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Bill Analysis

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SUMMARY

- Prohibits an organization that sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles from failing to verify that any person attempting to access those materials or performances is age 18 or older.
- Prohibits an organization that sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles and that uses age verification from retaining identifying information of any person attempting to access those materials or performances.
- Prohibits a person who is under age 18 attempting to access materials or performances that are obscene or harmful to juveniles from recklessly providing false identifying information to access those materials or performances on the internet.
- Exempts persons employed by newspapers, magazines, television stations, or similar media and certain service providers disseminating information for the general public from fulfilling the age verification requirement.
- Provides the following affirmative defenses:
 - For a person attempting to access materials or performances that are obscene or harmful to juveniles on the internet if that person provided identifying information to the organization that sells, delivers, furnishes, disseminates, provides, exhibits, or presents material or performances that is obscene or harmful to juveniles.
 - For organizations that sell, deliver, furnish, disseminate, provide, exhibit, or present any material or performance that is obscene or harmful to juveniles on the internet if that organization made a bona fide effort to discover the age of a person attempting to access its materials who was under age 18.

- For organizations that sell, deliver, furnish, disseminate, provide, exhibit, or present any material or performance that is obscene or harmful to juveniles on the internet if the organization had no reason to believe the person attempting to access the material or performances was under age 18.
- Provides that organizations that sell, deliver, furnish, disseminate, provide, exhibit, or present any material or performance that is obscene or harmful to juveniles as well as the organization's officer, agent, or employee may be convicted for that criminal conduct.
- Creates the offense of failure to verify age of a person accessing materials that are obscene or harmful to juveniles and the offense of use of false identifying information to access materials that are obscene or harmful to juveniles.
- Prohibits a person from disseminating an image of another person if the person created, adapted, or modified an image to depict another person that is recognizable in a state of nudity or engaged in a sexual act without consent from the person depicted.
- Modifies existing law to allow the dissemination of an image if the person in the image is age 18 or older and the person is knowingly and willingly in a state of nudity or engaged in sexual conduct and is knowingly and willingly in a location where the person does not have a reasonable expectation of privacy.
- Creates the offense of nonconsensual dissemination of fabricated sexual images.
- Allows a victim of failure to verify age of person accessing materials that are obscene or harmful to juveniles and a victim of nonconsensual dissemination of fabricated sexual images to commence a civil action against the offender.
- Allows the court to order a person who is convicted of nonconsensual dissemination of fabricated sexual images or who is adjudicated a delinquent child by reason of committing that offense to criminally forfeit certain specified property acquired or maintained as a result of committing the offense.
- Names the bill the "Innocence Act."

DETAILED ANALYSIS

Age verification and internet protection for juveniles

Prohibitions and penalties

The bill prohibits an organization who sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles on the internet from recklessly failing to verify that any person attempting to access the material or

performance is age 18 or older through reasonable verification methods.¹ In addition, the bill prohibits an organization who sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles on the internet from recklessly retaining any identifying information of the person attempting to access that material or performance for more than 30 days.² A violation of either of these prohibitions is failure to verify age of a person accessing materials that are obscene or harmful to juveniles, a third degree felony.³

The bill also prohibits a person who is under age 18 from recklessly providing false identifying information for the purpose of attempting to access material or performance that is obscene or harmful to juveniles on the internet.⁴ A violation of this prohibition is use of false identifying information to access materials that are obscene or harmful to juveniles, a fourth degree misdemeanor.⁵

The bill provides that an organization or an officer, agent, or employee of the organization may be convicted of an offense, fined, and penalized if the officer, agent, or employee of the organization acted on the officer's agent's, or employee's own behalf.⁶

Age verification exemptions and affirmative defenses

The bill provides exemptions and affirmative defenses to certain persons and providers. The prohibitions described under "**Age verification and internet protection for juveniles,**" above, do not apply to the following persons or entities:⁷

1. A person who, while employed or contracted by a newspaper, magazine, press association, news agency, news wire service, radio or television station, or similar media, is gathering, processing, transmitting, compiling, editing, or disseminating information for the general public;
2. Providers of an interactive computer service;
3. A mobile service;
4. An internet provider;
5. A cable service provider;
6. A direct-to-home satellite service;

¹ R.C. 2907.312(B).

