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136th General Assembly

Regular Session

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Sub. H. B. No. 84

To amend sections 1349.10 and 1349.101 and to enact
section 109.1111 of the Revised Code to
establish the Innocence Act Enforcement Fund,
designate specified provisions of law as the
Innocence Act, and clarify the Attorney
General's enforcement authority.

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

Section 1. That sections 1349.10 and 1349.101 be amended
and section 109.1111 of the Revised Code be enacted to read as
follows:

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Sec. 109.1111. There is hereby created in the state
treasury the innocence act enforcement fund that shall be used
for the payment of expenses incurred by the office of the
attorney general. Up to twenty-five per cent of all amounts
collected by the attorney general from civil penalties as
described in section 1349.101 of the Revised Code shall be paid
into the state treasury to the credit of the innocence act
enforcement fund.

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Sec. 1349.10. (A) (1) "Cable service provider" has the same
meaning as in section 1332.01 of the Revised Code.

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(2) "Cloud service provider" means a third-party company	20
offering a cloud-based platform, infrastructure, application, or	21
storage services.	22
(3) "Direct-to-home satellite service" has the same	23
meaning as in 47 U.S.C. 303, as amended.	24
(4) "Identifying information" means photo identification	25
or public or private transactional data.	26
(5) "Interactive computer service" has the same meaning as	27
in the "Telecommunications Act of 1996," 47 U.S.C. 230, as	28
amended.	29
(6) "Internet provider" means a provider of internet	30
service, including all of the following:	31
(a) Broadband service, however defined or classified by	32
the federal communications commission;	33
(b) Information service or telecommunications service,	34
both as defined in the "Telecommunications Act of 1996," 47	35
U.S.C. 153, as amended;	36
(c) Internet protocol-enabled services, as defined in	37
section 4927.01 of the Revised Code.	38
(7) "Mobile service" and "telecommunications carrier" have	39
the same meanings as in the "Telecommunications Act of 1996," 47	40
U.S.C. 153, as amended.	41
(8) "Organization" means <u>both</u> <u>either</u> of the following:	42
(a) A commercial establishment that, for any form of	43
consideration, has as a significant or substantial portion of	44
its stock-in-trade in, derives a significant or substantial	45
portion of its revenues from, devotes a significant or	46

substantial portion of its content or advertising to, or 47
maintains a substantial section of its sales or online content 48
display space for the sale, rental, or viewing of materials that 49
are obscene or harmful to juveniles; 50

(b) A commercial establishment as defined in section 51
2907.38 of the Revised Code. An establishment may have other 52
principal business purposes that do not involve selling, 53
delivering, furnishing, disseminating, providing, exhibiting, or 54
presenting any material or performance that is obscene or 55
harmful to juveniles on the internet and still be categorized as 56
an organization subject to this section. The existence of other 57
principal business purposes does not exempt an establishment 58
from being categorized as an organization subject to this 59
section, so long as one of its principal business purposes 60
involves selling, delivering, furnishing, disseminating, 61
providing, exhibiting, or presenting any material or performance 62
that is obscene or harmful to juveniles on the internet. 63

(9) "Photo identification" has the same meaning as in 64
section 3501.01 of the Revised Code and includes any government- 65
issued identification issued by another state, district, 66
country, or sovereignty. 67

(10) "Reasonable age verification methods" means the 68
following: 69

(a) Verifying that the person attempting to access the 70
material or performance that is obscene or harmful to juveniles 71
is eighteen years of age or older through the use of a 72
commercial age verification system that uses photo 73
identification, visual age verification software, or public or 74
private transactional data to verify the person's age; 75

(b) Using <u>any available third-party and or any available</u>	76
governmental databases that use a commercial age verification	77
system that uses photo identification or public or private	78
transactional data to verify the person's age.	79
(11) "Transactional data" means a sequence of information	80
that documents an exchange, agreement, or transfer between a	81
person, organization, or third party for the purpose of	82
satisfying a request or event. "Transactional data" includes	83
mortgage, educational, and employment records.	84
(12) "Video service provider" has the same meaning as in	85
section 1332.21 of the Revised Code.	86
(13) " <u>Harmful to juveniles</u> " and " <u>obscene</u> " have the same	87
meanings as in section 2907.01 of the Revised Code.	88
(14) " <u>Significant or substantial</u> " means at least <u>thirty-</u>	89
<u>three and one-third per cent.</u>	90
(B) An organization that sells, delivers, furnishes,	91
disseminates, provides, exhibits, or presents any material or	92
performance that is obscene or harmful to juveniles on the	93
internet shall do all of the following:	94
(1) Verify that any person attempting to access the	95
material or performance that is obscene or harmful to juveniles	96
is eighteen years of age or older through reasonable age	97
verification methods;	98
(2) Verify that any person creating an account or	99
subscription to access any material or performance that is	100
obscene or harmful to juveniles is eighteen years of age or	101
older through reasonable age verification methods. The	102
organization shall reverify the age of the person every two	103
years thereafter.	104

