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## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Sen. Brenner

Nicholas A. Keller, Attorney

### SUMMARY

#### Braden's Law

- Names the bill Braden's Law.

#### Custodian compliance

- Requires a court, within 30 days, to adjudicate an application for a court order requiring a custodian to disclose the digital assets or terminate the account of a deceased user who was less than 18 years of age if the request was initiated by a parent or legal guardian of the deceased user. Requires the court to impose a civil penalty on the custodian if the custodian fails to comply with the court order.

#### Denial of claim or reduction of award of reparations

- Provides that a claim for reparations based on criminally injurious conduct that occurred but was denied, cannot be barred and provides that a claimant is eligible to reapply for relief until more than five years have passed since the criminally injurious conduct occurred.
- Provides that an award to a claimant whose claim is based on the claimant being a victim of aggravated sexual extortion is not prohibited if the claimant was less than 18 years of age when the criminally injurious conduct occurred.
- Defines "aggravated sexual extortion" and modifies the definitions of "criminally injurious conduct," "family member," "immediate family member," and "victim" for purposes of the Reparations Law.

#### Extortion

##### Aggravated sexual extortion and sexual extortion

- Creates the offenses of aggravated sexual extortion and sexual extortion.

## **Sexual extortion exceptions**

- Prohibits a person from asserting a cause of action in any Ohio court against any provider of an information, interactive computer, or telecommunications service for any injury, death, or loss to person or property in accordance with a court order issued in relation to sexual extortion.
- Provides that a provider of an information, interactive computer, or telecommunications service is immune from civil or criminal liability for injury, death, or loss to person or property in accordance with a court order issued in relation to sexual extortion.
- Provides that a person cannot commit sexual extortion solely by providing access to an electronic method of remotely transferring information not under the person's control that does not include the creation of the content of the material that is the subject of the access or connection.
- Provides that any person providing access or connection to or from an electronic method of remotely transferring information not under the person's control is not liable for any action taken in good faith to block the receipt or transmission of any information sent that is or could be considered as sexual extortion.
- Provides that there is no affirmative duty for any person providing access to an electronic method of remotely transferring information not under the person's control to block the receipt or transmission of possible instances of sexual extortion.
- Provides that a person who conspires with another who is actively involved in the creation or knowing distribution of material related to sexual extortion or who knowingly advertises the material is guilty of sexual extortion.
- Provides that a user or provider of an interactive computer service cannot be treated as the publisher or speaker of any information provided by another information content provider and will not be held civilly or criminally liable for the information provided by the other content provider.
- Provides that a person who develops or creates any content that is considered to be sexual extortion is not protected and is liable for committing the offense.
- Provides that a person cannot be convicted of an offense, and a child cannot be adjudicated a delinquent child, for disseminating private images of that person or child to another person as a result of committing the crime of sexual extortion when the person or child is a victim.

## **Definitions**

- Defines "elderly person," "disabled adult," "information service," "telecommunications service," "interactive computer service," "nudity," "sexual activity," "sexual excitement," "private images," and "threat" for purposes of the offenses of aggravated sexual extortion and sexual extortion.

## Technical change

- Makes necessary cross-reference changes.

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## DETAILED ANALYSIS

### Braden's law

The bill names the act "Braden's Law."<sup>1</sup>

### Custodian compliance

Under existing law, not later than 60 days after receipt of information required to be provided regarding the disclosure of electronic communications and other digital assets of a deceased user, a custodian must comply with a request from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance. Under the bill, if the deceased user was under 18 years of age at time of death and the request was initiated by a parent or legal guardian of that deceased user, the court must determine and adjudicate the application for a court order within 30 days after submission.<sup>2</sup> If the court finds that the custodian failed to comply with the court order, the court must impose the following civil penalties on the custodian:<sup>3</sup>

1. Up to \$1,000 for each of the first 60 days the operator failed to comply with the court order;
2. An additional civil penalty of up to \$5,000 for each subsequent day the operator failed to comply with the order, beginning with day 61 and ending with day 90;
3. An additional civil penalty of up to \$10,000 for each subsequent day the operator failed to comply with the order, beginning with day 91.

The court must deposit the civil penalties into the Consumer Protection Enforcement Fund.<sup>4</sup>

### Denial of claim or reduction of award of reparations

Under existing law, a claim for a reparations award must be commenced by filing an application for a reparations award with the Attorney General. Generally, all applications for a reparations award may be filed at any time within three years after the criminal injurious conduct occurred.<sup>5</sup> The Attorney General or the Court of Claims cannot make or order an award of reparations to a claimant if the claim is based on criminal injurious conduct that occurred

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<sup>1</sup> Section 3.

<sup>2</sup> R.C. 2137.15(A).

<sup>3</sup> R.C. 2137.15(F).

