



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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132nd General Assembly
(As Introduced)

Reps. Rogers and Manning

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 first degree misdemeanor, a second offense a fifth degree felony, and a third or subsequent offense a fourth degree felony.
- 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.
- Requires 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.

Employment requirements

- Prohibits an employer from discharging, failing to hire, or discriminating against an employee who is a victim of nonconsensual dissemination of private sexual images.

- Prohibits an employer from failing to make a reasonable accommodation for an employee who is a victim of nonconsensual dissemination of private sexual images.
- Prohibits an employer from failing to grant at least five days of unpaid leave to an employee who is a victim of nonconsensual dissemination of private sexual images.
- Requires an employer to keep information relating to the nonconsensual dissemination of private sexual images confidential.
- Creates a civil action for nonconsensual dissemination of private sexual images in which an employee may file against an employer and be awarded reinstatement, 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.

Disseminating matter harmful to juveniles

- Makes a violation involving the transmission of private sexual images under certain specified circumstances a third degree misdemeanor.

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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

Permitted conduct

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

¹ R.C. 2917.211(B) and (F).

² R.C. 2917.211(E).

³ R.C. 2917.211(F)(1)(d).

⁴ R.C. 2917.211(C).

- 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.

Penalty

Generally, a violation of nonconsensual dissemination of private sexual images is a first degree misdemeanor. If the offender commits a second offense, nonconsensual dissemination of private sexual images is a fifth degree felony. If the offender commits a

⁵ R.C. 2917.211(D).

third or subsequent offense, nonconsensual dissemination of private sexual images is a fourth degree felony.⁶

Criminal forfeiture of property

Under the bill, in addition to any other penalties or dispositions, the court must 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

The bill defines the following terms: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.

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

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).

⁹ R.C. 2307.66 and 2917.211(G).

Employment requirements

Discrimination prohibited

Under the bill, an employer is prohibited from knowingly discharging, failing to hire, or otherwise discriminating against an individual or employee who is a victim, or is perceived to be a victim, of nonconsensual dissemination of private sexual images.¹⁰

Reasonable accommodations

Under the bill, an employer is prohibited from knowingly failing to make a reasonable accommodation for an employee who is a victim, or is perceived to be a victim, of nonconsensual dissemination of private sexual images unless the employer demonstrates that the accommodation would impose an undue hardship on the operation of the employer's business. If an employer refuses or fails to make a reasonable accommodation for an employee, the burden is on the employer to prove that the reasonable accommodation would impose an undue hardship.¹¹

However, prior to making the reasonable accommodation, an employer may request documentation relating to the employee's status as a victim, or perceived victim, of nonconsensual dissemination of private sexual images. The employee satisfies the request by providing any of the following:¹²

- A copy of the police report;
- Documentation of the court proceeding;
- A written statement verifying the violation and signed by the employee's attorney, victim services organization, or trained victim advocate;
- A written statement verifying the violation and signed by a member of the clergy from whom the employee has sought assistance in connection with the violation.

Pursuant to the bill, an employer is also prohibited from knowingly taking adverse employment action against an employee because the employee requested a reasonable accommodation, regardless of whether the employer granted the request for the reasonable accommodation.¹³

¹⁰ R.C. 4113.91(A).

¹¹ R.C. 4113.92(A) and (C).

¹² R.C. 4113.92(B).

¹³ R.C. 4113.91(B).

Unpaid leave for victim

Under the bill, in addition to any other paid or unpaid leave, an employer must provide at least five days of unpaid leave to an employee who is a victim, or is perceived to be a victim, of nonconsensual dissemination of private sexual images. An employer is prohibited from knowingly failing to grant the unpaid leave to an eligible employee.¹⁴ An employee is eligible for unpaid leave if both of the following requirements are met:¹⁵

-- The employee has worked at least 20 weeks in the calendar year for which the unpaid leave is requested.

-- The employee has worked more than 25 hours a week in the six months immediately preceding the time for which the unpaid leave is requested.

An employee may use unpaid leave for any of the following actions related to the nonconsensual dissemination of private sexual images:¹⁶

-- To seek nonemergency medical attention for the employee or the employee's dependent, including services from a victim services organization, psychological treatment, and counseling;

-- To meet with law enforcement officers;

-- To seek legal assistance;

-- To seek other assistance for the employee or employee's dependent, including assistance from a counselor, social worker, trained victim advocate, health care provider, or other professional who assists persons in dealing with nonconsensual dissemination of private sexual images;

-- To attend a civil or criminal court proceeding.

Pursuant to the bill, an employer is also prohibited from knowingly retaliating or otherwise discriminating against an employee because the employee used unpaid leave.¹⁷

¹⁴ R.C. 4113.93(A), (C), and (D).

