

I_135_0364-8

135th General Assembly
Regular Session
2023-2024

Sub. H. B. No. 295

A BILL

To amend sections 2307.66, 2917.211, and 2981.02 1
and to enact sections 2307.68 and 2907.312 of 2
the Revised Code to enact the Innocence Act to 3
prohibit an organization from failing to verify 4
the age of a person attempting to access 5
material that is obscene or harmful to 6
juveniles, to prohibit a person from using 7
another person's likeness to create sexual 8
images of the other person, and to create a 9
private right of action for each prohibited 10
activity. 11

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2307.66, 2917.211, and 2981.02 be 12
amended and sections 2307.68 and 2907.312 of the Revised Code be 13
enacted to read as follows: 14

Sec. 2307.66. (A) A victim of a violation of section 15
2917.211 of the Revised Code has and may commence a civil cause 16
of action against the offender for any of the following, in 17
addition to reasonable attorney's fees and the costs of bringing 18



myzmfuahkwph2uxett3y4c

the civil action: 19

(1) An injunction or a temporary restraining order 20
prohibiting further dissemination of the image that is the 21
subject of the violation; 22

(2) Compensatory and punitive damages for harm resulting 23
from the violation. 24

(B) The victim shall be presumed to have suffered harm as 25
a result of the nonconsensual dissemination of private sexual 26
images or the nonconsensual dissemination of fabricated sexual 27
images. 28

(C) A civil action brought under division (A) of this 29
section shall be brought within four years after the cause of 30
action accrues. 31

(D) The cause of action created by this section is in 32
addition to any other cause of action available under statutory 33
or common law. 34

~~(D)~~ (E) As used in this section, "victim" has the same 35
meaning as in section 2930.01 of the Revised Code. 36

(F) "Fabricated sexual image" means a created, adapted, or 37
modified image that depicts another person, the other person is 38
recognizable in the image by the other person's face, likeness, 39
or other distinguishing characteristic, and the other person 40
depicted in the image is in a state of nudity or is engaged in a 41
sexual act. 42

Sec. 2307.68. (A) A victim of a violation of division (B) 43
or (C) of section 2907.312 of the Revised Code may commence a 44
civil action against the offender for injunctive relief in 45
addition to reasonable attorney's fees and the costs of bringing 46

the civil action. The civil action shall be brought within two 47
years after the cause of action accrues. 48

(B) For purposes of division (A) of this section, a victim 49
of a violation of division (B) of section 2907.312 of the 50
Revised Code is a person under eighteen years of age or a parent 51
or guardian of the person under eighteen years of age who is 52
bringing the action on behalf of the person. 53

Sec. 2907.312. (A) (1) "Cable service provider" has the 54
same meaning as in section 1332.01 of the Revised Code. 55

(2) "Cloud service provider" means a third-party company 56
offering a cloud-based platform, infrastructure, application, or 57
storage services. 58

(3) "Direct-to-home satellite service" has the meaning 59
defined in 47 U.S.C. 303, as amended. 60

(4) "Identifying information" means photo identification 61
or public or private transactional data. 62

(5) "Interactive computer service" has the meaning defined 63
in the "Telecommunications Act of 1996," 47 U.S.C. 230, as 64
amended. 65

(6) "Internet provider" means a provider of internet 66
service, including all of the following: 67

(a) Broadband service, however defined or classified by 68
the federal communications commission; 69

(b) Information service or telecommunications service, 70
both as defined in the "Telecommunications Act of 1996," 47 71
U.S.C. 153, as amended; 72

(c) Internet protocol-enabled services, as defined in 73

section 4927.01 of the Revised Code. 74

(7) "Mobile service" and "telecommunications carrier" have 75
the meanings defined in the "Telecommunications Act of 1996," 47 76
U.S.C. 153, as amended. 77

(8) "Organization" means both of the following: 78

(a) A commercial establishment that, for any form of 79
consideration, has as a significant or substantial portion of 80
its stock-in-trade in, derives a significant or substantial 81
portion of its revenues from, devotes a significant or 82
substantial portion of its content or advertising to, or 83
maintains a substantial section of its sales or online content 84
display space for the sale, rental, or viewing of materials that 85
are obscene or harmful to juveniles; 86

(b) A commercial establishment as defined in section 87
2907.38 of the Revised Code. An establishment may have other 88
principal business purposes that do not involve selling, 89
delivering, furnishing, disseminating, providing, exhibiting, or 90
presenting any material or performance that is obscene or 91
harmful to juveniles on the internet and still be categorized as 92
an organization subject to this section. The existence of other 93
principal business purposes does not exempt an establishment 94
from being categorized as an organization subject to this 95
section, so long as one of its principal business purposes 96
involves selling, delivering, furnishing, disseminating, 97
providing, exhibiting, or presenting any material or performance 98
that is obscene or harmful to juveniles on the internet. 99

