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# OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 163  
136<sup>th</sup> General Assembly

## Bill Analysis

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**Version:** As Passed by the Senate

**Primary Sponsors:** Sens. Blessing and Johnson

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## SUMMARY

### Generative artificial intelligence systems

- Requires generative artificial intelligence systems (generative AI systems) be programmed to provide a distinctive watermark on generative AI system generated images or videos that informs the user that it was generated using a generative AI system.
- Requires covered providers to include provenance data in any content created by the provider's generative AI system.
- Prohibits a person from doing either of the following:
  - Knowingly and with the intent to deceive a third party, removing a watermark required by the bill with the purpose of concealing that the product was generated using a generative AI system.
  - Knowingly and with the intent to deceive a third party, distributing content fully generated by a generative AI system with false information about the authenticity of the content.
- Allows a person harmed by a violation of the above provisions to bring a civil action against the violator if: (1) the person files a complaint with the Attorney General (AG), and (2) the AG does not file an action against the violator within six months.
- Allows the AG to bring a civil action to enforce the above provisions of the bill.
- Grants the AG the ability to investigate reasonable allegations of a violation of the above provisions, and permits the AG to engage in various actions related to the investigation, such as, for example, bringing subpoenas.

## Depiction of a minor in pandering and illegal use offenses

- Expands the offense of pandering obscenity involving a minor or impaired person to also prohibit pandering obscenity involving a depiction of a purported minor.
- Expands the offense of pandering sexually oriented matter involving a minor or impaired person to also prohibit pandering sexually oriented matter involving an artificially generated depiction of a minor.
- Expands the offense of illegal use of a minor or impaired person in a nudity-oriented material or performance to also prohibit illegal use of an artificially generated depiction of a minor in a nudity-oriented material or performance.

## Identity fraud

- Expands the offense of identity fraud to include the use of a replica of a person’s persona in several different ways, such as, for example, prohibiting a person from permitting another to use their persona with the intent to defraud.
- Creates a civil action for a person against an offender of the bill’s prohibition against creating, using, or disseminating a replica of a person’s persona who is not a minor or impaired person in a manner depicting the individual in a state of nudity, engaged in sexual activity, or in any obscene material without consent.
- Provides that the bill’s identity fraud provisions do not apply to:
  - Any information service or system provider that provides or enables computer access by multiple users to a computer server for libraries or educational institutions, including a service or system that provides access to the internet.
  - The provider or developer of any technology used in the creation of a replica of a person’s persona, unless the provider or developer is the same entity committing the violation.

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## TABLE OF CONTENTS

Generative artificial intelligence systems .....	3
Watermark and provenance data requirements .....	3
Generative AI system prohibitions .....	3
Generative AI systems enforcement mechanisms.....	4
Private civil action.....	4
AG action .....	4
AG investigations.....	4
Subpoena actions .....	4
Self-incrimination assertion.....	5
Cease and desist opportunity.....	5
Investigation termination .....	5

AG procedures cumulative and concurrent .....	6
Depiction of a minor in pandering and illegal use offenses .....	6
Pandering obscenity involving a depiction of a purported minor .....	6
Pandering sexually oriented matter involving an artificially generated depiction of a minor ...	7
Illegal use of an artificially generated depiction of a minor in a nudity-oriented material or performance.....	9
Constitutional considerations .....	10
Identity fraud .....	10

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## DETAILED ANALYSIS

### Generative artificial intelligence systems

#### Watermark and provenance data requirements

The bill requires that generative artificial intelligence systems (generative AI systems) be programmed to provide a distinctive watermark on any generative AI system generated image or video that informs the user that the particular image or video was generated using a generative AI system. Additionally, a covered provider must include provenance data in any content created by the provider’s generative AI system.

The bill defines the following terms:

- “Covered provider” means a person or entity that creates, codes, or otherwise produces a generative AI system that is publicly accessible by consumers within Ohio for personal use. “Covered provider” excludes business-to-business use of generative AI systems for a purpose not otherwise prohibited by law.
- “Generative artificial intelligence system” (“generative AI system”) means an artificial intelligence system that can generate derived synthetic content, including text, images, video, and audio that emulates the structure and characteristics of the system’s input.
- “Provenance data” means information that is embedded or attached to help determine the origin of digitally generated content and its history of modification.
- “Watermark” means a visible signal embedded within a generative AI system generated image or video that clearly attributes the creation of such product to a generative AI system.<sup>1</sup>

#### Generative AI system prohibitions

The bill prohibits a person from doing either of the following:

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<sup>1</sup> R.C. 1349.13(A) and (B).