¹⁵ R.C. 4113.93(A).

¹⁶ R.C. 4113.93(B).

¹⁷ R.C. 4113.91(C).



Victim confidentiality

Under the bill, an employer is prohibited from knowingly failing to keep information related to an employee's status as a victim, or perceived victim, of nonconsensual dissemination of private sexual images confidential, unless either of the following apply:¹⁸

-- The individual or employee gives written consent allowing the employer to share the information.

-- The employer is required by state or federal law to share the information.

Civil action by employee

Under the bill, an employee who is a victim, or is perceived to be a victim, of nonconsensual dissemination of private sexual images may file a civil action against an employer for failure to comply with the above requirements. The court may award compensatory damages, punitive damages, reasonable attorney's fees, and costs of bringing the action. Additionally, if the individual was wrongfully discharged, the court may reinstate the individual's employment.¹⁹

Definitions

The bill defines the following terms:²⁰

-- **Reasonable accommodation** includes a changed work telephone number, transfer to a different department or location, modified employment schedule, assistance with documenting workplace harassment, or time off work.

-- **Undue hardship** means any action an employer is required to take that would result in significant difficulty or expense when considered in light of the following factors: (1) the nature and cost of the accommodation, (2) the overall financial resources of the employer, (3) the overall size of the employer's business with respect to the number of employees, (4) the number, type, and location of the employer's facilities, and (5) the effect on the employer's expenses and resources or the impact otherwise of the accommodation on the employer's operation.

¹⁸ R.C. 4113.92(D) and (E).

¹⁹ R.C. 4113.94.

²⁰ R.C. 4113.90.



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.²¹

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:²²

- 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.²³

Disseminating matter harmful to juveniles

Under current law unchanged by the bill, the offense of "disseminating matter harmful to juveniles" prohibits a person from recklessly doing any of the following:²⁴

- Directly sell, deliver, furnish, disseminate, provide, exhibit, rent, or present to a juvenile, group of juveniles, law enforcement officer posing as a juvenile, or group of

²¹ R.C. 3345.49.

²² R.C. 9.74(B).

²³ R.C. 9.74(A).

²⁴ R.C. 2907.31(A).

law enforcement officers posing as juveniles any material or performance that is obscene or harmful to juveniles.

-- Directly offer or agree to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present to a juvenile, group of juveniles, law enforcement officer posing as a juvenile, or group of law enforcement officers posing as juveniles any material or performance that is obscene or harmful to juveniles.

-- While in the physical proximity of the juvenile or law enforcement officer posing as a juvenile, allow any juvenile or law enforcement officer posing as a juvenile to review or peruse any material or view any live performance that is harmful to juveniles.

The above conduct occurs by means of an electronic method of remotely transmitting information if the person knows or has reason to believe that the person receiving the information is a juvenile, or the group of persons receiving the information are juveniles. The above conduct does not occur by means of a mass distribution method of remotely transmitting information if either of the following apply:²⁵

-- The person has inadequate information to know or have reason to believe that a particular recipient of the information or offer is a juvenile.

-- The method of mass distribution does not provide the person the ability to prevent a particular recipient from receiving the information.

Penalty for violation of disseminating matter harmful to juveniles

Under current law unchanged by the bill, the penalty for a violation of disseminating matter harmful to juveniles is based on the conduct involved. If the material or performance involved is harmful to juveniles, disseminating matter harmful to juveniles is a first degree misdemeanor. If the material or performance involved is obscene, disseminating matter harmful to juveniles is a fifth degree felony. If the material or performance involved is obscene, and the recipient is less than 13 years old, disseminating matter harmful to juveniles is a fourth degree felony.²⁶

²⁵ R.C. 2907.31(D).

²⁶ R.C. 2907.31(F)(1).



Under the bill, notwithstanding the aforementioned penalties, disseminating matter harmful to juveniles is a third degree misdemeanor if all of the following apply:²⁷

- The image is privately transmitted to a juvenile.
- The person in the image is in a state of nudity or engaged in a sexual act.
- The person transmitting the image is not more than five years older than the juvenile.
- The person transmitting the image subsequently becomes a victim of nonconsensual dissemination of private sexual images.

Definitions

The following definitions are used in the bill:

-- **Harmful to juveniles** means any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, in any form, to which all of the following apply: (1) the material or performance, when considered as a whole, appeals to the prurient interest of juveniles in sex, (2) the material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles, and (3) the material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.

-- **Obscene** means when considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply: (1) its dominant appeal is to prurient interest, (2) its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite, (3) its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality, (4) its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose, and (5) it contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of

²⁷ R.C. 2907.31(F)(2).

elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

-- **Material** means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, film, phonographic record, tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device.

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

HISTORY

ACTION	DATE
Introduced	02-13-18

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