(3) (a) 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; 105
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(b) The location-based technology provider shall 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. The organization shall ensure that the location-based technology provider performs the geolocation check. 110
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(c) If the location-based technology provider determines that a person is located in this state, as determined by the geolocation check under division (B) (3) (b) of this section, 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 shall block that person until the person's age has been verified using reasonable age verification methods. 117
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(4) 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. 125
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(C) (1) (a) Except as otherwise provided in division (C) (1) (b) of this section, 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 129
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that is obscene or harmful to juveniles on the internet shall do	135
the following:	136
(i) Immediately delete all information gathered for the	137
purpose of age verification after the age verification is	138
completed, except the information maintained for account and	139
subscription access and for billing purposes;	140
(ii) Upon the request of the account holder or subscriber,	141
immediately delete the data maintained for user access to the	142
account or subscription and for billing purposes;	143
(iii) Develop and maintain a data privacy policy compliant	144
with federal and state law and maintain data in a manner that is	145
reasonably secure.	146
(b) On the expiration of two years after the creation of	147
the account or subscription, the organization shall immediately	148
delete all information relative to the creation of the user's	149
account or subscription and any information maintained for	150
billing purposes, unless the account holder or subscriber renews	151
the account or subscription.	152
(2) An organization that sells, delivers, furnishes,	153
disseminates, provides, exhibits, or presents any material or	154
performance that is obscene or harmful to juveniles on the	155
internet and verifies the age of the person attempting to access	156
the material or performance that is obscene or harmful to	157
juveniles on the internet shall do both of the following:	158
(a) Immediately delete all information gathered for the	159
purpose of age verification after age verification is completed;	160
(b) Develop and maintain a data privacy policy compliant	161
with federal and state law and maintain data in a manner that is	162
reasonably secure.	163

(3) An organization described in division (C)(1) or (2) of this section shall 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. In response to any subpoena or notice of a violation received pursuant to section 1349.101 of the Revised Code, the organization shall submit an affidavit to the attorney general stating that the organization has complied with this requirement. The attorney general shall adopt rules under Chapter 119. of the Revised Code specifying the information that the organization shall include in the affidavit.

(4) An organization as described in division (C)(1) or (2) of this section shall not transfer any information collected, except for the purpose of age verification. Any and shall ensure that any party third-party who receives transferred information for age verification purposes shall not transfer any information collected to any other party except for the purpose of age verification and shall immediately delete all information gathered for the purpose of age verification after age verification is completed.

(D) This section does not apply to any of the following: 188

(1) 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; 189
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(2) A provider of an interactive computer service <u>that is</u>	194
<u>not an organization;</u>	195
(3) A mobile service;	196
(4) An internet provider;	197
(5) A cable service provider;	198
(6) A direct-to-home satellite service;	199
(7) A video service provider;	200
(8) A cloud service provider.	201
 Sec. 1349.101. (A) (A) (1) The attorney general may	202
<u>investigate reasonable allegations that an organization has</u>	203
<u>violated section 1349.10 of the Revised Code and, upon finding a</u>	204
<u>violation, provide written notice to the organization believed</u>	205
<u>to have committed the violation, as described in division (B) of</u>	206
<u>this section.</u>	207
 <u>(2) The attorney general may administer oaths, subpoena</u>	208
<u>witnesses, adduce evidence, and require the production of</u>	209
<u>relevant matter for the purposes of an investigation under this</u>	210
<u>section.</u>	211
 <u>(3) An organization subpoenaed by the attorney general</u>	212
<u>under this section may, within twenty days after the subpoena is</u>	213
<u>served, file a motion in a court of common pleas of any county</u>	214
<u>to extend the return day, or to modify or quash the subpoena.</u>	215
<u>The organization shall include in the motion a statement</u>	216
<u>describing good cause for the requested extension, modification,</u>	217
<u>or quashing of the subpoena.</u>	218
 <u>(4) If an organization fails, without lawful excuse, to</u>	219
<u>obey a subpoena served, or to produce relevant matter requested</u>	220

under this section, the attorney general may apply to the court 221
of common pleas of any county in this state for an order 222
compelling compliance. 223

(5) Neither of the following are public records under 224
section 149.43 of the Revised Code when obtained by the attorney 225
general as part of an investigation under this section: 226

(a) Any subpoena issued and any records obtained pursuant 227
to a subpoena issued by the attorney general under division (A) 228
(2) of this section; 229

