



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. H.B. 497*

132nd General Assembly
(As Reported by S. Judiciary)

Reps. Rogers and Manning, Anielski, Arndt, Ashford, Boyd, Brown, Cupp, Dever, Galonski, Gavarone, Green, Hambley, Holmes, Hoops, Howse, Hughes, Koehler, Landis, Lanese, Lang, Leland, Lepore-Hagan, Miller, O'Brien, Patterson, Patton, Perales, Ramos, Rezabek, Riedel, Scherer, Schuring, Sheehy, West, R. Smith

BILL SUMMARY

Nonconsensual dissemination of private sexual images

- Enacts the offense of "nonconsensual dissemination of private sexual images" under which a person is prohibited from disseminating private sexual images of a person without consent and with intent to harm the individual in the image.
- Makes a first offense a third degree misdemeanor, a second offense a second degree misdemeanor, and a third or subsequent offense a first degree misdemeanor.
- Allows nonconsensual dissemination of private sexual images for specified purposes.
- Exempts certain entities from liability for nonconsensual dissemination of private sexual images if the image or information was provided by a third party.
- Allows the court to order a convicted offender or adjudicated delinquent child to forfeit all property that was acquired or maintained in connection with the nonconsensual dissemination of private sexual images.

* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

Civil action by victim

- Creates a civil action for nonconsensual dissemination of private sexual images in which the victim may file against the offender and be awarded an injunction or temporary restraining order, compensatory damages, punitive damages, reasonable attorney's fees, and costs of bringing the action.

Higher education requirements

- Prohibits an institution of higher learning from considering that an applicant or student is a victim of nonconsensual dissemination of private sexual images when providing financial assistance.
- Prohibits an institution of higher learning from disciplining a student because the student is a victim of nonconsensual dissemination of private sexual images.

Licensing authority requirements

- Prohibits a licensing authority from refusing to license or renew a license or limiting, suspending, or revoking a license because the individual is a victim of nonconsensual dissemination of private sexual images.

CONTENT AND OPERATION

Nonconsensual dissemination of private sexual images

Prohibition

The bill creates the offense of "nonconsensual dissemination of private sexual images." Under the offense, a person is prohibited from knowingly disseminating an image of another if all of the following apply:¹

--The person in the image is 18 years old or older.

--The person in the image can be identified either from the image or from information displayed in connection with the image.

--The person in the image is in a state of nudity or engaged in a sexual act.

--The image is disseminated without the consent of the person in the image.

--The image is disseminated with intent to harm the person in the image.

¹ R.C. 2917.211(B).

The above conduct may be prosecuted under the bill, another section of the Revised Code, or both.² However, the above conduct may not be prosecuted under the bill if the offender is under 18 years old, and the person in the image is not more than five years older than the offender.³

Permitted conduct

The bill does not prohibit dissemination of an image in the following circumstances:⁴

--The image is disseminated for purposes of a criminal investigation that otherwise is lawful.

--The image is disseminated for purposes of, or in connection with, reporting unlawful conduct.

--The image is part of a news report or commentary or an artistic or expressive work, such as a performance, art, literature, theater, music, film, or audiovisual work.

--The image is disseminated by a law enforcement officer, or a corrections facility corrections officer or guard, acting in the scope of the person's official duties.

--The image is disseminated for a lawful public purpose.

--The person in the image is knowingly and willingly in a state of nudity or engaged in a sexual act and willingly in a location in which the person does not have a reasonable expectation of privacy.

--The image is disseminated for purposes of medical treatment or examination.

Entities exempt from liability

Under the bill, the following entities are not liable for a violation of the prohibition under the offense of nonconsensual dissemination of private sexual images solely because an image or information was provided by another person.⁵

² R.C. 2917.211(E).

³ R.C. 2917.211(F)(1)(d).

⁴ R.C. 2917.211(C).

⁵ R.C. 2917.211(D).



- A provider of an interactive computer service;
- A mobile service;
- A telecommunications carrier;
- An Internet provider;
- A cable services provider;
- A direct-to-home satellite service;
- A video service provider.

Penalty

Generally, nonconsensual dissemination of private sexual images is a third degree misdemeanor. If the offender commits a second offense, nonconsensual dissemination of private sexual images is a second degree misdemeanor. If the offender commits a third or subsequent offense, nonconsensual dissemination of private sexual images is a first degree misdemeanor.⁶

Criminal forfeiture of property

Under the bill, in addition to any other penalties or dispositions, the court may order an offender convicted of nonconsensual dissemination of private sexual images, or a person who is adjudicated a delinquent child by reason of committing a violation of the offense's prohibition, to criminally forfeit any property acquired or maintained in connection with the nonconsensual dissemination of private sexual images. The property that may be forfeited includes profits and proceeds so acquired or maintained, and interests in, securities of, claims against, or property or contractual rights of any kind affording a source of influence over any enterprise established, operated, controlled, or conducted so acquired or maintained.⁷

Definitions

The bill defines the following terms for purposes of the offense of nonconsensual dissemination of private sexual images:⁸

⁶ R.C. 2917.211(F)(1)(a), (b), and (c).