- Knowingly and with the intent to deceive a third party, removing a watermark required by the bill with the purpose of concealing that the product was generated using a generative AI system.
- Knowingly and with the intent to deceive a third party, distributing content fully generated by a generative AI system with false information about the authenticity of the content.<sup>2</sup>

## **Generative AI systems enforcement mechanisms**

### **Private civil action**

The bill provides that any person harmed by a violation of the prohibitions and watermark and provenance requirements discussed above may bring a civil action against the violator for damages that result from the violation if both of the following are met:

1. The person files a complaint with the Attorney General (AG) against the violator (as described immediately below); and
2. The AG does not file an action against the violator within six months after the date the person files the complaint.<sup>3</sup>

### **AG action**

The bill also allows the AG to bring a civil action against violators of the bill's prohibitions and watermark and provenance requirements discussed above for injunctive relief. If the violator removes a generative AI system watermark required by the bill, the AG may seek a civil penalty of up to \$10,000. Civil penalties collected under this provision of the bill must be deposited into the Consumer Protection Enforcement Fund.<sup>4</sup>

### **AG investigations**

The bill allows the AG to investigate reasonable allegations that a person has violated the prohibitions and the watermark and provenance requirements discussed above.

For purposes of these investigations, the AG is permitted to administer oaths, subpoena witnesses, adduce evidence, and require the production of relevant matter. If the matter the AG requires to be produced is located outside Ohio, the AG may designate representatives, including officials of the state where the matter is located, to inspect the matter on the AG's behalf. The AG may respond to similar requests from officials of other states.<sup>5</sup>

### **Subpoena actions**

The person subpoenaed may make the matter available to the AG at a convenient location within Ohio or pay the reasonable and necessary expenses for the AG or the AG's representative

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<sup>2</sup> R.C. 1349.13(C) and (D).

<sup>3</sup> R.C. 1349.13(E).

<sup>4</sup> R.C. 1349.13(F) and 1345.51.

<sup>5</sup> R.C. 1349.14(A).

to examine the matter at the place where it is located, provided the expenses cannot be charged to a party not subsequently found to have engaged in an act or practices in violation of the above prohibitions and watermark and provenance requirements of the bill.

Within 20 days after a subpoena is served, a subpoenaed person may file a motion to extend the return day, or to modify or quash the subpoena, stating good cause, in the Franklin County Court of Common Pleas or any other common pleas court in Ohio.

A person subpoenaed must comply with the terms of the subpoena, unless the parties agree to modify the terms of the subpoena or unless the court has modified or quashed the subpoena, extended the return day of the subpoena, or issued any other order with respect to the subpoena prior to its return day.

If a person fails without lawful excuse to obey a subpoena or to produce relevant matter, the AG may apply to the Franklin County Court of Common Pleas or any other common pleas court in Ohio for an order compelling compliance.<sup>6</sup>

### **Self-incrimination assertion**

The AG may request that an individual who refuses to testify or to produce relevant matter on the ground that the testimony or matter may incriminate the individual be ordered by the court to provide the testimony or matter. With the exception of a prosecution under the bill, an individual who complies with a court order to provide testimony or matter, after asserting a privilege against self-incrimination to which the individual is entitled by law, cannot be subjected to a criminal proceeding or to a civil penalty or forfeiture on the basis of the testimony or matter required to be disclosed or testimony or matter discovered through that testimony or matter.<sup>7</sup>

### **Cease and desist opportunity**

The AG may, during an investigation, afford, in a manner considered appropriate to the AG, a covered provider an opportunity to cease and desist from any suspected violation. The AG may suspend such an investigation during the time period that the AG permits the covered provider to cease and desist. However, the suspension of the investigation or the affording of an opportunity to cease and desist does not prejudice or prohibit any further investigation by the AG.<sup>8</sup>

### **Investigation termination**

The AG may terminate an investigation upon acceptance of a written assurance of voluntary compliance from a covered provider who is suspected of violating the above prohibitions and watermark and provenance requirements of the bill. Acceptance of an assurance may be conditioned upon an undertaking to reimburse or to take other appropriate corrective action with respect to identifiable individuals damaged by an alleged violation of the above prohibitions and watermark and provenance requirements of the bill. An assurance of

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<sup>6</sup> R.C. 1349.14(A)(2), (B), and (C).

