

BILL ANALYSIS

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S.B. 1135
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In recent years, there has been a disturbing Internet trend of sexually explicit images disclosed without the consent of the depicted person, resulting in immediate and in many cases, irreversible harm to the victim. Victims' images are often posted with identifying information such as name, contact information, and links to their social media profiles. The victims are frequently threatened with sexual assault, harassed, stalked, fired from jobs, and forced to change schools. Some victims have even committed suicide.

In many instances, the images are disclosed by a former spouse or partner who is seeking revenge. This practice has been commonly referred to as "revenge pornography" by the media. To add insult to injury, "revenge porn websites" are further preying on victims by charging fees to remove the sexually explicit images from the internet.

S.B. 1135 would preserve relationship privacy by providing victims both civil and criminal remedies when these intimate images are disclosed in a nonconsensual manner and cause harm to the depicted person.

As proposed, S.B. 1135 amends current law relating to civil and criminal liability for the disclosure or promotion of certain intimate visual material and creates an offense.

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 Title 4, Civil Practice and Remedies Code, by adding Chapter 98B, as follows:

CHAPTER 98B. LIABILITY FOR PROMOTION OF INTIMATE VISUAL MATERIAL

Sec. 98B.001. DEFINITIONS. Defines "intimate visual material," "promote," "sexual conduct," and "visual material."

Sec. 98B.002. LIABILITY FOR PROMOTION OF CERTAIN INTIMATE VISUAL MATERIAL. Provides that 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) Requires that a claimant who prevails in a suit under this chapter be awarded:

- (1) actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown;
- (2) court costs; and

(3) reasonable attorney's fees.

(b) Authorizes a claimant who prevails in a suit under this chapter to recover exemplary damages, in addition to an award under Subsection (a).

Sec. 98B.004. INJUNCTIVE RELIEF. Authorizes a court in which a suit is brought under this chapter, on the motion of a party, to issue a temporary restraining order or a temporary or permanent injunction to restrain and prevent the promotion of intimate visual material with respect to the person depicted in the material.

Sec. 98B.005. CAUSE OF ACTION CUMULATIVE. Provides that the cause of action created by this chapter is cumulative of any other remedy provided by common law or statute.

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

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

(b) Provides that 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 consisting of intimate visual material provided by another person.

SECTION 2. Amends Chapter 21, Penal Code, by adding Section 21.16, as follows:

Sec. 21.16. UNLAWFUL DISCLOSURE OR PROMOTION OF INTIMATE VISUAL MATERIAL. (a) Defines "promote," "sexual conduct," and "visual material."

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

(1) without the effective consent of the depicted person, the person intentionally discloses visual material depicting another person 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; and

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

(c) Provides that 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 other forum for publication that is owned or operated by the person.

(d) Provides that 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.

(e) Provides that it is an affirmative defense to prosecution under this section 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 only a voluntary exposure of 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, and the disclosure or promotion consists of visual material provided by another person.

(f) Provides that an offense under this section is a Class A misdemeanor.

(g) Authorizes that the actor be prosecuted under this section, the other law, or both, if conduct that constitutes an offense under this section also constitutes an offense under another law.

SECTION 3. Provides that 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. Provides that 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) Provides that Section 21.16, Penal Code, as added by this Act, applies to visual material disclosed or promoted 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 4. Effective date: September 1, 2015.