² R.C. 2907.312(C).

³ R.C. 2907.312(H)(1).

⁴ R.C. 2907.312(D).

⁵ R.C. 2907.312(H)(2).

⁶ R.C. 2907.312(G).

⁷ R.C. 2907.312(E).

7. A video service provider;
8. A cloud service provider.

The bill also provides that it is an affirmative defense to a charge of failure to verify age of person accessing materials that are obscene or harmful to juveniles if all of the following apply:⁸

1. The person attempting to access any material or performance that is obscene or harmful to juveniles on the internet provided identifying information to the organization who sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles on the internet;
2. That organization made a bona fide effort to ascertain the true age of the person by verifying that the person attempting to access the material or performance is age 18 or older through reasonable age verification methods;
3. The organization had no reason to believe that the person attempting to access the material or performance was under age 18.

Civil action for failure to verify age of person accessing materials that are obscene or harmful to juveniles

The bill allows a victim of the offense of failure to verify age of person accessing materials that are obscene or harmful to juveniles to commence a civil action against the offender and to recover compensatory damages, reasonable attorney's fees, court costs, and other reasonable expenses incurred in maintaining the civil action.⁹

Definitions

The bill defines the following terms for purposes of the provisions described above:

"Cable service provider" means any person or group of persons that is engaged in the provision of cable service over a cable system and directly or indirectly owns a significant interest in the cable system, or that through any arrangement otherwise controls or is responsible for the management and operation of the cable system.¹⁰

"Cloud service provider" means a third-party company offering a cloud-based platform, infrastructure, application, or storage services.¹¹

"Direct-to-home satellite service" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of

⁸ R.C. 2907.312(F).

⁹ R.C. 2307.68.

¹⁰ R.C. 2907.312(A)(1) and 1332.01(C), not in the bill.

¹¹ R.C. 2907.312(A)(2).

ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.¹²

"Identifying information" means a photo identification or public or private transactional data.¹³

"Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions.¹⁴

"Internet provider" means a provider of internet service, including all of the following:¹⁵

- Broadband service, however defined or classified by the Federal Communications Commission;
- Information service or telecommunications service, both as defined in the "Telecommunications Act of 1996," 47 U.S.C. 153, as amended;
- Internet protocol-enabled services.

"Mobile service" means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes both one-way and two-way radio communication services, a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" or any successor proceeding.¹⁶

"Organization" means a corporation for profit or not-for-profit, partnership, limited partnership, joint venture, unincorporated nonprofit association, estate, trust, or other commercial or legal entity. "Organization" does not include an entity organized as or by a governmental agency for the execution of a governmental program.¹⁷

¹² R.C. 2907.312(A)(3) and 47 United States Code (U.S.C.) 303(v), not in the bill.

¹³ R.C. 2907.312(A)(4).

¹⁴ R.C. 2907.312(A) and 47 U.S.C. 230(f), not in the bill.

¹⁵ R.C. 2907.312(A)(6).

¹⁶ R.C. 2907.312(A)(7) and 47 U.S.C. 153(33), not in the bill.

¹⁷ R.C. 2907.312(A)(8) and 2901.23(D), not in the bill.

“Photo identification” means one of the following documents that includes the individual’s name and photograph and is not expired and includes any substantially similar license issued by another state, district, country, or sovereignty:¹⁸

- An Ohio driver’s license, state identification card, or interim identification form issued by the registrar of motor vehicles or a deputy registrar;
- A United States passport or passport card;
- A United States military identification card, Ohio National Guard identification card, or United States Department of Veterans Affairs identification card.

“Reasonable age verification methods” means verifying that the person attempting to access the material or performance that is obscene or harmful to juveniles is age 18 or older through the use of a commercial age verification system that uses photo identification or public or private transactional data to verify the person’s age.¹⁹

“Telecommunications carrier” means any provider of telecommunications services, except that such term does not include aggregators of telecommunications. A telecommunications carrier shall be treated as a common carrier only to the extent that it is engaged in providing telecommunications services, except that the Federal Communications Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.²⁰

“Transactional data” means a sequence of information that documents an exchange, agreement, or transfer between a person, organization, or third party for the purpose of satisfying a request or event. “Transactional data” includes mortgage, educational, and employment records.²¹

“Video service provider” means a person granted video service authorization under the Fair Competition In Cable Operations Law.²²

Dissemination of fabricated sexual images crime and defenses

Prohibition and penalty

The bill prohibits a person from knowingly disseminating an image of another person if all of the following apply:²³

¹⁸ R.C. 2907.312(A)(9) and 3501.01(AA)(1), not in the bill.

