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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

S.B. 217
135th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Sens. Blessing and Johnson

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SUMMARY

- Requires products generated by artificial intelligence to have a watermark.
- Prohibits simulated child pornography.
- Prohibits identity fraud using a replica of a person's persona.

DETAILED ANALYSIS

Artificial intelligence

The bill requires that artificial intelligence (AI) systems be programmed to provide a watermark on AI-generated products that informs the user that the product was generated by AI.¹ The bill also prohibits the removal of these watermarks for the purpose of concealing that the product was created using AI.² As defined by the bill, “**artificial intelligence**,” means a machine-based system that, for a given set of human-defined objectives, uses machine- and human-based inputs to make predictions, recommendations, or decisions influencing real or virtual environments. To be considered AI for the purposes of the bill, the system must be capable of: (1) perceiving real and virtual environments, (2) abstracting such perception into models through analysis in an automated manner, and (3) using model inference to formulate options for information or action.³

The bill provides that any person harmed by a violation of this requirement may bring a civil action against the violator for damages. In such an action regarding removal of the watermark, the person who removed the watermark is rebuttably presumed to have caused

¹ R.C. 1349.10(B).

² R.C. 1349.10(C).

³ R.C. 1349.10(A).

the harm alleged.⁴ The Attorney General (AG) may also bring a civil action against violators for injunctive relief. If the violator removes an AI-generated watermark, the AG may seek a civil penalty of up to \$10,000. Civil penalties collected under this section must be deposited into the Consumer Protection Enforcement fund.⁵

Obscenity

The bill expands the offense of pandering obscenity involving a minor or impaired person. The bill makes it a felony in the third degree for a person to make or transmit any simulated obscene material, and a felony in the fourth degree for a person to buy, procure, possess, or control any simulated obscene material.⁶ As used in this section “**simulated obscene material**,” means any visual depiction of a minor or impaired person, including an image generated by AI that would violate child obscenity laws if the minor depicted was a natural person.⁷

The bill requires that websites and service providers remove simulated child obscenity and obscene material created using a replica of a person’s persona in violation of offenses related to identity fraud, discussed below, from their platform within 24 hours of receiving notice from the AG. A party that fails to remove the simulated child obscenity within 24 hours is liable for civil penalties of up to \$1,000 per day. The AG may bring a civil action seeking compliance with the bill’s requirements, and may seek civil penalties, injunctions, and restraining orders. Any civil penalties collected under this section must be deposited into the Consumer Protection Enforcement fund.⁸

If challenged, a court might examine whether the criminalization of making and transmitting simulated obscene material could be found to run counter to the First Amendment. The U.S. Supreme Court struck down a similar law in 2002, finding the prohibition on simulated obscene material to be unconstitutionally overbroad.⁹

Identity fraud

The bill prohibits the use of a replica of a person’s persona for several different activities. “**Replica of a person’s persona**” or “**persona**” means a modified or fabricated version of an individual’s voice, photograph, image, likeness, or distinctive appearance that is created or presented in a manner that it appears to be the individual’s authentic persona. The term includes the modifications and fabrications produced in whole or in part by AI.¹⁰

⁴ R.C. 1349.10(D).

⁵ R.C. 1349.10(E) and 1345.51.

⁶ R.C. 2907.321(A) and (C).

⁷ R.C. 2907.321(D); R.C. 2907.322 and 2907.323, not in the bill.

⁸ R.C. 2907.324.

⁹ *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

¹⁰ R.C. 2913.49(A).

The bill creates the following new offenses:

- A person may not permit another to use their persona with the intent to defraud.
- A persona may not be used in a manner that would induce another person to make a financial decision or extend credit in reliance on the persona without the express consent of the person whose persona is replicated.
- A persona may not be used with the intent to damage a person or entity's reputation, including the reputation of the person whose persona is being used.¹¹
- The creation, use, or dissemination of a persona in a state of nudity, engaged in sexual activity, or in any obscene material without the consent of the person whose persona is used.
- The use of a persona for the purposes of violating child enticement or child obscenity laws.¹²

Following continuing law, it is an affirmative defense to a charge of permitting another person to use a person's persona with the intent to defraud if the person using the persona is a law enforcement agency and is using the persona with the prior consent of the person whose persona is being used or the law enforcement agency uses the persona for a lawful purpose.¹³

A person who violates this section is guilty of identity fraud. Following continuing law, the degree of the offense depends on the amount of money defrauded, whether the victim belonged to certain protected classes, and if other specified statutes were violated as part of the offending conduct. A person whose persona is replicated in violation of this section may also bring a civil action against the violator.¹⁴

HISTORY

Action	Date
Introduced	01-24-24

ANSB0217IN-135/ar

¹¹ R.C. 2913.49(D), (F), and (G).

¹² R.C. 2913.49(H) and (I) and 2907.321; R.C. 2905.05, 2907.322, and 2907.323, not in the bill.

¹³ R.C. 2913(J)(2).

¹⁴ R.C. 2913(L), (M), and (N).