As Introduced

135th General Assembly
Regular Session
2023-2024

S. B. No. 217

Senators Blessing, Johnson
Cosponsor: Senator Ingram

A BILL

To amend sections 1345.51, 2907.321, and 2913.49 and to enact sections 1349.10 and 2907.324 of the Revised Code to require AI-generated products have a watermark, to prohibit simulated child pornography, and to prohibit identity fraud using a replica of a person.

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

Section 1. That sections 1345.51, 2907.321, and 2913.49 be amended and sections 1349.10 and 2907.324 of the Revised Code be enacted to read as follows:

Sec. 1345.51. There is hereby created in the state treasury the consumer protection enforcement fund. The fund shall include civil penalties ordered pursuant to divisions (A) and (D) of section 1345.07 of the Revised Code and paid as provided in division (G) of that section, all civil penalties ordered pursuant to division (E) of section 1349.10 of the Revised Code, all civil penalties assessed under division (A) of section 1349.192 of the Revised Code, all costs awarded to the attorney general and all penalties imposed under section 4549.48...
of the Revised Code, and all money unclaimed under section 4549.50 of the Revised Code. The money in the consumer protection enforcement fund shall be used for the sole purpose of paying expenses incurred by the consumer protection section of the office of the attorney general.

Sec. 1349.10. (A) As used in this section, "artificial intelligence" and "AI" mean a machine-based system that, for a given set of human-defined objectives, uses machine- and human-based inputs to make predictions, recommendations, or decisions influencing real or virtual environments. "Artificial intelligence" and "AI" include only machine-based systems that are capable of all of the following:

(1) Perceiving real and virtual environments;

(2) Abstracting such perceptions into models through analysis in an automated manner;

(3) Using model inference to formulate options for information or action.

(B) Artificial intelligence systems shall be programmed to provide a distinctive watermark on any AI-generated product that informs the user that the particular product was generated using an AI system.

(C) No person shall remove a watermark required by this section with the purpose of concealing that the product was generated using artificial intelligence.

(D) Any person aggrieved by a violation of division (B) or (C) of this section has and may commence a civil action against the violator for damages that result from the violation. In a civil action under this division, any person found to have removed a watermark required by this section shall be rebuttably
presumed to have caused the harm alleged in the complaint.

(E) In addition to the civil action authorized under division (D) of this section, the attorney general may commence a civil action against a person that violates division (C) or (D) of this section for injunctive relief and, in the case of a person that violates division (C) of this section, a civil penalty of up to ten thousand dollars. All civil penalties collected under this division shall be deposited to the consumer protection enforcement fund created by section 1345.51 of the Revised Code.

Sec. 2907.321. (A) No person, with knowledge of the character of the material or performance involved, shall do any of the following:

(1) Create, reproduce, or publish any obscene material that has a minor or impaired person as one of its participants or portrayed observers;

(2) Promote or advertise for sale or dissemination; sell, deliver, disseminate, display, exhibit, present, rent, or provide; or offer or agree to sell, deliver, disseminate, display, exhibit, present, rent, or provide, any obscene material that has a minor or impaired person as one of its participants or portrayed observers;

(3) Create, direct, or produce an obscene performance that has a minor or impaired person as one of its participants;

(4) Advertise or promote for presentation, present, or participate in presenting an obscene performance that has a minor or impaired person as one of its participants;

(5) Buy, procure, possess, or control any obscene material, that has a minor or impaired person as one of its
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participants:

(6) Bring or cause to be brought into this state any obscene material that has a minor or impaired person as one of its participants or portrayed observers;

(7) Make or transmit any simulated obscene material;

(8) Buy, procure, possess, or control any simulated obscene material.

(B)(1) This section does not apply to any material or performance that is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance.

(2) Mistake of age is not a defense to a charge under this section.

(3) In a prosecution under this section, the trier of fact may infer that a person in the material or performance involved is a minor or impaired person if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as a minor or impaired person.

(C) Whoever violates this section is guilty of pandering obscenity involving a minor or impaired person. If the offense involves a minor, a violation of division (A)(1), (2), (3), (4), or (6) of this section is a felony of the second degree. If the offense involves an impaired person, a violation of division (A) (1), (2), (3), (4), or (6) of this section is a felony of the
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third degree. A violation of division (A)(5) or (8) of this section is a felony of the fourth degree. A violation of division (A)(7) of this section is a felony of the third degree.

If the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2907.322 or 2907.323 of the Revised Code, pandering obscenity involving a minor or impaired person in violation of division (A)(5) of this section is a felony of the third degree.

(D) As used in this section and sections 2907.322 and 2907.323 of the Revised Code, "impaired:

(1) "Impaired person" means a person whose ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.

