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**Sub. H. B. No. 84**

**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., Barhorst, Creech, Daniels, Deeter, Dovilla, Fischer, Ghanbari, Hall, D., Isaacsohn, Lampton, Lear, Lorenz, Manning, Mathews, A., Mullins, Oelslager, Plummer, Ray, Swearingen, Synenberg, White, A.**

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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 18  
meaning as in section 1332.01 of the Revised Code. 19

(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 ~~both~~ either 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 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 purpose of age verification after age verification is completed; (159-160)
- (b) Develop and maintain a data privacy policy compliant with federal and state law and maintain data in a manner that is reasonably secure. (161-163)
- (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. (164-178)
- (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. (179-187)
- (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;

(2) A provider of an interactive computer service that is not an organization;

(3) A mobile service;

(4) An internet provider;

(5) A cable service provider;

(6) A direct-to-home satellite service;

(7) A video service provider;

(8) A cloud service provider.

**Sec. 1349.101.** ~~(A)~~ (A) (1) The attorney general may investigate reasonable allegations that an organization has violated section 1349.10 of the Revised Code and, upon finding a violation, provide written notice to the organization believed to have committed the violation, as described in division (B) of this section.

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

(3) An organization subpoenaed by the attorney general under this section may, within twenty days after the subpoena is served, file a motion in a court of common pleas of any county to extend the return day, or to modify or quash the subpoena.

The organization shall include in the motion a statement 216  
describing good cause for the requested extension, modification, 217  
or quashing of the subpoena. 218

(4) If an organization fails, without lawful excuse, to 219  
obey a subpoena served, or to produce relevant matter requested 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 attorney general shall provide written notice to the organization identifying and explaining the basis for each instance of alleged violation.

~~(B)~~ (C) Except as otherwise provided in division (D) of this section and until the date that is two years after the effective date of this amendment, the attorney general shall not commence an enforcement action if the organization, within forty-five days after notice of the alleged violation is sent, does both of the following:

(1) Cures all violations described in the notice;

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

~~(C)~~ (D) (1) If the organization does ~~not~~ any of the following, the attorney general may immediately and without additional notice, file the enforcement action in the court of common pleas of the county in which the alleged violation occurred, if known, or in the Franklin county court of common pleas if the location of the violation is unknown, against that organization to seek injunctive relief and the imposition of a civil penalty pursuant to division (D) (3) of this section:

(a) Fails to timely respond or continues to fail to comply with the requirements under ~~divisions~~ division (B) (1) ~~or~~, (2), (3) (a), (b), or (c), or (4) or (C) (1) ~~or~~, (2), or (3), or (4) of section 1349.10 of the Revised Code after receiving the notice, ~~the attorney general may initiate the enforcement action~~

<del>and seek injunctive relief.</del>	274
<u>(b) Fails to cure all violations within the forty-five-day period described in division (C) of this section.</u>	275 276
<u>(c) Commits one or more subsequent violations of division (B) (1), (2), (3) (a), (b), or (c), or (4) or (C) (1), (2), (3), or (4) of section 1349.10 of the Revised Code after reporting that the initial violation was cured.</u>	277 278 279 280
<u>(2) Two years after the effective date of this amendment, the attorney general may immediately and without notice initiate an enforcement action against an organization that commits a violation of this section.</u>	281 282 283 284
<u>(3) If an organization violates section 1349.10 of the Revised Code, the attorney general may request, and the court may impose, a civil penalty of up to one hundred thousand dollars for each day of violation. Seventy-five per cent of the penalty shall go to the consumer protection enforcement fund as described in section 1345.51 of the Revised Code and twenty-five per cent of the penalty shall go to the innocence act enforcement fund as described in section 109.1111 of the Revised Code.</u>	285 286 287 288 289 290 291 292 293
<del>(D) Division (B) of this section does not apply if the organization fails to timely comply with all of the requirements described in the notice or commits subsequent violations of the same type after curing the initial violation under that division. Notwithstanding division (C) of this section, if an organization commits a subsequent violation of the same type after reporting that the initial violation is cured, the attorney general may bring a civil action at any time after sending notice of the violation under division (A) of this</del>	294 295 296 297 298 299 300 301 302

<del>section.</del>	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
<b>Section 2.</b> That existing sections 1349.10 and 1349.101 of	307
the Revised Code are hereby repealed.	308
<b>Section 3.</b> Sections 1349.10 and 1349.101 of the Revised	309
Code shall be known as the Innocence Act.	310
<b>Section 4.</b> 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