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Bill Analysis

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SUMMARY

- Prohibits an organization that sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles from failing to verify that any person attempting to access or create an account or subscription to access those materials to juveniles is 18 years of age or older through reasonable age verification methods.
- Prohibits an organization that sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles and that uses age verification from retaining identifying information of any person attempting to access those materials or performances.
- Exempts persons employed by newspapers, magazines, television stations, or similar media and certain service providers disseminating information for the general public from fulfilling the age verification requirement.
- Provides the following affirmative defenses:
 - For a person attempting to access or creating an account or subscription to access materials or performances that are obscene or harmful to juveniles on the internet if that person provided identifying information to the organization that sells, delivers, furnishes, disseminates, provides, exhibits, or presents material or performances that is obscene or harmful to juveniles.
 - For organizations that sell, deliver, furnish, disseminate, provide, exhibit, or present any material or performance that is obscene or harmful to juveniles on the internet if that organization made a bona fide effort to discover the age of a person attempting to access or creating an account or subscription to access its materials who was under age 18.

- For organizations that sell, deliver, furnish, disseminate, provide, exhibit, or present any material or performance that is obscene or harmful to juveniles on the internet if the organization had no reason to believe the person attempting to access or creating an account or subscription to access the material or performances was under age 18.
- Provides that organizations that sell, deliver, furnish, disseminate, provide, exhibit, or present any material or performance that is obscene or harmful to juveniles as well as the organization’s officer, agent, or employee may be convicted for that criminal conduct.
- Creates the offense of failure to verify age of a person accessing materials that are obscene or harmful to juveniles and the offense of use of false identifying information to access materials that are obscene or harmful to juveniles.
- Modifies existing law to allow the dissemination of an image or a fabricated sexual image if the person in the image is age 18 or older and the person is knowingly and willingly in a state of nudity or engaged in sexual conduct and is knowingly and willingly in a location where the person does not have a reasonable expectation of privacy.
- Creates the offenses of nonconsensual dissemination and nonconsensual creation of fabricated sexual images.
- Allows a victim of failure to verify age of person accessing materials that are obscene or harmful to juveniles and a victim of nonconsensual dissemination or nonconsensual creation of fabricated sexual images to commence a civil action against the offender.
- Allows the court to order a person who is convicted of nonconsensual dissemination or nonconsensual creation of fabricated sexual images or who is adjudicated a delinquent child by reason of committing that offense to criminally forfeit certain specified property acquired or maintained as a result of committing the offense.
- Names the bill the “Innocence Act.”

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DETAILED ANALYSIS

Age verification for juveniles

Prohibitions and penalties

The bill prohibits an organization that sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles on the internet from recklessly failing to verify that any person attempting to access the material or performance is age 18 or older through reasonable verification methods.¹ In addition, the bill prohibits an organization that sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles on the internet from recklessly failing to verify that any person creating an account or subscription to access any material or performance that is obscene or harmful to juveniles is age 18 or older through reasonable age verification methods.² The organization must reverify the age of the person every two years after the completion of age verification.³

An organization that sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles on the internet and verifies the age of the person creating an account or subscription or attempting to access the material or performance that is obscene or harmful to juveniles on the internet is prohibited from recklessly failing to immediately delete any identifying information, except the information required for the purpose of granting a person access to the account or subscription and for billing the account or subscription, that is used for age verification of the person attempting to access or creating an account or subscription to access any material or performance on the internet that is obscene or harmful to juveniles after age verification is completed.⁴ The bill also prohibits the organization from transferring any information collected, except for the purpose of age verification. The bill specifies that any party who receives transferred information for age verification purposes must immediately delete all information gathered for the purpose of age verification after age verification is completed.⁵

A violation of any of these prohibitions is failure to verify age of person accessing materials that are obscene or harmful to juveniles, a first degree misdemeanor and each day a person commits a violation constitutes a separate offense.⁶

¹ R.C. 2907.312(B)(1).

² R.C. 2907.312(B)(2).

³ R.C. 2907.312(B)(2).

