing a photograph of human remains that the individual obtained while acting within the course and scope of the individual's duties as an officer or employee of this state or a political subdivision of this state.

(b) Provides that for purposes of Subsection (a), a photograph is considered to have been published if the photograph is:

- (1) displayed to an unauthorized person;
- (2) released to an unauthorized person by any delivery method, including text message, e-mail, or facsimile;
- (3) posted on a social media platform; or
- (4) sold to a news publication.

Sec. 672A.003. CIVIL PENALTY. (a) Provides that an individual who violates Section 672A.002 is liable for a civil penalty in an amount not to exceed \$10,000 for each violation.

(b) Authorizes the attorney general or the appropriate county or district attorney to sue to collect the civil penalty provided by Subsection (a) and to recover attorney's fees and costs incurred in obtaining relief under this section.

(c) Provides that it is a defense to liability for a civil penalty under this section that:

- (1) the individual published the photograph of human remains for an official law enforcement, scientific, educational, research, or medical purpose, or as part of a civil proceeding; or
- (2) the photograph was published in a documentary film or television show with the approval of the chief medical examiner, coroner, or commissioners court, as applicable, and the remains are unidentifiable.

(d) Prohibits a defendant from asserting official immunity as a defense in an action brought under this section.

SECTION 3. Effective date: September 1, 2023.