



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

Sarah A. Maki

Am. Sub. H.B. 497 132nd General Assembly (As Passed by the General Assembly)

- 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
- Sens.** Bacon, Beagle, Burke, Coley, Dolan, Gardner, Hackett, Hoagland, Kunze, Lehner, Manning, Obhof, O'Brien, Oelslager, Peterson, Schiavoni, Sykes, Tavares, Terhar, Thomas, Uecker, Yuko

Effective date: March 22, 2019

ACT SUMMARY

Criminal offense

- Enacts the offense of "nonconsensual dissemination of private sexual images" with intent to harm the person 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 the nonconsensual dissemination of private sexual images for specified purposes.
- Exempts certain entities from liability for the nonconsensual dissemination of private sexual images if the image or information was provided by a third party.
- Allows a court to order an offender to forfeit all property that was acquired or maintained in connection with the nonconsensual dissemination of private sexual images.

Civil action

- Permits the victim of nonconsensual dissemination of private sexual images to sue the offender for an injunction, temporary restraining order, compensatory damages, punitive damages, reasonable attorney's fees, and costs of bringing the action.

Higher education prohibitions

- 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 prohibitions

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

CONTENT AND OPERATION

Criminal offense

Prohibition

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

Permitted conduct

The act does not prohibit the nonconsensual dissemination of private sexual images in the following circumstances:³

--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.

--It is disseminated as part of a criminal investigation.

--It is disseminated to report unlawful conduct.

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

--It is disseminated for medical treatment or examination.

--It is disseminated for another lawful public purpose.

--It is part of a news report or commentary or an artistic or expressive work.

Exceptions

Under the act, the following entities are not liable for a violation of the nonconsensual dissemination of private sexual images solely because an image or information was provided by another person:⁴

--A provider of an interactive computer service;

--A mobile service;

--A telecommunications carrier;

--An Internet provider;

² R.C. 2917.211(E) and (F)(1)(d).

³ R.C. 2917.211(C).

⁴ R.C. 2917.211(D).

- 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, punishable by a jail term of up to 60 days and a fine of up to \$500. If an offender commits a second offense, the violation is a second degree misdemeanor, punishable by a jail term of up to 90 days and a fine of up to \$750. If an offender commits a third or subsequent offense, the violation is a first degree misdemeanor, punishable by a jail term of up to 180 days and a fine of up to \$1,000.⁵

Criminal forfeiture

In addition to any other penalties or dispositions, the court may order a person convicted of or adjudicated a delinquent child for committing nonconsensual dissemination of private sexual images, to criminally forfeit any property acquired or maintained in connection with the offense. The property that may be forfeited includes profits, proceeds, interests in, securities of, claims against, or property or contractual rights of any kind affording a source of influence over any enterprise the person has established, operated, controlled, or conducted.⁶

Civil action

The act creates a civil action for a victim of the nonconsensual dissemination of private sexual images. 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 offense. 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.⁷

Higher education prohibitions

Under the act, an institution of higher education is prohibited from engaging in certain actions against a student or an applicant for enrollment who is a victim of the

⁵ R.C. 2917.211(F)(1)(a), (b), and (c); R.C. 2929.24(A) and 2929.28(A), not in the act.

⁶ R.C. 2917.211(F)(2), 2981.02(B), and 2981.04(A).

⁷ R.C. 2307.66 and 2917.211(G).



offense of nonconsensual dissemination of private sexual images. The person's status as a victim must not:⁸

--Affect the person's eligibility for financial assistance provided by the institution for educational expenses;

-- Cause that type of financial assistance to be lost;

--Subject the person to disciplinary action, including academic penalties.

Licensing authority prohibitions

Under the act, a licensing authority is prohibited from knowingly taking the following actions against an individual solely because the person is a victim of the offense of nonconsensual dissemination of private sexual images:

--Refusing to issue a license to an applicant;

--Limiting, suspending, or revoking a license;

--Refusing to renew a license.

This provision applies generally to the granting by a public office of the privilege to engage in a specified activity or to possess and use specific equipment or premises.⁹

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	12-06-18
Passed Senate (31-0)	12-13-18
House concurred in Senate amendments (86-0)	12-13-18

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⁸ R.C. 3345.49.

⁹ R.C. 9.74.