⁴ R.C. 2907.312(C)(3).

⁵ R.C. 2907.312(C)(4).

⁶ R.C. 2907.312(G).

The bill provides that an organization may be convicted under the law regarding the criminal liability of an organization or fined under the law regarding fines for organizations, or an officer, agent, or employee of an organization may be convicted under the law regarding personal liability for criminal conduct and penalized as if the officer, agent, or employee of the organization acted on the officer's, agent's, or employee's own behalf.⁷

Requirements

The bill requires the organization that sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles on the internet to utilize a geofence system maintained and monitored by a licensed location-based technology provider to dynamically monitor the geolocation of persons attempting to access or creating an account or subscription to access the material or performance that is obscene or harmful to juveniles.⁸

The location-based technology provider must perform a geolocation check to dynamically monitor the person attempting to access or creating an account or subscription to access the material or performance that is obscene or harmful to juveniles and the person's location.⁹ If the location-based technology provider determines that a person is located in Ohio, the organization that sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles on the internet must block that person until the person's age has been verified using reasonable age verification methods.¹⁰ The organization must also implement a notification mechanism to alert persons attempting to access or creating an account or subscription to access the material or performance that is obscene or harmful to juveniles, of a geolocation check failure.¹¹

Generally under the bill, an organization that sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles on the internet and verifies the age of the person creating an account or subscription to access the material or performance that is obscene or harmful to juveniles on the internet must do the following:¹²

- Immediately delete all information gathered for the purpose of age verification after the age verification is completed, except the information maintained for account and subscription access and for billing purposes;
- Upon the request of the account holder or subscriber, immediately delete the data maintained for user access to the account or subscription and for billing purposes;

⁷ R.C. 2907.312(F), 2901.23, 2901.24, and 2929.31, not in the bill.

⁸ R.C. 2907.312(B)(3)(a).

⁹ R.C. 2907.312(B)(3)(b).

¹⁰ R.C. 2907.312(B)(3)(c).

¹¹ R.C. 2907.312(B)(3)(d).

¹² R.C. 2907.312(C)(1)(a).

- Develop and maintain a data privacy policy compliant with federal and Ohio law and maintain data in a manner that is reasonably secure.

On the expiration of two years after the creation of the account or subscription, the organization is required to immediately delete all information relative to the creation of the user's account or subscription and any information maintained for billing purposes, unless the account holder or subscriber renews the account or subscription.¹³

Under the bill, the organization that sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles on the internet and verifies the age of the person attempting to access the material or performance that is obscene or harmful to juveniles on the internet must do both of the following:¹⁴

- Immediately delete all information gathered for the purpose of age verification after age verification is completed;
- Develop and maintain a data privacy policy compliant with federal and Ohio law and maintain data in a manner that is reasonably secure.

Age verification exemptions and affirmative defenses

The bill provides exemptions and affirmative defenses to certain persons and providers. The prohibitions described under "**Age verification for juveniles**," above, do not apply to the following persons or entities:¹⁵

- A person who, while employed or contracted by a newspaper, magazine, press association, news agency, news wire service, radio or television station, or similar media, is gathering, processing, transmitting, compiling, editing, or disseminating information for the general public;
- Providers of an interactive computer service;
- A mobile service;
- An internet provider;
- A cable service provider;
- A direct-to-home satellite service;
- A video service provider;
- A cloud service provider.

¹³ R.C. 2907.312(C)(1)(b).

¹⁴ R.C. 2907.312(C)(2).

¹⁵ R.C. 2907.312(D).

The bill also provides that it is an affirmative defense to a charge of failure to verify age of person accessing materials that are obscene or harmful to juveniles if all of the following apply:¹⁶

- The person attempting to access or creating an account or subscription to access any material or performance that is obscene or harmful to juveniles on the internet provided identifying information to the organization that sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles on the internet.
- That organization made a bona fide effort to ascertain the true age of the person by verifying that the person attempting to access or creating an account or subscription to access the material or performance is age 18 or older through reasonable age verification methods.
- The organization had no reason to believe that the person attempting to access or creating an account or subscription to access any material or performance was under age 18.

