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Representatives Demetriou, Williams

Cosponsors: Representatives Bird, Brennan, Claggett, Click, Dean, Fowler Arthur, Gross, Hiner, Holmes, Hoops, John, Johnson, King, Klopfenstein, McClain, Miller, K., Newman, Peterson, Richardson, Robb Blasdel, Salvo, Schmidt, Sigrist, Stewart, Thomas, C., Willis, Workman, Young, Hall, T., Mathews, T., Miller, M.

To amend sections 1349.10 and 1349.101 and to enact 1
section 109.1111 of the Revised Code to 2
establish the Innocence Act Enforcement Fund, 3
designate specified provisions of law as the 4
Innocence Act, and clarify the Attorney 5
General's enforcement authority. 6

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

Section 1. That sections 1349.10 and 1349.101 be amended 7
and section 109.1111 of the Revised Code be enacted to read as 8
follows: 9

Sec. 109.1111. There is hereby created in the state 10
treasury the innocence act enforcement fund that shall be used 11
for the payment of expenses incurred by the office of the 12
attorney general. Up to twenty-five per cent of all amounts 13
collected by the attorney general from civil penalties as 14
described in section 1349.101 of the Revised Code shall be paid 15
into the state treasury to the credit of the innocence act 16
enforcement fund. 17

Sec. 1349.10. (A) (1) "Cable service provider" has the same meaning as in section 1332.01 of the Revised Code.	18 19
(2) "Cloud service provider" means a third-party company offering a cloud-based platform, infrastructure, application, or storage services.	20 21 22
(3) "Direct-to-home satellite service" has the same meaning as in 47 U.S.C. 303, as amended.	23 24
(4) "Identifying information" means photo identification or public or private transactional data.	25 26
(5) "Interactive computer service" has the same meaning as in the "Telecommunications Act of 1996," 47 U.S.C. 230, as amended.	27 28 29
(6) "Internet provider" means a provider of internet service, including all of the following:	30 31
(a) Broadband service, however defined or classified by the federal communications commission;	32 33
(b) Information service or telecommunications service, both as defined in the "Telecommunications Act of 1996," 47 U.S.C. 153, as amended;	34 35 36
(c) Internet protocol-enabled services, as defined in section 4927.01 of the Revised Code.	37 38
(7) "Mobile service" and "telecommunications carrier" have the same meanings as in the "Telecommunications Act of 1996," 47 U.S.C. 153, as amended.	39 40 41
(8) "Organization" means both <u>either</u> of the following:	42
(a) A commercial establishment that, for any form of consideration, has as a significant or substantial portion of	43 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 any available third-party~~and~~ or any available 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) "Harmful to juveniles" and "obscene" have the same 87
meanings as in section 2907.01 of the Revised Code. 88

(14) "Significant or substantial" means at least thirty- 89
three and one-third per cent. 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 105
by a licensed location-based technology provider to dynamically 106
monitor the geolocation of persons attempting to access or 107
creating an account or subscription to access the material or 108
performance that is obscene or harmful to juveniles; 109

(b) The location-based technology provider shall perform a 110
geolocation check to dynamically monitor the person attempting 111
to access or creating an account or subscription to access the 112
material or performance that is obscene or harmful to juveniles 113
and the person's location. The organization shall ensure that 114
the location-based technology provider performs the geolocation 115
check. 116

(c) If the location-based technology provider determines 117
that a person is located in this state, as determined by the 118
geolocation check under division (B) (3) (b) of this section, the 119
organization that sells, delivers, furnishes, disseminates, 120
provides, exhibits, or presents any material or performance that 121
is obscene or harmful to juveniles on the internet shall block 122
that person until the person's age has been verified using 123
reasonable age verification methods. 124

(4) Implement a notification mechanism to alert persons 125
attempting to access or creating an account or subscription to 126
access the material or performance that is obscene or harmful to 127
juveniles, of a geolocation check failure. 128

(C) (1) (a) Except as otherwise provided in division (C) (1) 129
(b) of this section, an organization that sells, delivers, 130
furnishes, disseminates, provides, exhibits, or presents any 131

material or performance that is obscene or harmful to juveniles 132
on the internet and verifies the age of the person creating an 133
account or subscription to access the material or performance 134
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 164
this section shall immediately delete any identifying 165
information, except the information required for the purpose of 166
granting a person access to the account or subscription and for 167
billing the account or subscription, that is used for age 168
verification of the person attempting to access or creating an 169
account or subscription to access any material or performance on 170
the internet that is obscene or harmful to juveniles after age 171
verification is completed. In response to any subpoena or notice 172
of a violation received pursuant to section 1349.101 of the 173
Revised Code, the organization shall submit an affidavit to the 174
attorney general stating that the organization has complied with 175
this requirement. The attorney general shall adopt rules under 176
Chapter 119. of the Revised Code specifying the information that 177
the organization shall include in the affidavit. 178

