



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Dennis M. Papp

Am. S.B. 251

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

Sens. Schiavoni, Tavares, Thomas, Yuko

BILL SUMMARY

Nonconsensual dissemination of private sexual images

- Prohibits nonconsensual dissemination of private sexual images 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.
- Authorizes the sentencing court to require a convicted offender to forfeit all property that was acquired or maintained in connection with the nonconsensual dissemination of private sexual images.

Civil action by victim

- Creates a civil action for nonconsensual dissemination of private sexual images in which the victim may file against the convicted 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

The bill creates the offense of "nonconsensual dissemination of private sexual images." 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 by the image or by 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.

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

¹ R.C. 2917.211(B) and (F).

² R.C. 2917.211(E).

³ R.C. 2917.211(F)(1)(d).

Permitted conduct

The bill does not prohibit nonconsensual dissemination of private sexual images in the following circumstances:⁴

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

--The image is disseminated for purposes of reporting unlawful conduct.

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

--The image is disseminated by a law enforcement officer, corrections officer, or guard 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 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 nonconsensual dissemination of private sexual images solely because an image or information was provided to the entity by another person:⁵

--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.

⁴ R.C. 2917.211(C).

⁵ R.C. 2917.211(D).

Penalty

Generally, a violation of 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 a convicted offender to forfeit any property acquired or maintained in connection with the nonconsensual dissemination of private sexual images. Property may include profits, proceeds, 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.⁷

Definitions

As used in the bill's provisions described above:⁸

--**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.

--**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.

--**Performance** means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.

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

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. 2907.01 and 2917.211(A).



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

Higher education requirements

Under the bill, an institution of higher education is prohibited from engaging in certain actions against an applicant or student who is a victim, or is perceived to be a victim, 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, or perceived 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, or perceived victim. Third, the student must not be subject to disciplinary action, including academic penalties, because of the student's status as a victim, or perceived victim.¹⁰

Licensing authority requirements

Under the bill, a licensing authority is prohibited from knowingly taking the following actions against an individual who is a victim, or is perceived to be a victim, of nonconsensual dissemination of private sexual images:¹¹

- 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.¹²

⁹ R.C. 2307.66 and 2917.211(G).

¹⁰ R.C. 3345.49.

¹¹ R.C. 9.74(B).

¹² R.C. 9.74(A).

HISTORY

ACTION

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