Civil action for failure to verify age of person accessing materials that are obscene or harmful to juveniles

The bill allows a victim of the offense of failure to verify age of person accessing materials that are obscene or harmful to juveniles to commence a civil action against the offender for injunctive relief in addition to reasonable attorney's fees and the costs of bringing the civil action. The civil action must be brought within two years after the cause of action accrues. The statute of limitations on the claim against the offender does not run during any time when the victim is less than age 18.¹⁷ The bill also specifies that a victim of failure to verify the age of person accessing materials that are obscene or harmful to juveniles is a person under age 18 or a parent or guardian of the minor who is bringing the action on behalf of the person.¹⁸

Definitions

The bill defines the following terms for purposes of the provisions described above:

“Cable service provider” means any person or group of persons that is engaged in the provision of cable service over a cable system and directly or indirectly owns a significant interest in the cable system, or that through any arrangement otherwise controls or is responsible for the management and operation of the cable system.¹⁹

¹⁶ R.C. 2907.312(E).

¹⁷ R.C. 2307.68(A).

¹⁸ R.C. 2307.68(A) and (B).

¹⁹ R.C. 2907.312(A)(1) and 1332.01(C), not in the bill.

“Cloud service provider” means a third-party company offering a cloud-based platform, infrastructure, application, or storage services.²⁰

“Direct-to-home satellite service” means the distribution or broadcasting of programming or services by satellite directly to the subscriber’s premises without the use of ground receiving or distribution equipment, except at the subscriber’s premises or in the uplink process to the satellite.²¹

“Identifying information” means a photo identification or public or private transactional data.²²

“Interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions.²³

“Internet provider” means a provider of internet service, including all of the following:²⁴

- Broadband service, however defined or classified by the Federal Communications Commission;
- Information service or telecommunications service, both as defined in the “Telecommunications Act of 1996,” 47 U.S.C. 153, as amended;
- Internet protocol-enabled services.

“Mobile service” means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes both one-way and two-way radio communication services, a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and any service for which a license is required in a personal communications service established pursuant to the proceeding entitled “Amendment to the Commission’s Rules to Establish New Personal Communications Services” or any successor proceeding.²⁵

“Organization” means both of the following:²⁶

²⁰ R.C. 2907.312(A)(2).

²¹ R.C. 2907.312(A)(3) and 47 United States Code (U.S.C.) 303(v), not in the bill.

²² R.C. 2907.312(A)(4).

²³ R.C. 2907.312(A)(5) and 47 U.S.C. 230(f), not in the bill.

²⁴ R.C. 2907.312(A)(6).

²⁵ R.C. 2907.312(A)(7) and 47 U.S.C. 153(33), not in the bill.

²⁶ R.C. 2907.312(A)(8) and 2907.38, not in the bill.

- A commercial establishment that, for any form of consideration, has as a significant or substantial portion of its stock-in-trade in, derives a significant or substantial portion of its revenues from, devotes a significant or substantial portion of its content or advertising to, or maintains a substantial section of its sales or online content display space for the sale, rental, or viewing of materials that are obscene or harmful to juveniles;
- A commercial establishment that is an entity that is open to the public and (1) has a substantial or significant portion of its stock in trade of the sale, rental, or viewing of visual materials or performances depicting sexual conduct or (2) has as a principal business purpose the sale, rental, or viewing of visual materials or performances depicting sexual conduct. An establishment may have other principal business purposes that do not involve selling, delivering, furnishing, disseminating, providing, exhibiting, or presenting any material or performance that is obscene or harmful to juveniles on the internet and still be categorized as an organization subject to the provisions of the bill. The existence of other principal business purposes does not exempt an establishment from being categorized as an organization subject to the provisions of the bill, so long as one of its principal business purposes involves selling, delivering, furnishing, disseminating, providing, exhibiting, or presenting any material or performance that is obscene or harmful to juveniles on the internet.