¹⁹ R.C. 2907.312(A)(10).

²⁰ R.C. 2907.312(A)(7) and 47 U.S.C. 153(51), not in the bill.

²¹ R.C. 2907.312(A)(11).

²² R.C. 2907.312(A) and 1332.21(M), not in the bill.

²³ R.C. 2917.211(C).

- The person created, adapted, or modified an image to depict another person, and the other person is recognizable in the image by the other person's face, likeness, or other distinguishing characteristic;
- The person depicted in the image is in a state of nudity or is engaged in a sexual act;
- The image is disseminated without consent from the person depicted in the image.

A violation of this prohibition is nonconsensual dissemination of fabricated sexual images, a third degree felony.²⁴ If the offender has previously been convicted of or pleaded guilty to nonconsensual dissemination of fabricated sexual images, a sexually oriented offense, or a child-victim oriented offense, nonconsensual dissemination of fabricated sexual images is a second degree felony.²⁵ If the offender is under age 18, nonconsensual dissemination of fabricated sexual images is a first degree misdemeanor.²⁶

Exceptions

Under continuing law, which also applies to the prohibition described above, the dissemination of an image is not prohibited if any of the following apply:²⁷

- The image is disseminated for the purpose of a criminal investigation that is otherwise lawful;
- The image is disseminated for the purpose of, or in connection with, the reporting of unlawful conduct;
- The image is part of a news report or commentary or an artistic or expressive work, such as a performance, work of art, literary work, theatrical work, musical work, motion picture, film, or audiovisual work;
- The image is disseminated by a law enforcement officer, or a corrections officer or guard in a detention facility, acting within the scope of the person's official duties;
- The image is disseminated for another lawful purpose;
- The person in the image is knowingly and willingly in a state of nudity or engaged in a sexual act and is knowingly and willingly in a location in which the person does not have a reasonable expectation of privacy;
- The image is disseminated for the purpose of medical treatment or examination.

The bill modifies continuing law described above by establishing that if *the person in the image is age 18 or older*, is knowingly and willingly in a state of nudity or engaged in a sexual

²⁴ R.C. 2917.211(G)(2)(a).

²⁵ R.C. 2917.211(G)(2)(b).

²⁶ R.C. 2917.211(G)(2)(c).

²⁷ R.C. 2917.211(D).

act, and is knowingly and willingly in a location in which the person does not have a reasonable expectation of privacy, the dissemination of the image is not prohibited.²⁸

Civil action for nonconsensual dissemination of fabricated sexual images

The bill allows a victim of the offense of nonconsensual dissemination of fabricated sexual images to commence a civil action against the offender and recover compensatory damages, reasonable attorney's fees, court costs, and other reasonable expenses incurred in maintaining a civil action.²⁹

Forfeiture

The bill modifies the existing Criminal and Civil Forfeiture Law by allowing the court to order any person who is convicted of nonconsensual dissemination of fabricated sexual images or who is adjudicated a delinquent child by reason of committing the offense of nonconsensual dissemination of fabricated sexual images to criminally forfeit the following property to the state under the Criminal and Civil Forfeiture Law:³⁰

- Any profits or proceeds and any property the person has acquired or maintained in violation of the offense of nonconsensual dissemination of fabricated sexual images that the sentencing court determines to have been acquired or maintained as a result of the violation;
- Any interest in, securities of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise that the person has established, operated, controlled, or conducted as a result of committing the offense of nonconsensual dissemination of fabricated sexual images that the sentencing court determines to have been acquired or maintained as a result of the violation.

The Innocence Act

The bill names the act the "Innocence Act."³¹

²⁸ R.C. 2917.211(D)(6).

²⁹ R.C. 2307.69.

³⁰ R.C. 2917.211(G)(2) and (3) and 2981.02(B).

³¹ Section 3.

HISTORY

Action	Date
Introduced	10-10-23