(9) "Photo identification" has the same meaning as in 100
section 3501.01 of the Revised Code and includes any government- 101
issued identification issued by another state, district, 102

country, or sovereignty. 103

(10) "Reasonable age verification methods" means the 104
following: 105

(a) Verifying that the person attempting to access the 106
material or performance that is obscene or harmful to juveniles 107
is eighteen years of age or older through the use of a 108
commercial age verification system that uses photo 109
identification or public or private transactional data to verify 110
the person's age; 111

(b) Using previously verified information that allows 112
access to materials that are obscene or harmful to juveniles if 113
the organization reasonably believes that the person attempting 114
to access the material is eighteen years of age or older and the 115
information provided is accurate; 116

(c) Using third-party and governmental databases that use 117
a commercial age verification system that uses photo 118
identification or public or private transactional data to verify 119
the person's age. 120

(11) "Transactional data" means a sequence of information 121
that documents an exchange, agreement, or transfer between a 122
person, organization, or third party for the purpose of 123
satisfying a request or event. "Transactional data" includes 124
mortgage, educational, and employment records. 125

(12) "Video service provider" has the same meaning as in 126
section 1332.21 of the Revised Code. 127

(B) (1) No organization that sells, delivers, furnishes, 128
disseminates, provides, exhibits, or presents any material or 129
performance that is obscene or harmful to juveniles on the 130
internet shall recklessly fail to verify that any person 131

attempting to access the material or performance that is obscene 132
or harmful to juveniles is eighteen years of age or older 133
through reasonable age verification methods. 134

(2) (a) The organization that sells, delivers, furnishes, 135
disseminates, provides, exhibits, or presents any material or 136
performance that is obscene or harmful to juveniles on the 137
internet shall utilize a geofence system maintained and 138
monitored by a licensed location-based technology provider to 139
dynamically monitor the geolocation of persons attempting to 140
access the material or performance that is obscene or harmful to 141
juveniles. 142

(b) The location-based technology provider shall perform a 143
geolocation check to dynamically monitor the person attempting 144
to access the material or performance that is obscene or harmful 145
to juveniles and the person's location. 146

(c) If the location-based technology provider determines 147
that a person is located in this state, the organization that 148
sells, delivers, furnishes, disseminates, provides, exhibits, or 149
presents any material or performance that is obscene or harmful 150
to juveniles on the internet shall block that person until the 151
person's age has been verified using reasonable age verification 152
methods. 153

(d) The organization that sells, delivers, furnishes, 154
disseminates, provides, exhibits, or presents any material or 155
performance that is obscene or harmful to juveniles on the 156
internet shall implement a notification mechanism to alert 157
persons attempting to access the material or performance that is 158
obscene or harmful to juveniles, of a geolocation check failure. 159

(C) (1) No organization that sells, delivers, furnishes, 160

disseminates, provides, exhibits, or presents any material or 161
performance that is obscene or harmful to juveniles on the 162
internet and verifies the age of the person attempting to access 163
the material or performance that is obscene or harmful to 164
juveniles as described in division (B) of this section shall 165
recklessly retain any identifying information of the person 166
attempting to access the material or performance that is obscene 167
or harmful to juveniles for more than two years. 168

(2) An organization that sells, delivers, furnishes, 169
disseminates, provides, exhibits, or presents any material or 170
performance that is obscene or harmful to juveniles on the 171
internet and verifies the age of the person attempting to access 172
the material or performance that is obscene or harmful to 173
juveniles as described in division (B) of this section shall do 174
all of the following: 175

(a) Delete all information gathered not more than two 176
years after each age verification; 177

(b) Develop and maintain a data privacy policy compliant 178
with federal and state law and maintain data in a manner that is 179
reasonably secure; 180

(c) Maintain only the following information: 181

(i) The person's full name and date of birth; 182

(ii) The person's primary address; 183

(iii) A web site account number or username of the person, 184
if applicable; 185

(iv) The type of government-issued identification, the 186
government-issued identification number, and a digital copy of 187
the identification of the person, if applicable; 188