“Photo identification” means one of the following documents that includes the individual’s name and photograph and is not expired and includes any government-issued identification issued by another state, district, country, or sovereignty:²⁷

- An Ohio driver’s license, state identification card, or interim identification form issued by the registrar of motor vehicles or a deputy registrar;
- A U.S. passport or passport card;
- A U.S. military identification card, Ohio National Guard identification card, or U.S. Department of Veterans Affairs identification card.

“Reasonable age verification methods” means the following:²⁸

- Verifying that the person attempting to access the material or performance that is obscene or harmful to juveniles is age 18 or older through the use of a commercial age verification system that uses photo identification or public or private transactional data to verify the person’s age;
- Using third-party and governmental databases that use a commercial age verification system that uses photo identification or public or private transactional data to verify the person’s age.

²⁷ R.C. 2907.312(A)(9) and 3501.01(AA)(1), not in the bill.

²⁸ R.C. 2907.312(A)(10).

“Telecommunications carrier” means any provider of telecommunications services, except that such term does not include aggregators of telecommunications. A telecommunications carrier shall be treated as a common carrier only to the extent that it is engaged in providing telecommunications services, except that the Federal Communications Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.²⁹

“Transactional data” means a sequence of information that documents an exchange, agreement, or transfer between a person, organization, or third party for the purpose of satisfying a request or event. “Transactional data” includes mortgage, educational, and employment records.³⁰

“Video service provider” means a person granted video service authorization under the Fair Competition In Cable Operations Law.³¹

Dissemination of fabricated and private sexual images crime and defenses

Prohibition and penalty

The bill prohibits a person from knowingly disseminating a fabricated sexual image of another person without the other person’s consent.³² A violation of this prohibition is nonconsensual dissemination of fabricated sexual images, a fourth degree felony.³³ If the offender has previously been convicted of or pleaded guilty to nonconsensual dissemination of fabricated sexual images, a sexually oriented offense, or a child-victim oriented offense, nonconsensual dissemination of fabricated sexual images is a third degree felony.³⁴

The bill also prohibits a person, without the consent of the depicted person, in order to harass, extort, threaten, or cause physical, emotional, reputational, or economic harm to a person falsely depicted, from knowingly doing either of the following: (1) creating a fabricated sexual image with intent to distribute or (2) soliciting the creation of a fabricated sexual image with intent to distribute.³⁵

A violation of this prohibition is nonconsensual creation of fabricated sexual images, a fourth degree felony.³⁶ If the offender has previously been convicted of or pleaded guilty to

²⁹ R.C. 2907.312(A)(7) and 47 U.S.C. 153(51), not in the bill.

³⁰ R.C. 2907.312(A)(11).

³¹ R.C. 2907.312(A)(12) and 1332.21(M), not in the bill.

³² R.C. 2917.211(C).

³³ R.C. 2917.211(H)(2)(a) and 2307.68.

³⁴ R.C. 2917.211(H)(2)(b).

³⁵ R.C. 2917.211(D).

³⁶ R.C. 2917.211(H)(3)(a).

nonconsensual creation of fabricated sexual images, a sexually oriented offense, or a child-victim oriented offense, nonconsensual creation of fabricated sexual images is a third degree felony.³⁷

The bill modifies existing law by increasing the penalty for nonconsensual dissemination of private sexual images from a third degree misdemeanor to a fifth degree felony and increases the penalty from a second degree misdemeanor to a fourth degree felony if the offender was previously convicted of or pleaded guilty to nonconsensual dissemination of private sexual images, as well as a sexually oriented offense, or a child-victim oriented offense.³⁸

Exceptions

The bill modifies continuing law by specifying that the dissemination of a fabricated sexual image is not prohibited if any of the following apply:³⁹

- The fabricated sexual image is disseminated for the purpose of a criminal investigation that is otherwise lawful;
- The fabricated sexual image is disseminated for the purpose of, or in connection with, the reporting of unlawful conduct;
- The fabricated sexual image is part of a news report or commentary or an artistic or expressive work, such as a performance, work of art, literary work, theatrical work, musical work, motion picture, film, or audiovisual work;
- The fabricated sexual image is disseminated by a law enforcement officer, or a corrections officer or guard in a detention facility, acting within the scope of the person's official duties;
- The fabricated sexual image is disseminated for another lawful purpose;
- If the person in the image or fabricated sexual image is 18 years of age or older, the person in the image or fabricated sexual image is knowingly and willingly in a state of nudity or engaged in a sexual act and is knowingly and willingly in a location in which the person does not have a reasonable expectation of privacy;
- The fabricated sexual image is disseminated for the purpose of medical treatment or examination.