⁷ R.C. 2917.211(F)(2), 2981.02(B), and 2981.04(A).

⁸ R.C. 2917.211(A).



--**Disseminate** means to post, distribute, or publish on a computer device, computer network, website, or other electronic device, or medium of communication.

--**Image** means a photograph, film, videotape, digital recording, or other depiction or portrayal of a person.

--"**Interactive computer service**" has the meaning defined in the "Telecommunications Act of 1996," 47 U.S.C. 230, as amended.

--"**Internet provider**" means a provider of internet service, including all of the following: (1) broadband service, however defined or classified by the Federal Communications Commission, (2) information service, as defined in the "Telecommunications Act of 1996," 47 U.S.C. 153, as amended, and (3) Internet protocol-enabled services, as defined in R.C. 4927.01.

--"**Mobile service**" and "**telecommunications carrier**" have the meanings defined in 47 U.S.C. 153, as amended.

--"**Cable service provider**" has the same meaning as in R.C. 1332.01.

--"**Direct-to-home satellite service**" has the meaning defined in 47 U.S.C. 303, as amended.

--"**Video service provider**" has the same meaning as in R.C. 1332.21.

--**Sexual act** means sexual activity, masturbation, an act involving a bodily substance that is performed for the purpose of sexual arousal or gratification, or sado-masochistic abuse.

Civil action by victim

Under the bill, in addition to any other statutory or common law actions, a victim of nonconsensual dissemination of private sexual images may file a civil action against the offender. The victim is presumed to have suffered harm as a result of the nonconsensual dissemination of private sexual images. As such, the court may award an injunction or temporary restraining order prohibiting further dissemination of the image, compensatory damages, punitive damages, reasonable attorney's fees, and costs of bringing the action.⁹

⁹ R.C. 2307.66 and 2917.211(G).

Higher education requirements

Under the bill, an institution of higher education is prohibited from engaging in certain actions against an applicant for enrollment or student who is a victim of the bill's offense of nonconsensual dissemination of private sexual images.

First, an applicant's eligibility for financial assistance provided by the institution for educational expenses, including grants, scholarships, and fellowships must not be affected by the student's status as a victim. Second, a student's financial assistance provided by the institution for educational expenses, including grants, scholarships, and fellowships must not be lost because of the student's status as a victim. Third, the student must not be subject to disciplinary action, including academic penalties, because of the student's status as a victim.¹⁰

As used in these provisions, a "victim" is a person who is identified as the victim of a crime or specified delinquent act in a police report or in a complaint, indictment, or information that charges the commission of a crime and that provides the basis for the criminal prosecution or delinquency proceeding and subsequent proceedings referred to in the Crime Victims' Rights Law.¹¹

Licensing authority requirements

Under the bill, a licensing authority is prohibited from knowingly taking the following actions against an individual solely on the basis of the person being a victim of the bill's offense of nonconsensual dissemination of private sexual images:¹²

- Refusing to issue a license to an applicant;
- Limiting, suspending, or revoking a license;
- Refusing to renew a license.

The bill defines a "licensing authority" as a public office that issues a license to a person or entity.¹³

¹⁰ R.C. 3345.49.

¹¹ R.C. 3345.49, by reference to existing R.C. 2930.01, not in the bill.

¹² R.C. 9.74(B).

¹³ R.C. 9.74(A).



Other terms the bill defines for purposes of the provision are:¹⁴

--"**License**," which means a license, certificate, registration, permit, card, or other authority issued or conferred by a licensing authority of which the licensee has or claims the privilege to engage in the profession, occupation, or activity, or to have control of and operate certain specific equipment, machinery, or premises, over which the licensing authority has jurisdiction.

--"**Political subdivision**," which means a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.

--"**Public office**," which means any state agency, public institution, political subdivision, other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government. The term does not include the nonprofit corporation formed under R.C. 187.01.

--"**Victim**," which has the same meaning as is described above under "**Higher education requirements**."

HISTORY

ACTION	DATE
Introduced	02-13-18
Reported, H. Community & Family Advancement	06-07-18
Passed House (93-0)	06-27-18
Reported, S. Judiciary	---

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¹⁴ R.C. 9.74(A).