<u>(v) The method and any other information used to verify</u>	189
<u>the person's age;</u>	190
<u>(vi) The date of identity verification;</u>	191
<u>(vii) A history of granted access to the person to</u>	192
<u>materials, if applicable.</u>	193
<u>(D) No person who is less than eighteen years of age shall</u>	194
<u>recklessly provide false identifying information for the purpose</u>	195
<u>of attempting to access the material or performance that is</u>	196
<u>obscene or harmful to juveniles on the internet.</u>	197
<u>(E) This section does not apply to any of the following:</u>	198
<u>(1) A person who, while employed or contracted by a</u>	199
<u>newspaper, magazine, press association, news agency, news wire</u>	200
<u>service, radio or television station, or similar media, is</u>	201
<u>gathering, processing, transmitting, compiling, editing, or</u>	202
<u>disseminating information for the general public;</u>	203
<u>(2) A provider of an interactive computer service;</u>	204
<u>(3) A mobile service;</u>	205
<u>(4) An internet provider;</u>	206
<u>(5) A cable service provider;</u>	207
<u>(6) A direct-to-home satellite service;</u>	208
<u>(7) A video service provider;</u>	209
<u>(8) A cloud service provider.</u>	210
<u>(F) It is an affirmative defense to a charge under</u>	211
<u>division (B) or (C) of this section if all of the following</u>	212
<u>apply:</u>	213
<u>(1) The person attempting to access any material or</u>	214

performance that is obscene or harmful to juveniles on the 215
internet provided identifying information to the organization 216
that sells, delivers, furnishes, disseminates, provides, 217
exhibits, or presents any material or performance that is 218
obscene or harmful to juveniles on the internet. 219

(2) The organization that sells, delivers, furnishes, 220
disseminates, provides, exhibits, or presents any material or 221
performance that is obscene or harmful to juveniles on the 222
internet made a bona fide effort to ascertain the true age of 223
the person by verifying that the person attempting to access the 224
material or performance that is obscene or harmful to juveniles 225
is eighteen years of age or older through reasonable age 226
verification methods. 227

(3) The organization that sells, delivers, furnishes, 228
disseminates, provides, exhibits, or presents any material or 229
performance that is obscene or harmful to juveniles on the 230
internet had no reason to believe that the person attempting to 231
access any material or performance that is obscene or harmful to 232
juveniles was less than eighteen years of age. 233

(G) An organization may use previously verified 234
information before the expiration of two years from the date the 235
individual's age was verified. After the expiration of that two- 236
year period, the organization shall verify that previously 237
verified information. 238

(H) For purposes of this section, an organization may be 239
convicted of an offense pursuant to section 2901.23 of the 240
Revised Code and fined in accordance with section 2929.31 of the 241
Revised Code or an officer, agent, or employee of an 242
organization may be convicted of an offense pursuant to section 243
2901.24 of the Revised Code and penalized as if the officer, 244

agent, or employee of the organization acted on the officer's, 245
agent's, or employee's own behalf. 246

(I)(1) Whoever violates division (B) or (C) of this 247
section is guilty of failure to verify age of person accessing 248
materials that are obscene or harmful to juveniles. Except as 249
otherwise provided in this division, a violation of division (B) 250
or (C) of this section is a misdemeanor of the first degree. 251
Each day a person violates this division constitutes a separate 252
offense. 253

(2) Whoever violates division (D) of this section is 254
guilty of use of false identifying information to access 255
materials that are obscene or harmful to juveniles, a delinquent 256
act that would be a misdemeanor of the fourth degree if 257
committed by an adult. 258

Sec. 2917.211. (A) As used in this section: 259

(1) "Child-victim oriented offense" and "sexually oriented 260
offense" have the same meanings as in section 2950.01 of the 261
Revised Code. 262

(2) "Disseminate" means to post, distribute, or publish on 263
a computer device, computer network, web site, or other 264
electronic device or medium of communication. 265

~~(2)~~ (3) "Image" means a photograph, film, videotape, 266
digital recording, or other depiction or portrayal of a person. 267

~~(3)~~ (4) "Interactive computer service" has the meaning 268
defined in the "Telecommunications Act of 1996," 47 U.S.C. 230, 269
as amended. 270

~~(4)~~ (5) "Internet provider" means a provider of internet 271
service, including all of the following: 272