Existing law, unchanged by the bill, provides for the above-described exceptions for photographs, film, videotape, digital recording, or other depiction or portrayal of a person.

The bill also specifies that the providers of interactive computer services, mobile services, telecommunication carriers, internet providers, cable service providers, direct-to-home satellite services, or video service providers are not liable for dissemination of fabricated sexual images

³⁷ R.C. 2917.211(H)(3)(b).

³⁸ R.C. 2917.211(H)(1)(a) and (b).

³⁹ R.C. 2917.211(E).

solely as a result of a fabricated sexual image along with an image under existing law or other information is provided by another person.⁴⁰

Civil action for nonconsensual dissemination of fabricated sexual images

Existing law allows a victim of the offense of nonconsensual dissemination of private sexual images to commence a civil action against the offender for any of the following, in addition to reasonable attorney's fees and the costs of bringing the civil action:⁴¹

- An injunction or a temporary restraining order prohibiting further dissemination of the image that is the subject of the violation;
- Compensatory and punitive damages for harm resulting from the violation.

The bill allows a victim of the offense of nonconsensual dissemination of fabricated sexual images to commence such a civil action as well.

The bill specifies that the victim is presumed to have suffered harm as a result of the nonconsensual dissemination of fabricated sexual images.⁴² The civil action must be brought within four years after the victim discovers the private sexual image or fabricated sexual image.⁴³

The bill defines "**fabricated sexual image**" as a created, adapted, or modified image that depicts another person, the other person is recognizable in the image by the other person's face, likeness, or other distinguishing characteristic, and the other person depicted in the image is in a state of nudity or is engaged in a sexual act.⁴⁴

Forfeiture

The bill modifies the existing Criminal and Civil Forfeiture Law by allowing the court to order any person who is convicted of nonconsensual dissemination of fabricated sexual images or of nonconsensual creation of fabricated sexual images or who is adjudicated a delinquent child by reason of committing the offense of nonconsensual dissemination of fabricated sexual image or of nonconsensual creation of fabricated sexual images to criminally forfeit the following property to the state under the Criminal and Civil Forfeiture Law:⁴⁵

- Any profits or proceeds and any property the person has acquired or maintained in violation of the offense of nonconsensual dissemination of fabricated sexual images or nonconsensual creation of fabricated sexual images that the sentencing court determines to have been acquired or maintained as a result of the violation;

⁴⁰ R.C. 2917.211(F).

⁴¹ R.C. 2307.66(A).

⁴² R.C. 2307.66(B).

⁴³ R.C. 2307.66(C).

⁴⁴ R.C. 2307.66(F) and 2917.211(A)(11).

⁴⁵ R.C. 2917.211(H)(4) and 2981.02(B).

- Any interest in, securities of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise that the person has established, operated, controlled, or conducted as a result of committing the offense of nonconsensual dissemination of fabricated sexual images or nonconsensual creation of fabricated sexual images that the sentencing court determines to have been acquired or maintained as a result of the violation.

The Innocence Act

The bill names the act the “Innocence Act.”⁴⁶

Severability

The bill specifies that the provisions of law in the bill, and their application, are severable and if any provision of law contained in the bill, or if any application of any provision of law contained in the bill, is held invalid, the invalidity does not affect other provisions of law in the bill and their applications that can be given effect without the invalid provision or application.⁴⁷

HISTORY

Action	Date
Introduced	02-11-25

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⁴⁶ Section 3.

⁴⁷ Section 4.