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# OHIO LEGISLATIVE SERVICE COMMISSION

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133<sup>rd</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Rep. Rogers

Yosef Schiff, Attorney

### SUMMARY

- Requires an operator (a person that maintains a platform containing an identifiable explicit image) to provide a process by which a person or person's legal representative may request removal of an identifiable explicit image (a visual image of a person who is in a state of nudity or engaged in sexual activity when the person is identifiable from the image itself or from information displayed in connection with the image).
- Subjects an operator to criminal penalties for failing to provide a removal process.
- Allows a person to request that an operator remove an identifiable explicit image of a person from the platform on which the image is published.
- Requires an operator to remove an identifiable explicit image upon request, subject to criminal penalties.
- Prohibits an operator from negligently soliciting or accepting a fee to remove an identifiable explicit image of a person, subject to criminal penalties.
- Prohibits a person from negligently republishing or otherwise disseminating an identifiable explicit image of a person that was previously removed from a platform, subject to criminal penalties.
- Allows a person to obtain civil damages for loss or harm resulting from another person's violation of the bill's provisions.

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## DETAILED ANALYSIS

### Overview

The bill enacts several regulations and prohibitions aimed at providing a way for an individual to have an explicit image of the individual removed from a platform (an internet website, online service, online application, or mobile application).<sup>1</sup> It does this by requiring a platform to implement a removal process and honor a removal request without charging a fee and by prohibiting a person from republishing an image that has been removed.

### Removal process for identifiable explicit imagery

The bill requires an operator (a person that maintains a platform containing an identifiable explicit image) to provide a process by which a person or person's legal representative (a person's parent, guardian, custodian, or attorney) may request removal of an identifiable explicit image (a visual image of a person who is in a state of nudity or engaged in sexual activity when the person is identifiable from the image itself or from information displayed in connection with the image). An operator who negligently fails to provide such a process is guilty of a first degree misdemeanor. Under the bill, an operator may only be convicted once per platform, unless the failure to implement a removal process occurred subsequently to a previous conviction for such a failure for the same platform.<sup>2</sup>

### Requirement to remove explicit imagery upon request

Under the bill, a person or person's legal representative has the right to request that an operator remove an identifiable explicit image of a person from the platform on which the image is published. An operator must remove such an image within one calendar day of the submission of the request. If an operator negligently fails to remove such an image, that operator is guilty of a first degree misdemeanor.<sup>3</sup>

### Prohibition on charging for removal

The bill prohibits an operator from negligently soliciting or accepting a fee to remove an identifiable explicit image of a person. An operator who violates this provision is guilty of a first degree misdemeanor. Each payment solicited or accepted in violation of this provision constitutes a separate violation.<sup>4</sup>

### Prohibition on republication of removed imagery

Under the bill, a person, whether an operator or any other person, is prohibited from negligently republishing or otherwise disseminating an identifiable explicit image of a person

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<sup>1</sup> R.C. 2927.31(D).

<sup>2</sup> R.C. 2927.31(A), (B), and (E) and 2927.311.

<sup>3</sup> R.C. 2927.312.

<sup>4</sup> R.C. 2927.313.

that was removed in accordance with the bill's removal provisions without the consent of the person who submitted, or on whose behalf a legal representative submitted, the initial removal request. A person who violates this provision is guilty of a fifth degree felony. Each instance of republication or dissemination constitutes a separate violation.<sup>5</sup>

## Civil damages

Continuing law allows a person to recover civil damages for a criminal act committed by another person, subject to certain exceptions such as when the injured party was participating in criminal conduct. Under the bill, if a person suffers loss or harm resulting from another person's violation of the bill's provisions, that person may be awarded all of the following:

- An amount equal to the greater of \$10,000 or actual damages and punitive or exemplary damages, if authorized by Ohio's laws regarding the award of punitive and exemplary damages;
- Reasonable attorney's fees and court costs;
- Any other remedies provided by law.

The bill provides that humiliation or embarrassment is adequate to show that the plaintiff has incurred damages. No physical manifestation of either humiliation or embarrassment is necessary for damages to be shown.<sup>6</sup>

## Exclusions

The bill does not apply to any of the following:

- Images involving voluntary nudity or sexual activity in public or commercial settings or in a place where a person does not have a reasonable expectation of privacy;
- Disclosures made in the public interest, including the reporting of unlawful conduct, or lawful and common practices of law enforcement, criminal reporting, corrections, legal proceedings, or medical treatment;
- Disclosures of materials that constitute a matter of public concern.<sup>7</sup>

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## COMMENT

Section 230(c) of the federal Communications Decency Act (CDA) states, "No provider or user of an interactive computer service[, including a website that hosts user-generated content,] shall be treated as the publisher or speaker of any information provided by another information content provider." It goes on to say that no provider or user of an interactive computer service is liable for any action it takes to remove content it deems objectionable. In

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<sup>5</sup> R.C. 2927.314.

<sup>6</sup> R.C. 2927.315; R.C. 2307.60 and 2315.21, not in the bill.

<sup>7</sup> R.C. 2927.316; 47 United States Code (U.S.C.) 153 and 230(f)(2).

short, Section 230(c) gives online services broad immunity from civil or criminal suits that would treat the service as the publisher or speaker of the content it hosts.<sup>8</sup>

Section 230(e)(3) of the CDA preempts most state laws that would reach website operators. A state law regulating a website or similar interactive computer service can be upheld only if it is “consistent” with Section 230.<sup>9</sup> It is unclear how the bill’s requirements governing operators would be interpreted in relation to Section 230 of the CDA.

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## HISTORY

Action	Date
Introduced	05-19-20

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H0652-I-133/ks

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<sup>8</sup> 47 U.S.C. 230(c) and *Zeran v. America Online*, 958 F.Supp. 1124 (E.D.Va. 1997).

<sup>9</sup> 47 U.S.C. 230(e)(3).