(a) Broadband service, however defined or classified by the federal communications commission;	273 274
(b) Information service or telecommunications service, both as defined in the "Telecommunications Act of 1996," 47 U.S.C. 153, as amended;	275 276 277
(c) Internet protocol-enabled services, as defined in section 4927.01 of the Revised Code.	278 279
(5) <u>(6)</u> "Mobile service" and "telecommunications carrier" have the meanings defined in 47 U.S.C. 153, as amended.	280 281
(6) <u>(7)</u> "Cable service provider" has the same meaning as in section 1332.01 of the Revised Code.	282 283
(7) <u>(8)</u> "Direct-to-home satellite service" has the meaning defined in 47 U.S.C. 303, as amended.	284 285
(8) <u>(9)</u> "Video service provider" has the same meaning as in section 1332.21 of the Revised Code.	286 287
(9) <u>(10)</u> "Sexual act" means any of the following:	288
(a) Sexual activity;	289
(b) Masturbation;	290
(c) An act involving a bodily substance that is performed for the purpose of sexual arousal or gratification;	291 292
(d) Sado-masochistic abuse.	293
<u>(11) "Fabricated sexual image" has the same meaning as in section 2307.66 of the Revised Code.</u>	294 295
(B) No person shall knowingly disseminate an image of another person if all of the following apply:	296 297
(1) The person in the image is eighteen years of age or	298

older. 299

(2) The person in the image can be identified from the 300
image itself or from information displayed in connection with 301
the image and the offender supplied the identifying information. 302

(3) The person in the image is in a state of nudity or is 303
engaged in a sexual act. 304

(4) The image is disseminated without consent from the 305
person in the image. 306

(5) The image is disseminated with intent to harm the 307
person in the image. 308

(C) No person shall knowingly disseminate a fabricated 309
sexual image of another person without the other person's 310
consent. 311

(D) No person shall, without the consent of the depicted 312
person, in order to harass, extort, threaten, or cause physical, 313
emotional, reputational, or economic harm to a person falsely 314
depicted, knowingly do either of the following: 315

(1) Create a fabricated sexual image with intent to 316
distribute; 317

(2) Solicit the creation of a fabricated sexual image with 318
intent to distribute. 319

(E) This section does not prohibit the dissemination of an 320
image or fabricated sexual image if any of the following apply: 321

(1) The image or fabricated sexual image is disseminated 322
for the purpose of a criminal investigation that is otherwise 323
lawful. 324

(2) The image or fabricated sexual image is disseminated 325

for the purpose of, or in connection with, the reporting of 326
unlawful conduct. 327

(3) The image_or fabricated sexual image is part of a news 328
report or commentary or an artistic or expressive work, such as 329
a performance, work of art, literary work, theatrical work, 330
musical work, motion picture, film, or audiovisual work. 331

(4) The image_or fabricated sexual image is disseminated 332
by a law enforcement officer, or a corrections officer or guard 333
in a detention facility, acting within the scope of the person's 334
official duties. 335

(5) The image_or fabricated sexual image is disseminated 336
for another lawful public purpose. 337

(6) ~~The~~ If the person in the image or fabricated sexual 338
image is eighteen years of age or older, the person in the image 339
or fabricated sexual image is knowingly and willingly in a state 340
of nudity or engaged in a sexual act and is knowingly and 341
willingly in a location in which the person does not have a 342
reasonable expectation of privacy. 343

(7) The image_or fabricated sexual image is disseminated 344
for the purpose of medical treatment or examination. 345

~~(D)~~ (F) The following entities are not liable for a 346
violation of this section solely as a result of an image_or 347
fabricated sexual image or other information provided by another 348
person: 349

(1) A provider of interactive computer service; 350

(2) A mobile service; 351

(3) A telecommunications carrier; 352

(4) An internet provider;	353
(5) A cable service provider;	354
(6) A direct-to-home satellite service;	355
(7) A video service provider.	356
(E) <u>(G)</u> Any conduct that is a violation of this section	357
and any other section of the Revised Code may be prosecuted	358
under this section, the other section, or both sections.	359
(F) (1) (a) <u>(H) (1) (a)</u> Except as otherwise provided in	360
division (F) (1) (b), (c), or (d) <u>(H) (1) (b)</u> of this section,	361
whoever violates <u>division (B) of this section</u> is guilty of	362
nonconsensual dissemination of private sexual images, a	363
misdemeanor <u>felony</u> of the third <u>fifth</u> degree.	364
(b) If the offender previously has been convicted of or	365
pleaded guilty to a violation of <u>division (B) of this section, a</u>	366
<u>sexually oriented offense, or a child-victim oriented offense,</u>	367
nonconsensual dissemination of private sexual images is a	368
misdemeanor <u>felony</u> of the second <u>fourth</u> degree.	369
(c) If the offender previously has been convicted of or	370
pleaded guilty to two or more violations of this section,	371
nonconsensual dissemination of private sexual images is a	372
misdemeanor of the first degree.	373
(d) If the offender is under eighteen years of age and the	374
person in the image is not more than five years older than the	375
offender, the offender shall not be prosecuted under this	376
section.	377
(2) <u>(2) (a)</u> Except as otherwise provided in <u>division (H) (2)</u>	378
<u>(b) of this section, whoever violates division (C) of this</u>	379
<u>section is guilty of nonconsensual dissemination of fabricated</u>	380

sexual images, a felony of the fourth degree. 381

(b) If the offender has previously been convicted of or 382
pleaded guilty to a violation of this section, a sexually 383
oriented offense, or a child-victim oriented offense, 384
nonconsensual dissemination of fabricated sexual images is a 385
felony of the third degree. 386