<sup>4</sup> R.C. 2137.15(G) and 1345.51, not in the bill.

<sup>5</sup> R.C. 2743.56.

more than three years before the claim was filed for if the claim was denied under the law as it existed prior to March 2, 2022.<sup>6</sup>

Under the bill, if the claim for reparations is based on criminally injurious conduct that occurred prior to the effective date of the bill and was denied, the claim is not barred and the claimant is eligible to reapply for relief until more than five years have passed since the criminally injurious conduct that gave rise to the claim.<sup>7</sup> The bill also provides that an award to a claimant whose claim is based on the claimant being a victim of aggravated sexual extortion is not prohibited if the claimant was less than 18 years of age when the criminally injurious conduct occurred.<sup>8</sup>

The bill defines “aggravated sexual extortion,” for purposes of the Reparations Law, as follows:<sup>9</sup>

- The activity involves the release, exhibition, distribution, or threatened release, exhibition, or distribution of the private images of another person for any of the following purposes:
  - To compel or attempt to compel another person, against that person’s will, to perform any act or refrain from performing any act;
  - To induce the other person to commit a criminal offense;
  - To obtain additional private images from the other person;
  - To obtain anything of value from the other person.
- The target of the activity was age 18 or younger at the time of the activity.

The bill also modifies the following definitions for purposes of the Reparations Law:<sup>10</sup>

“**Criminally injurious conduct**” is expanded to include aggravated sexual extortion within or outside of the United States that results in the death of the targeted person.

“**Victim**” is expanded to include the following:

1. A person who is an immediate family member of a victim of criminally injurious conduct that consists of aggravated sexual extortion who requires psychiatric care or counseling as a result of the conduct.
2. A person who suffers trauma so severe that it impedes or prohibits a person from participating in normal daily activities and who is a family member of a victim of criminally injurious conduct that consists of aggravated sexual extortion.

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<sup>6</sup> R.C. 2743.60(A)(2)(a).

<sup>7</sup> R.C. 2743.60(A)(2)(d).

<sup>8</sup> R.C. 2743.60(J).

<sup>9</sup> R.C. 2743.51(T).

<sup>10</sup> R.C. 2743.51(C), (L), (X), and (Y).

**“Immediate family member”** is expanded to include an individual who resided in the same permanent household as a target of aggravated sexual extortion at the time of the criminally injurious conduct and who is related to the victim by affinity or consanguinity.

**“Family member”** is expanded to include an individual who is related to a target of aggravated sexual extortion by affinity or consanguinity.

## **Extortion**

### **Sexual extortion**

The bill creates the offense of sexual extortion, which prohibits a person from threatening to release, exhibit, or distribute the private images of another with purpose to do any of the following:<sup>11</sup>

1. Compel or attempt to compel the other person, against the other person’s will, to perform any act or refrain from performing any act;
2. Induce the other person to commit an offense;
3. Obtain additional private images from the other person;
4. Obtain anything of value from the other person.

Generally, sexual extortion is a third degree felony. If the offender was previously convicted of or pleaded guilty to a violation of the prohibition against sexual extortion, sexual extortion is a second degree felony. If the offender was previously convicted of or pleaded guilty to two or more violations of the prohibition against sexual extortion or if the offense involves sexual extortion of a person under age 18, an elderly person, or a disabled adult, sexual extortion is a first degree felony.<sup>12</sup>

### **Aggravated sexual extortion**

The bill provides that whoever commits the offense of sexual extortion in a manner that causes great bodily harm to a victim or causes the victim’s death is guilty of aggravated sexual extortion.

Generally, aggravated sexual extortion is a third degree felony and, in addition to any other prison term imposed for the offense, the court may impose an additional prison term of up to ten years. If the offender was previously convicted of or pleaded guilty to a violation of the prohibition against sexual extortion, aggravated sexual extortion is a second degree felony and, in addition to any other prison term imposed for the offense, the court may impose an additional prison term of up to ten years. If the offender was previously convicted of or pleaded guilty to two or more violations of the prohibition against sexual extortion or if the offense involves sexual extortion of a person under age 18, an elderly person, or a disabled adult,

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<sup>11</sup> R.C. 2905.11(D) and (E).

