

1-1 By: Garcia, Huffman, Zaffirini S.B. No. 1135
1-2 (In the Senate - Filed March 10, 2015; March 17, 2015, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 April 7, 2015, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 7, 2015,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	<u>Whitmire</u>	X		
1-10	<u>Huffman</u>	X		
1-11	<u>Burton</u>	X		
1-12	<u>Creighton</u>	X		
1-13	<u>Hinojosa</u>	X		
1-14	<u>Menéndez</u>	X		
1-15	<u>Perry</u>	X		

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1135 By: Whitmire

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to civil and criminal liability for the unlawful
1-20 disclosure or promotion of certain intimate visual material;
1-21 creating an offense.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. This Act shall be known as the Relationship
1-24 Privacy Act.

1-25 SECTION 2. Title 4, Civil Practice and Remedies Code, is
1-26 amended by adding Chapter 98B to read as follows:

1-27 CHAPTER 98B. UNLAWFUL DISCLOSURE OR PROMOTION OF INTIMATE VISUAL
1-28 MATERIAL

1-29 Sec. 98B.001. DEFINITIONS. In this chapter:

1-30 (1) "Intimate visual material" means visual material
1-31 that depicts a person engaged in sexual conduct.

1-32 (2) "Promote" and "sexual conduct" have the meanings
1-33 assigned by Section 43.25, Penal Code.

1-34 (3) "Visual material" has the meaning assigned by
1-35 Section 43.26, Penal Code.

1-36 Sec. 98B.002. LIABILITY FOR UNLAWFUL DISCLOSURE OR
1-37 PROMOTION OF CERTAIN INTIMATE VISUAL MATERIAL. (a) A defendant is
1-38 liable, as provided by this chapter, to a person depicted in
1-39 intimate visual material for damages arising from the disclosure of
1-40 the material if:

1-41 (1) the defendant discloses the intimate visual
1-42 material without the effective consent of the depicted person;

1-43 (2) the intimate visual material was obtained by the
1-44 defendant or created under circumstances in which the depicted
1-45 person had a reasonable expectation that the material would remain
1-46 private;

1-47 (3) the disclosure of the intimate visual material
1-48 causes harm to the depicted person; and

1-49 (4) the disclosure of the intimate visual material
1-50 reveals the identity of the depicted person in any manner,
1-51 including through:

1-52 (A) any accompanying or subsequent information
1-53 or material related to the intimate visual material; or

1-54 (B) information or material provided by a third
1-55 party in response to the disclosure of the intimate visual
1-56 material.

1-57 (b) A defendant is liable, as provided by this chapter, to a
1-58 person depicted in intimate visual material for damages arising
1-59 from the promotion of the material if, knowing the character and
1-60 content of the material, the defendant promotes intimate visual

2-1 material described by Subsection (a) on an Internet website or
2-2 other forum for publication that is owned or operated by the
2-3 defendant.

2-4 Sec. 98B.003. DAMAGES. (a) A claimant who prevails in a
2-5 suit under this chapter shall be awarded:

2-6 (1) actual damages, including damages for mental
2-7 anguish;

2-8 (2) court costs; and

2-9 (3) reasonable attorney's fees.

2-10 (b) In addition to an award under Subsection (a), a claimant
2-11 who prevails in a suit under this chapter may recover exemplary
2-12 damages.

2-13 Sec. 98B.004. INJUNCTIVE RELIEF. (a) A court in which a
2-14 suit is brought under this chapter, on the motion of a party, may
2-15 issue a temporary restraining order or a temporary or permanent
2-16 injunction to restrain and prevent the disclosure or promotion of
2-17 intimate visual material with respect to the person depicted in the
2-18 material.

2-19 (b) A court that issues a temporary restraining order or a
2-20 temporary or permanent injunction under Subsection (a) may award to
2-21 the party who brought the motion damages in the amount of:

2-22 (1) \$1,000 for each violation of the court's order or
2-23 injunction, if the disclosure or promotion of intimate visual
2-24 material is wilful or intentional; or

2-25 (2) \$500 for each violation of the court's order or
2-26 injunction, if the disclosure or promotion of intimate visual
2-27 material is not wilful or intentional.

2-28 Sec. 98B.005. CAUSE OF ACTION CUMULATIVE. The cause of
2-29 action created by this chapter is cumulative of any other remedy
2-30 provided by common law or statute.