(3) (a) Except as otherwise provided in division (H) (3) (b) 387
of this section, whoever violates division (D) of this section 388
is guilty of nonconsensual creation of fabricated sexual images, 389
a felony of the fourth degree. 390

(b) If the offender has previously been convicted of or 391
pleaded guilty to a violation of this section, a sexually 392
oriented offense, or a child-victim oriented offense, 393
nonconsensual creation of fabricated sexual images is a felony 394
of the third degree. 395

(4) In addition to any other penalty or disposition 396
authorized or required by law, the court may order any person 397
who is convicted of a violation of this section or who is 398
adjudicated delinquent by reason of a violation of this section 399
to criminally forfeit all of the following property to the state 400
under Chapter 2981. of the Revised Code: 401

(a) Any profits or proceeds and any property the person 402
has acquired or maintained in violation of this section that the 403
sentencing court determines to have been acquired or maintained 404
as a result of the violation; 405

(b) Any interest in, securities of, claim against, or 406
property or contractual right of any kind affording a source of 407
influence over any enterprise that the person has established, 408
operated, controlled, or conducted in violation of this section 409

that the sentencing court determines to have been acquired or 410
maintained as a result of the violation. 411

~~(G)~~ (I) A victim of a violation of this section may 412
commence a civil cause of action against the offender, as 413
described in section 2307.66 of the Revised Code. 414

Sec. 2981.02. (A) (1) The following property is subject to 415
forfeiture to the state or a political subdivision under either 416
the criminal or delinquency process in section 2981.04 of the 417
Revised Code or the civil process in section 2981.05 of the 418
Revised Code: 419

(a) Contraband involved in an offense; 420

(b) Proceeds derived from or acquired through the 421
commission of an offense; 422

(c) An instrumentality that is used in or intended to be 423
used in the commission or facilitation of any of the following 424
offenses when the use or intended use, consistent with division 425
(B) of this section, is sufficient to warrant forfeiture under 426
this chapter: 427

(i) A felony; 428

(ii) A misdemeanor, when forfeiture is specifically 429
authorized by a section of the Revised Code or by a municipal 430
ordinance that creates the offense or sets forth its penalties; 431

(iii) An attempt to commit, complicity in committing, or a 432
conspiracy to commit an offense of the type described in 433
divisions (A) (3) (a) and (b) of this section. 434

(2) In determining whether an alleged instrumentality was 435
used in or was intended to be used in the commission or 436
facilitation of an offense or an attempt, complicity, or 437

conspiracy to commit an offense in a manner sufficient to 438
warrant its forfeiture, the trier of fact shall consider the 439
following factors the trier of fact determines are relevant: 440

(a) Whether the offense could not have been committed or 441
attempted but for the presence of the instrumentality; 442

(b) Whether the primary purpose in using the 443
instrumentality was to commit or attempt to commit the offense; 444

(c) The extent to which the instrumentality furthered the 445
commission of, or attempt to commit, the offense. 446

(B) The property described in division ~~(F)(2)~~ (H)(4) of 447
section 2917.211 of the Revised Code is subject to forfeiture 448
under the criminal or delinquency process in section 2981.04 of 449
the Revised Code, if the forfeiture is ordered by the court 450
imposing sentence or an order of disposition. 451

(C) This chapter does not apply to or limit forfeitures 452
under Title XLV of the Revised Code, including forfeitures 453
relating to section 2903.06 or 2903.08 of the Revised Code. 454

Section 2. That existing sections 2307.66, 2917.211, and 455
2981.02 of the Revised Code are hereby repealed. 456

Section 3. This act shall be known as the Innocence Act. 457

Section 4. The provisions of law contained in this act, 458
and their applications, are severable. If any provision of law 459
contained in this act, or if any application of any provision of 460
law contained in this act, is held invalid, the invalidity does 461
not affect other provisions of law contained in this act and 462
their applications that can be given effect without the invalid 463
provision or application. 464