(4) An organization as described in division (C) (1) or (2) 179
of this section shall not transfer any information collected, 180
except for the purpose of age verification. ~~Any~~ and shall 181
ensure that any ~~party~~ third-party who receives transferred 182
information for age verification purposes shall not transfer any 183
information collected to any other party except for the purpose 184
of age verification and shall immediately delete all information 185
gathered for the purpose of age verification after age 186
verification is completed. 187

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

(1) A person who, while employed or contracted by a 189
newspaper, magazine, press association, news agency, news wire 190

service, radio or television station, or similar media, is 191
gathering, processing, transmitting, compiling, editing, or 192
disseminating information for the general public; 193

(2) A provider of an interactive computer service that is 194
not an organization; 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
investigate reasonable allegations that an organization has 203
violated section 1349.10 of the Revised Code and, upon finding a 204
violation, provide written notice to the organization believed 205
to have committed the violation, as described in division (B) of 206
this section. 207

(2) The attorney general may administer oaths, subpoena 208
witnesses, adduce evidence, and require the production of 209
relevant matter for the purposes of an investigation under this 210
section. 211

(3) An organization subpoenaed by the attorney general 212
under this section may, within twenty days after the subpoena is 213
served, file a motion in a court of common pleas of any county 214
to extend the return day, or to modify or quash the subpoena. 215
The organization shall include in the motion a statement 216
describing good cause for the requested extension, modification, 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
<u>under this section, the attorney general may apply to the court</u>	221
<u>of common pleas of any county in this state for an order</u>	222
<u>compelling compliance.</u>	223
<u>(5) Neither of the following are public records under</u>	224
<u>section 149.43 of the Revised Code when obtained by the attorney</u>	225
<u>general as part of an investigation under this section:</u>	226
<u>(a) Any subpoena issued and any records obtained pursuant</u>	227
<u>to a subpoena issued by the attorney general under division (A)</u>	228
<u>(2) of this section;</u>	229
<u>(b) An affidavit as described in division (C) (3) of</u>	230
<u>section 1349.10 of the Revised Code.</u>	231
<u>(6) The attorney general has the exclusive authority to</u>	232
<u>enforce section 1349.10 of the Revised Code. The remedies set</u>	233
<u>forth in this section are the exclusive remedies for any</u>	234
<u>violation of that section.</u>	235
<u>(B) (1) The attorney general may bring a civil enforcement</u>	236
<u>action against an organization that sells, delivers, furnishes,</u>	237
<u>disseminates, provides, exhibits, or presents any material or</u>	238
<u>performance that is obscene or harmful to juveniles on the</u>	239
<u>internet that fails to comply with the requirements under</u>	240
<u>divisions division (B) (1) or, (2), (3) (a), (b), or (c), or (4)</u>	241
<u>or (C) (1) or, (2), (3), or (4) of section 1349.10 of the</u>	242
<u>Revised Code and as a result of that failure a minor gains</u>	243
<u>access to the material or performance.</u>	244
<u>(2) Before initiating such an enforcement action, the</u>	245
<u>attorney general shall provide written notice to the</u>	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 ~~not~~ any 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

<u>period described in division (C) of this section.</u>	276
<u>(c) Commits one or more subsequent violations of division</u>	277
<u>(B) (1), (2), (3) (a), (b), or (c), or (4) or (C) (1), (2), (3), or</u>	278
<u>(4) of section 1349.10 of the Revised Code after reporting that</u>	279
<u>the initial violation was cured.</u>	280
<u>(2) Two years after the effective date of this amendment,</u>	281
<u>the attorney general may immediately and without notice initiate</u>	282
<u>an enforcement action against an organization that commits a</u>	283
<u>violation of this section.</u>	284
<u>(3) If an organization violates section 1349.10 of the</u>	285
<u>Revised Code, the attorney general may request, and the court</u>	286
<u>may impose, a civil penalty of up to one hundred thousand</u>	287
<u>dollars for each day of violation. Seventy-five per cent of the</u>	288
<u>penalty shall go to the consumer protection enforcement fund as</u>	289
<u>described in section 1345.51 of the Revised Code and twenty-five</u>	290
<u>per cent of the penalty shall go to the innocence act</u>	291
<u>enforcement fund as described in section 109.1111 of the Revised</u>	292
<u>Code.</u>	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