<sup>12</sup> R.C. 2905.11(E)(1).

aggravated sexual extortion is a first degree felony and, in addition to any other prison term imposed for the offense, the court may impose an additional prison term of up to ten years.<sup>13</sup>

### **Sexual extortion – exceptions**

The bill prohibits a person from asserting a cause of action in any Ohio court against any provider of an information service, interactive computer service, or telecommunications service or against any agent, employee, or officer of such provider, for any injury, death, or loss to person or property that allegedly arose out of the provider's, officer's, employee's, or agent's provision of information, facilities, or assistance in accordance with the terms of a court order that was issued in relation to the investigation or prosecution of sexual extortion.<sup>14</sup> A provider of an information service, interactive computer service, or telecommunications service, or any agent, employee, or officer of such provider, is immune from any civil or criminal liability for injury, death, or loss to person or property that allegedly arises out of the provider's, officer's, employee's, or agent's provision of information, facilities, assistance in accordance with a court order issued in relation to the investigation or prosecution of sexual extortion.<sup>15</sup>

Under the bill, a person cannot be considered to have committed sexual extortion solely by providing access or connection to or from an electronic method of remotely transferring information not under the person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information and that do not include the creation of the content of the material that is the subject of the access or connection.<sup>16</sup> Any person providing access or connection to or from an electronic method of remotely transferring information not under the person's control is not liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information sent that the person believes is, or will be, considered as sexual extortion.<sup>17</sup>

Under the bill, there is no affirmative duty for any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of the prohibition against sexual extortion, except as otherwise provided by law.<sup>18</sup> A person who conspires with another person who is actively involved in the creation or knowing distribution of material related to sexual extortion or who knowingly advertises the availability of material of that nature is guilty of sexual extortion.<sup>19</sup>

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<sup>13</sup> R.C. 2905.11(E)(2).

<sup>14</sup> R.C. 2905.11(F)(1).

<sup>15</sup> R.C. 2905.11(F)(2).

<sup>16</sup> R.C. 2905.11(G)(1)(a).

<sup>17</sup> R.C. 2905.11(G)(1)(b).

<sup>18</sup> R.C. 2905.11(G)(2).

<sup>19</sup> R.C. 2905.11(G)(3).

Under the bill, a provider or user of an interactive computer service cannot be treated as the publisher or speaker of any information provided by another information content provider and cannot be held civilly or criminally liable for the creation or development of information provided by another content provider.<sup>20</sup> A person is not protected from liability to the extent that the person developed or created any content that is considered to be sexual extortion.<sup>21</sup>

The bill provides that a person cannot be convicted of an offense, and no child can be adjudicated a delinquent child, for disseminating private images of that person or child to another person as a direct and proximate result of a violation of the prohibition against sexual extortion when the person or child was a victim.<sup>22</sup>

### **Definitions – extortion**

The bill defines the following terms for the purposes of the offenses of aggravated sexual extortion and sexual extortion:

**“Elderly person”** means a person who is 65 years of age or older.<sup>23</sup>

**“Disabled adult”** means a person who is 18 years of age or older and has some impairment of body or mind that makes the person unable to work at any substantially remunerative employment that the person otherwise would be able to perform and that will, with reasonable probability, continue for a period of at least 12 months without any present indication of recovery from the impairment, or who is 18 years of age or older and has been certified as permanently and totally disabled by an agency of this state or the United States that has the function of so classifying persons.<sup>24</sup>

**“Information service”** means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.<sup>25</sup>

**“Telecommunications service”** means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.<sup>26</sup>

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<sup>20</sup> R.C. 2905.11(G)(4)(a).

<sup>21</sup> R.C. 2905.11(G)(4)(b).

<sup>22</sup> R.C. 2905.111.

<sup>23</sup> R.C. 2905.11(A)(1) and 2913.01, not in the bill.

<sup>24</sup> R.C. 2905.11(A)(1) and 2913.01, not in the bill.

<sup>25</sup> R.C. 2905.11(A)(2) and 47 United States Code (U.S.C.) 153.

<sup>26</sup> R.C. 2905.11(A)(2) and 47 U.S.C. 153.

**“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.<sup>27</sup>

**“Nudity”** means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.<sup>28</sup>

**“Sexual activity”** means sexual conduct or sexual contact, or both.<sup>29</sup>

**“Sexual excitement”** means the condition of human male or female genitals when in a state of sexual stimulation or arousal.<sup>30</sup>

**“Private images”** means images of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination.<sup>31</sup>

**“Threat”** includes a direct threat and a threat by innuendo.<sup>32</sup>

## Technical change

The bill makes necessary cross-references changes.<sup>33</sup>

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## HISTORY

Action	Date
Introduced	05-08-24

ANSB0263IN-135/ts

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<sup>27</sup> R.C. 2905.11(A)(3) and 47 U.S.C. 230.

<sup>28</sup> R.C. 2905.11(A)(4) and 2907.01, not in the bill.

<sup>29</sup> R.C. 2905.11(A)(4) and 2907.01, not in the bill.

<sup>30</sup> R.C. 2905.11(A)(4) and 2907.01, not in the bill.

<sup>31</sup> R.C. 2905.11(A)(5).

<sup>32</sup> R.C. 2905.11(A)(6).

<sup>33</sup> R.C. 2743.56 and 2743.71.