<sup>7</sup> R.C. 1349.14(D).

<sup>8</sup> R.C. 1349.14(E)(1).

compliance given by a provider is not evidence of a violation. The AG may, at any time, reopen an investigation terminated by the acceptance of an assurance of voluntary compliance if the AG believes that further proceedings are in the public interest. Evidence of a violation of an assurance of voluntary compliance is prima facie evidence of an act or practice in violation of the above prohibitions and the watermark and provenance requirements of the bill, if presented after the violation in an action brought under the Consumer Protection Law. An assurance of voluntary compliance may be filed with the court and if approved by the court, entered as a consent judgment.<sup>9</sup>

### **AG procedures cumulative and concurrent**

The investigation procedures described above available to the AG are cumulative and concurrent, and the exercise of one procedure by the AG does not preclude or require the exercise of any other procedure.<sup>10</sup>

## **Depiction of a minor in pandering and illegal use offenses**

### **Pandering obscenity involving a depiction of a purported minor**

The bill expands the offense of pandering obscenity involving a minor or impaired person so that it also prohibits pandering obscenity involving a “depiction of a purported minor” (a defined term, see below).

These prohibitions mirror existing prohibitions for pandering obscenity involving a minor or impaired person and prohibit a person, with knowledge of the character of the material or performance involved, from doing any of the following:<sup>11</sup>

1. Creating, reproducing, or publishing any obscene material that has a depiction of a purported minor as one of its participants or portrayed observers.
2. Promoting or advertising for sale or dissemination; selling, delivering, disseminating, displaying, exhibiting, presenting, renting, or providing; or offering or agreeing to sell, deliver, disseminate, display, exhibit, present, rent, or provide any obscene material that has a depiction of a purported minor as one of its participants or portrayed observers.
3. Creating, directing, or producing an obscene performance that has a depiction of a purported minor as one of its participants.
4. Advertising or promoting for presentation, presenting, or participating in presenting, an obscene performance that has a depiction of a purported minor as one of its participants.
5. Buying, procuring, possessing, or controlling any obscene material that has a depiction of a purported minor as one of its participants.

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<sup>9</sup> R.C. 1349.14(E)(2).

<sup>10</sup> R.C. 1349.14(F).

<sup>11</sup> R.C. 2907.321(A).

6. Bringing or causing to be brought into Ohio any obscene material that has a depiction of a purported minor as one of its participants or portrayed observers.

A person who violates any of the above new provisions is guilty of pandering obscenity involving a minor, a depiction of a purported minor, or an impaired person. Penalties under existing law, expanded to include these new “purported minor” offenses are as follows:<sup>12</sup>

- If the offense is a violation of 1, 2, 3, 4, or 6, above, a violation is a second degree felony.
- If the offense is a violation of 5 above, a violation is a fourth degree felony or a third degree felony if the offender has previously been convicted of pandering obscenity involving a minor, a depiction of a purported minor, or an impaired person, pandering sexually oriented matter involving a minor, an artificially generated depiction of a minor, or an impaired person (expanded offense described below), or illegal use of a minor, an artificially generated depiction of a minor, or an impaired person in a nudity-oriented material or performance (expanded offense described below).

For purposes of these new pandering obscenity offenses, “depiction of a purported minor” means a visual representation that appears to depict an actual minor that a reasonable person would believe depicts or represents an actual minor but may or may not depict an actual minor.<sup>13</sup>

Exceptions that apply to existing pandering obscenity involving minors or impaired persons offenses apply similarly to pandering obscenity involving a depiction of a purported minor.<sup>14</sup> In a prosecution for pandering obscenity involving a depiction of a purported minor, the trier of fact may infer that a person in the material or performance involved is a depiction of a purported minor if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as a depiction of a purported minor.<sup>15</sup>

### **Pandering sexually oriented matter involving an artificially generated depiction of a minor**

The bill also expands the offense of pandering sexually oriented matter involving a minor or impaired person so that it also prohibits pandering sexually oriented matter involving an “artificially generated depiction” of a minor.<sup>16</sup> For purposes of this new offense and the new “illegal use of an artificially generated depiction of a minor in a nudity-oriented material or performance” offense, described below, an “artificially generated depiction” of a minor means a visual depiction of an actual person that was created or edited by artificial intelligence or other computer-generated means and that a reasonable person would believe depicts or represents an actual person who is identifiable by the person’s face, likeness, or other distinguishing

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<sup>12</sup> R.C. 2907.321(C).