2-31 Sec. 98B.006. JURISDICTION. A court has personal
2-32 jurisdiction over a defendant in a suit brought under this chapter
2-33 if:

2-34 (1) the defendant resides in this state;

2-35 (2) the claimant who is depicted in the intimate
2-36 visual material resides in this state;

2-37 (3) the intimate visual material is stored on a server
2-38 that is located in this state; or

2-39 (4) the intimate visual material is available for view
2-40 in this state.

2-41 Sec. 98B.007. LIBERAL CONSTRUCTION AND APPLICATION;
2-42 CERTAIN CONDUCT EXCEPTED. (a) This chapter shall be liberally
2-43 construed and applied to promote its underlying purpose to protect
2-44 persons from, and provide adequate remedies to victims of, the
2-45 disclosure or promotion of intimate visual material.

2-46 (b) This chapter does not apply to a claim brought against
2-47 an interactive computer service, as defined by 47 U.S.C. Section
2-48 230, for a disclosure consisting of intimate visual material
2-49 provided by another person.

2-50 SECTION 3. Chapter 21, Penal Code, is amended by adding
2-51 Section 21.16 to read as follows:

2-52 Sec. 21.16. UNLAWFUL DISCLOSURE OR PROMOTION OF INTIMATE
2-53 VISUAL MATERIAL. (a) In this section:

2-54 (1) "Promote" and "sexual conduct" have the meanings
2-55 assigned by Section 43.25.

2-56 (2) "Visual material" has the meaning assigned by
2-57 Section 43.26.

2-58 (b) A person commits an offense if:

2-59 (1) without the effective consent of the depicted
2-60 person, the person intentionally discloses visual material
2-61 depicting another person engaged in sexual conduct;

2-62 (2) the visual material was obtained by the person or
2-63 created under circumstances in which the depicted person had a
2-64 reasonable expectation that the visual material would remain
2-65 private;

2-66 (3) the disclosure of the visual material causes harm
2-67 to the depicted person; and

2-68 (4) the disclosure of the visual material reveals the
2-69 identity of the depicted person in any manner, including through:

3-1 (A) any accompanying or subsequent information
3-2 or material related to the visual material; or

3-3 (B) information or material provided by a third
3-4 party in response to the disclosure of the visual material.

3-5 (c) A person commits an offense if the person intentionally
3-6 threatens to disclose, without the consent of the depicted person,
3-7 visual material depicting another person engaged in sexual conduct
3-8 and the actor makes the threat to obtain a benefit:

3-9 (1) in return for not making the disclosure; or

3-10 (2) in connection with the threatened disclosure.

3-11 (d) A person commits an offense if, knowing the character
3-12 and content of the visual material, the person promotes visual
3-13 material described by Subsection (b) on an Internet website or
3-14 other forum for publication that is owned or operated by the person.

3-15 (e) It is not a defense to prosecution under this section
3-16 that the depicted person:

3-17 (1) created or consented to the creation of the visual
3-18 material; or

3-19 (2) voluntarily transmitted the visual material to the
3-20 actor.

3-21 (f) It is an affirmative defense to prosecution under
3-22 Subsection (b) or (d) that:

3-23 (1) the disclosure or promotion is made in the course
3-24 of:

3-25 (A) lawful and common practices of law
3-26 enforcement or medical treatment;

3-27 (B) reporting unlawful activity; or

3-28 (C) a legal proceeding, if the disclosure or
3-29 promotion is permitted or required by law;

3-30 (2) the disclosure or promotion consists of visual
3-31 material depicting only a voluntary exposure of sexual conduct in a
3-32 public or commercial setting; or

3-33 (3) the actor is an interactive computer service, as
3-34 defined by 47 U.S.C. Section 230, and the disclosure or promotion
3-35 consists of visual material provided by another person.

3-36 (g) An offense under this section is a Class A misdemeanor.

3-37 (h) If conduct that constitutes an offense under this
3-38 section also constitutes an offense under another law, the actor
3-39 may be prosecuted under this section, the other law, or both.

3-40 SECTION 4. (a) Chapter 98B, Civil Practice and Remedies
3-41 Code, as added by this Act, applies only to a cause of action that
3-42 accrues on or after the effective date of this Act. A cause of
3-43 action that accrues before the effective date of this Act is
3-44 governed by the law in effect immediately before that date, and that
3-45 law is continued in effect for that purpose.

3-46 (b) Section 21.16, Penal Code, as added by this Act, applies
3-47 to visual material disclosed or promoted, or threatened to be
3-48 disclosed, on or after the effective date of this Act, regardless of
3-49 whether the visual material was created or transmitted to the actor
3-50 before, on, or after that date.

3-51 SECTION 5. This Act takes effect September 1, 2015.

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