(2) "Simulated obscene material" means any visual depiction of a minor or impaired person, including an image generated by artificial intelligence, that would constitute a violation of this section or section 2907.322 or 2907.323 of the Revised Code if the minor depicted was a natural person.

(3) "Artificial intelligence" has the same meaning as in section 1349.10 of the Revised Code.

Sec. 2907.324. (A) No person, web site, social media platform, internet service provider, or cellular telephone provider shall fail to remove from a web site, platform, web page, or other electronic communication any electronic image, text, or video that contains simulated child obscenity.
prohibited by divisions (A)(7) and (8) of section 2907.321 of
the Revised Code, or any electronic image, text, or video, the
creation, use or dissemination of which is prohibited by
division (H) or (I) of section 2913.49 of the Revised Code,
within twenty-four hours after receiving notice from the
attorney general.

(B) Any person, web site, social media platform, internet
service provider, or cellular telephone provider that fails to
comply with division (A) of this section is liable for civil
penalties of up to one thousand dollars per day. The attorney
general may bring in any court of competent jurisdiction a civil
enforcement action for declaratory relief seeking compliance
with this section. In the action, the attorney general may seek
a temporary restraining order, preliminary or permanent
injunction, and any civil penalties. Any civil penalty paid in
accordance with this section shall be credited to the attorney
general's consumer protection fund established in accordance
with section 1345.51 of the Revised Code.

Sec. 2913.49. (A) As used in this section, "personal

(1) "Personal identifying information" includes, but is
not limited to, the following: the name, address, telephone
number, driver's license, driver's license number, commercial
driver's license, commercial driver's license number, state
identification card, state identification card number, social
security card, social security number, birth certificate, place
of employment, employee identification number, mother's maiden
name, demand deposit account number, savings account number,
money market account number, mutual fund account number, other
financial account number, personal identification number,
password, or credit card number of a living or dead individual.
(2) "Replica of a person's persona" or "replica" means 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 artificial intelligence.

(3) "Artificial intelligence" has the same meaning as in section 1349.10 of the Revised Code.

(B) No person, without the express or implied consent of the other person, shall use, obtain, or possess any personal identifying information of another person with intent to do either of the following:

(1) Hold the person out to be the other person;

(2) Represent the other person's personal identifying information as the person's own personal identifying information.

(C) No person shall create, obtain, possess, or use the personal identifying information of any person with the intent to aid or abet another person in violating division (B) of this section.

(D) No person, with intent to defraud, shall permit another person to use the person's own personal identifying information or a replica of the person's persona.

(E) No person who is permitted to use another person's personal identifying information as described in division (D) of this section shall use, obtain, or possess the other person's personal identifying information with intent to defraud any person by doing any act identified in division (B)(1) or (2) of
(F)(1) No person shall create or use a replica of a person's persona in a manner that would induce any other person to make a financial decision or extend credit to any person in reliance on the replica without the express consent of the individual whose persona is replicated.

(G) No person shall create or use a replica with the intent to damage any person's or entity's reputation, including the reputation of the individual whose persona is replicated.

(H) No person shall create, use, or disseminate a replica of a person's persona in a manner that depicts the individual whose persona is replicated in a state of nudity, engaging in sexual activity, or in any obscene material without the consent of the individual whose persona is replicated.

(I) No person shall create, use, or disseminate a replica of a person's persona for the purposes of violating or attempting to violate section 2905.05, 2907.321, 2907.322, or 2907.323 of the Revised Code.

(J)(1) It is an affirmative defense to a charge under division (B) of this section that the person using the personal identifying information is acting in accordance with a legally recognized guardianship or conservatorship or as a trustee or fiduciary.

(2) It is an affirmative defense to a charge under division (B), (C), (D), or (E) of this section that either of the following applies:

(a) The person or entity using, obtaining, possessing, or creating the personal identifying information or replica, or permitting it to be used, is a law enforcement agency,
authorized fraud personnel, or a representative of or attorney
for a law enforcement agency or authorized fraud personnel and
is using, obtaining, possessing, or creating the personal
identifying information or replica, or permitting it to be used,
with prior consent given as specified in this division, in a
bona fide investigation, an information security evaluation, a
pretext calling evaluation, or a similar matter. The prior
consent required under this division shall be given by the
person whose personal identifying information or replica is
being used, obtained, possessed, or created or is being
permitted to be used or, if the person whose personal
identifying information or replica is being used, obtained,
possessed, or created or is being permitted to be used is
deceased, by that deceased person's executor, or a member of
that deceased person's family, or that deceased person's
attorney. The prior consent required under this division may be
given orally or in writing by the person whose personal
identifying information or replica is being used, obtained,
possession, or created or is being permitted to be used or that
person's executor, or family member, or attorney.