(b) An affidavit as described in division (C) (3) of 230
section 1349.10 of the Revised Code. 231

(6) The attorney general has the exclusive authority to 232
enforce section 1349.10 of the Revised Code. The remedies set 233
forth in this section are the exclusive remedies for any 234
violation of that section. 235

(B) (1) The attorney general may bring a civil enforcement 236
action against an organization that sells, delivers, furnishes, 237
disseminates, provides, exhibits, or presents any material or 238
performance that is obscene or harmful to juveniles on the 239
internet that fails to comply with the requirements under 240
divisions~~division~~(B) (1) or, (2), (3) (a), (b), or (c), or (4) 241
or (C) (1) or, (2), (3), or (4) of section 1349.10 of the 242
Revised Code and as a result of that failure a minor gains 243
access to the material or performance. 244

(2) Before initiating such an enforcement action, the 245
attorney general shall provide written notice to the 246
organization identifying and explaining the basis for each 247
instance of alleged violation. 248

(B) (C) Except as otherwise provided in division (D) of 249

this section and until the date that is two years after the 250
effective date of this amendment, the attorney general shall not 251
commence an enforcement action if the organization, within 252
forty-five days after notice of the alleged violation is sent, 253
does both of the following: 254

(1) Cures all violations described in the notice~~÷~~; 255

(2) Provides the attorney general with a written statement 256
indicating that the violations are cured and agreeing to refrain 257
from further noncompliance of the requirements under ~~divisions~~ 258
~~division (B) (1) or, (2), (3) (a), (b), or (c), or (4) or (C) (1) or,~~ 259
~~(2), (3), or (4)~~ of section 1349.10 of the Revised Code. 260

~~(C)~~(D) (1) If the organization does notany of the 261
following, the attorney general may immediately and without 262
additional notice, file the enforcement action in the court of 263
common pleas of the county in which the alleged violation 264
occurred, if known, or in the Franklin county court of common 265
pleas if the location of the violation is unknown, against that 266
organization to seek injunctive relief and the imposition of a 267
civil penalty pursuant to division (D) (3) of this section: 268

(a) Fails to timely respond or continues to fail to comply 269
with the requirements under ~~divisions~~ ~~division (B) (1) or, (2),~~ 270
~~(3) (a), (b), or (c), or (4) or (C) (1) or, (2), or (3), or (4)~~ 271
of section 1349.10 of the Revised Code after receiving the 272
notice, the attorney general may initiate the enforcement action 273
and seek injunctive relief. 274

(b) Fails to cure all violations within the forty-five-day 275
period described in division (C) of this section. 276

(c) Commits one or more subsequent violations of division 277
(B) (1), (2), (3) (a), (b), or (c), or (4) or (C) (1), (2), (3), or 278

(4) of section 1349.10 of the Revised Code after reporting that 279
the initial violation was cured. 280

(2) Two years after the effective date of this amendment, 281
the attorney general may immediately and without notice initiate 282
an enforcement action against an organization that commits a 283
violation of this section. 284

(3) If an organization violates section 1349.10 of the 285
Revised Code, the attorney general may request, and the court 286
may impose, a civil penalty of up to one hundred thousand 287
dollars for each day of violation. Seventy-five per cent of the 288
penalty shall go to the consumer protection enforcement fund as 289
described in section 1345.51 of the Revised Code and twenty-five 290
per cent of the penalty shall go to the innocence act 291
enforcement fund as described in section 109.1111 of the Revised 292
Code. 293

~~(D) Division (B) of this section does not apply if the~~ 294
~~organization fails to timely comply with all of the requirements~~ 295
~~described in the notice or commits subsequent violations of the~~ 296
~~same type after curing the initial violation under that~~ 297
~~division. Notwithstanding division (C) of this section, if an~~ 298
~~organization commits a subsequent violation of the same type~~ 299
~~after reporting that the initial violation is cured, the~~ 300
~~attorney general may bring a civil action at any time after~~ 301
~~sending notice of the violation under division (A) of this~~ 302
~~section.~~ 303

~~(E) Nothing in this section shall be construed to provide~~ 304
~~a private right of action. The attorney general has the~~ 305
~~exclusive authority to enforce this section.~~ 306

Section 2. That existing sections 1349.10 and 1349.101 of 307

the Revised Code are hereby repealed. 308

Section 3. Sections 1349.10 and 1349.101 of the Revised 309
Code shall be known as the Innocence Act. 310

Section 4. The provisions of law contained in this act, 311
and their applications, are severable. If any provision of law 312
contained in this act, or if any application of any provision of 313
law contained in this act, is held invalid, the invalidity does 314
not affect other provisions of law contained in this act and 315
their applications that can be given effect without the invalid 316
provision or application. 317