<sup>13</sup> R.C. 2907.321(D)(2).

<sup>14</sup> R.C. 2907.321(B)(1) and (2).

<sup>15</sup> R.C. 2907.321(B)(3).

<sup>16</sup> R.C. 2907.322.

characteristic.<sup>17</sup> These prohibitions mirror existing prohibitions for pandering sexually oriented matter involving a minor or impaired person and prohibit a person, with knowledge of the character of the material or performance involved, from doing any of the following:<sup>18</sup>

1. Creating, recording, photographing, filming, developing, reproducing, or publishing any material that shows an artificially generated depiction of a minor participating or engaging in sexual activity, masturbation, or bestiality.
2. Advertising for sale or dissemination, selling, distributing, transporting, disseminating, exhibiting, or displaying any material that shows an artificially generated depiction of a minor participating or engaging in sexual activity, masturbation, or bestiality.
3. Creating, directing, or producing a performance that shows an artificially generated depiction of a minor participating or engaging in sexual activity, masturbation, or bestiality.
4. Advertising for presentation, presenting, or participating in presenting a performance that shows an artificially generated depiction of a minor participating or engaging in sexual activity, masturbation, or bestiality.
5. Knowingly soliciting, receiving, purchasing, exchanging, possessing, or controlling any material that shows an artificially generated depiction of a minor participating or engaging in sexual activity, masturbation, or bestiality.
6. Bringing or causing to be brought into Ohio any material that shows an artificially generated depiction of a minor participating or engaging in sexual activity, masturbation, or bestiality.
7. Bringing, causing to be brought, or financing the bringing of any minor into or across Ohio for the purpose of producing material containing a visual representation depicting an artificially generated depiction of the minor engaged in sexual activity, masturbation, or bestiality.

A person who violates any of the above new prohibitions is guilty of “pandering sexually oriented matter involving a minor, an artificially generated depiction of a minor, or an impaired person.” Penalties under existing law, expanded to include these new “artificially generated depiction of a minor” offenses are as follows:<sup>19</sup>

- If the offense is a violation of 1, 2, 3, 4, 6, or 7, above, a violation is a second degree felony.
- If the offense is a violation of 5 above, a violation is a fourth degree felony or a third degree felony if the offender has previously been convicted of pandering obscenity involving a minor, a depiction of a purported minor, or an impaired person, pandering sexually oriented matter involving a minor, an artificially generated depiction of a minor,

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<sup>17</sup> R.C. 2907.321(D)(1).

<sup>18</sup> R.C. 2907.322(A).

<sup>19</sup> R.C. 2907.322(C).

or an impaired person, or illegal use of a minor, an artificially generated depiction of a minor, or an impaired person in a nudity-oriented material or performance (expanded offense described below).

Exceptions that apply to existing pandering sexually oriented matter involving minors or impaired persons offenses apply similarly to pandering sexually oriented matter involving an artificially generated depiction of a minor.<sup>20</sup> In a prosecution for pandering sexually oriented matter involving an artificially generated depiction of a minor, the trier of fact may infer that a person in the material or performance involved is an artificially generated depiction of a minor if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as an artificially generated depiction of a minor.<sup>21</sup>

### **Illegal use of an artificially generated depiction of a minor in a nudity-oriented material or performance**

The bill also expands the offense of illegal use of a minor or an impaired person in a nudity-oriented material or performance so that it also prohibits illegal use of an artificially generated depiction of a minor.<sup>22</sup> These prohibitions mirror existing prohibitions for illegal use of a minor or impaired person and in a nudity-oriented material or performance and prohibit a person from doing any of the following:

1. Creating, directing, producing, or transferring any material or performance that shows an artificially generated depiction of a minor in a state of nudity.
2. Consenting to the use of an artificially generated depiction of a minor in a state of nudity in any material or performance or using or transferring a material or performance of that nature.
3. Possessing or viewing any material or performance that shows an artificially generated depiction of a minor who is not the person's child or ward in a state of nudity.

Existing law exceptions for bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purposes and for physicians, psychologists, sociologists, scientists, teachers, persons pursuing bona fide studies or research, librarians, members of the clergy, prosecutors, judges, and other persons having proper interest in the material or performance also apply to the new prohibitions on artificial depictions.<sup>23</sup>

A person who violates any of the above new prohibitions is guilty of "illegal use of a minor, an artificially generated depiction of a minor, or an impaired person in a nudity-oriented material

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<sup>20</sup> R.C. 2907.322(B)(1) and (2).