(b) The personal identifying information or replica was
obtained, possessed, used, created, or permitted to be used for
a lawful purpose, provided that division (F)(2)(b)–(J)(2)(b) of
this section does not apply if the person or entity using,
obtaining, possessing, or creating the personal identifying
information or replica, or permitting it to be used, is a law
enforcement agency, authorized fraud personnel, or a
representative of or attorney for a law enforcement agency or
authorized fraud personnel that is using, obtaining, possessing,
or creating the personal identifying information or replica, or
permitting it to be used, in an investigation, an information
security evaluation, a pretext calling evaluation, or similar matter.

(G)(K) It is not a defense to a charge under this section that the person whose personal identifying information or replica was obtained, possessed, used, created, or permitted to be used was deceased at the time of the offense.

(H)(1) If an offender commits a violation of division (B), (D), or (E) of this section and the violation occurs as part of a course of conduct involving other violations of division (B), (D), or (E) of this section or violations of, attempts to violate, conspiracies to violate, or complicity in violations of division (C) of this section or section 2913.02, 2913.04, 2913.11, 2913.21, 2913.31, 2913.42, 2913.43, or 2921.13 of the Revised Code, the court, in determining the degree of the offense pursuant to division (I)(M) of this section, may aggregate all credit, property, or services obtained or sought to be obtained by the offender and all debts or other legal obligations avoided or sought to be avoided by the offender in the violations involved in that course of conduct. The course of conduct may involve one victim or more than one victim.

(2) If an offender commits a violation of division (C) of this section and the violation occurs as part of a course of conduct involving other violations of division (C) of this section or violations of, attempts to violate, conspiracies to violate, or complicity in violations of division (B), (D), or (E) of this section or section 2913.02, 2913.04, 2913.11, 2913.21, 2913.31, 2913.42, 2913.43, or 2921.13 of the Revised Code, the court, in determining the degree of the offense pursuant to division (I)(M) of this section, may aggregate all credit, property, or services obtained or sought to be obtained.
by the person aided or abetted and all debts or other legal
obligations avoided or sought to be avoided by the person aided
or abetted in the violations involved in that course of conduct.
The course of conduct may involve one victim or more than one
victim.

(I)(1) Whoever violates this section is guilty of
identity fraud.

(2) Except as otherwise provided in this division or
division (I)(3) of this section, identity fraud is a
felony of the fifth degree. If the value of the credit,
property, services, debt, or other legal obligation involved in
the violation or course of conduct is one thousand dollars or
more and is less than seven thousand five hundred dollars,
except as otherwise provided in division (I)(3) of this
section, identity fraud is a felony of the fourth degree. If the
value of the credit, property, services, debt, or other legal
obligation involved in the violation or course of conduct is
seven thousand five hundred dollars or more and is less than one
hundred fifty thousand dollars, except as otherwise provided in
division (I)(3) of this section, identity fraud is a
felony of the third degree. If the value of the credit,
property, services, debt, or other legal obligation involved in
the violation or course of conduct is one hundred fifty thousand
dollars or more, except as otherwise provided in division (I)(3)
of this section, identity fraud is a felony of the second
degree.

(3) If the victim of the offense is a minor, an elderly
person, disabled adult, active duty service member, or spouse of
an active duty service member, a violation of this section is
identity fraud against a person in a protected class. Except as
otherwise provided in this division, identity fraud against a person in a protected class is a felony of the fourth degree. If the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct is one thousand dollars or more and is less than seven thousand five hundred dollars, identity fraud against a person in a protected class is a felony of the third degree. If the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct is seven thousand five hundred dollars or more and is less than one hundred fifty thousand dollars, identity fraud against a person in a protected class is a felony of the second degree. If the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct is one hundred fifty thousand dollars or more, identity fraud against a person in a protected class is a felony of the first degree. If the victim of the offense is an elderly person, in addition to any other penalty imposed for the offense, the offender shall be required to pay full restitution to the victim and to pay a fine of up to fifty thousand dollars. The clerk of court shall forward all fines collected under this division (I)(3) of this section to the county department of job and family services to be used for the reporting and investigation of elder abuse, neglect, and exploitation or for the provision or arrangement of protective services under sections 5101.61 to 5101.71 of the Revised Code.

(J)(N) In addition to the penalties described in division (I) of this section, anyone injured in person or property by a violation of division (B), (D), or (E) of this section who is the owner of the identifying information involved, or whose persona is replicated, in that violation has a civil action
against the offender pursuant to section 2307.60 of the Revised Code. That person may also bring a civil action to enjoin or restrain future acts that would constitute a violation of division (B), (D), or (E) of this section.

Section 2. That existing sections 1345.51, 2907.321, and 2913.49 of the Revised Code are hereby repealed.