<sup>21</sup> R.C. 2907.322(B)(3).

<sup>22</sup> R.C. 2907.323.

<sup>23</sup> R.C. 2907.323(A).

or performance.” Penalties under existing law, expanded to include these new “artificially generated depiction of a minor” offenses are as follows:<sup>24</sup>

- A violation of 1 or 2, above, is a second degree felony.
- A violation of 3, above, is a fifth degree felony, but is elevated to a fourth degree felony if the offender has previously been convicted of pandering obscenity involving a minor, a depiction of a purported minor, or an impaired person, pandering sexually oriented matter involving a minor, an artificially generated depiction of a minor, or an impaired person, or illegal use of a minor, an artificially generated depiction of a minor, or an impaired person in a nudity-oriented material or performance.

### **Constitutional considerations**

If any of the new prohibitions in “**Depiction of a minor in pandering and illegal use offenses**,” above, are challenged, a court might examine whether the criminalization of making and transmitting simulated material involving artificially generated images of a minor or depictions of a purported minor could be found to run counter to the First Amendment. The U.S. Supreme Court struck down a similar law in 2002, finding the prohibition on simulated obscene material to be unconstitutionally overbroad.<sup>25</sup>

### **Identity fraud**

The bill expands the offense of identify fraud to include the use of a replica of a person’s persona for several different activities. “Replica of a person’s persona” or “replica” is defined as a modified or fabricated version of an individual’s voice, photograph, image, likeness, or distinctive appearance that is created or presented in a manner that it appears to be the individual’s authentic persona. The term includes the modifications and fabrications produced in whole or in part by generative AI systems.<sup>26</sup>

The bill prohibits any person from doing the following:

- Permitting another to use a replica of the person’s persona with the intent to defraud.
- Creating or using a replica of a person’s persona in order to knowingly or intentionally induce another person to make a financial decision or extend credit in reliance on the replica without the express consent of the person whose persona is replicated.
- Creating or using a replica of a person’s persona with the intent to damage a person or entity’s reputation, including the reputation of the person whose persona is being replicated.
- Creating, using, or disseminating a replica of a person’s persona who is not a minor or an impaired person in a manner that depicts the individual in a state of nudity, engaged in

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<sup>24</sup> R.C. 2907.323(B)

<sup>25</sup> *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

<sup>26</sup> R.C. 2913.49(A).

sexual activity, or in any obscene material without the consent of the person whose persona is used.

- Creating, using, or disseminating a replica of a person's persona for the purposes of violating or attempting to violate child enticement laws.<sup>27</sup>

It is an affirmative defense to a charge of permitting another person to use a replica of a person's persona with the intent to defraud if the person or entity using the replica is a law enforcement agency or personnel of the same or similar entity using the persona with the prior consent for a lawful purpose.<sup>28</sup>

Following continuing law, the degree of an identity fraud offense depends on the amount of money defrauded, whether the victim belonged to certain protected classes, and if other specified statutes were violated as part of the offending conduct. A person whose persona is unlawfully replicated may also bring a civil action against the violator.<sup>29</sup>

The bill provides that a person injured in person or property by a violation of the prohibition against creating, using, or disseminating a replica of a person's persona who is not a minor or impaired person in a manner depicting the individual in a state of nudity, engaged in sexual activity, or in any obscene material without consent by a replica has a civil action against the offender pursuant to the Civil Action for Dissemination of Images Law.<sup>30</sup>

The bill also states that its identify fraud provisions do not apply to either of the following:

- Any information service or system provider that provides or enables computer access by multiple users to a computer server for libraries or educational institutions, including a service or system that provides access to the internet.
- The provider or developer of any technology used in the creation of a replica of a person's persona, unless the provider or developer is the same entity committing the violation.<sup>31</sup>

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<sup>27</sup> R.C. 2913.49(D), (F), (G), (H), and (I); R.C. 2905.05, not in the bill.

<sup>28</sup> R.C. 2913.49(J)(2).

<sup>29</sup> R.C. 2913.49(L), (M), and (N).

<sup>30</sup> R.C. 2913.49(O); R.C. 2307.66, not in the bill.

<sup>31</sup> R.C. 2913.49(P) and (Q).

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## HISTORY

Action	Date
Introduced	04-01-25
Reported, S. Judiciary	05-20-26
Passed Senate (30-0)	05-20-26

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