

As Introduced

134th General Assembly

Regular Session

2021-2022

H. B. No. 441

Representatives Wiggam, Cutrona

Cosponsors: Representatives Cross, Grendell, Hall, Carruthers, Loychik, Stoltzfus, Riedel, Plummer, Bird, Jordan, Gross, Fowler Arthur, Schmidt, Swearingen, Brinkman, Click, Jones, Edwards, Zeltwanger, Merrin, Lipps, McClain, Powell, Baldrige, John, Kick, Creech, Stein, Holmes, Johnson, Wilkin, Young, B., Dean

A BILL

To enact sections 1355.01, 1355.011, 1355.02, 1
1355.03, 1355.04, 1355.05, 1355.06, 1355.07, 2
1355.08, 1355.09, and 1355.10 of the Revised 3
Code relating to the censorship of users' 4
expressions by interactive computer services and 5
social media platforms. 6

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

Section 1. That sections 1355.01, 1355.011, 1355.02, 7
1355.03, 1355.04, 1355.05, 1355.06, 1355.07, 1355.08, 1355.09, 8
and 1355.10 of the Revised Code be enacted to read as follows: 9

Sec. 1355.01. As used in this chapter: 10

(A) "Censor" means any action taken to edit, alter, block, 11
ban, delete, remove, deplatform, demonetize, de-boost, regulate, 12
restrict, inhibit the publication or reproduction of, deny equal 13
access or visibility to, suspend a right to post, or otherwise 14
discriminate against expression. "Censor" includes the action of 15

deplatforming a person. It also includes an action taken to 16
inhibit or restrict an interactive computer service or a social 17
media platform user's ability to be viewed by or interact with 18
another user of the platform. 19

(B) "Expression" means any word, music, sound, still or 20
moving image, number, or other perceivable communication. 21

(C) "Interactive computer service" means any information 22
service, system, or access software provider that provides or 23
enables computer access by multiple users to a computer server. 24
The term does not include an internet service provider. 25

(D) "Receive," with respect to an expression, means to 26
read, hear, look at, access, or gain access to the expression. 27

(E) "Social media platform" means an internet search 28
engine, internet web site, internet system, access software 29
provider, or application that is open to the public and allows a 30
user of the platform to create an account for the primary 31
purpose of communicating with other users, including by posting 32
information, comments, messages, images, or videos. The term 33
does not include any of the following: 34

(1) An internet service provider; 35

(2) Electronic mail; 36

(3) An online service, application, or web site to which 37
both of following applies: 38

(a) It consists primarily of news, sports, entertainment, 39
or other information or content that is not user-generated but 40
is preselected by the provider; 41

(b) Any of its chat, comments, or interactive 42
functionality is incidental to, directly related to, or 43

dependent on the provision of the content described by division 44
(E) (3) (a) of this section. 45

(F) "Unlawful expression" means an expression that is 46
unlawful under the United States Constitution, federal law, the 47
Ohio Constitution, or the laws of this state, including 48
expressions that constitute a tort under the laws of this state 49
or the United States. 50

(G) "User" means a person who posts, uploads, transmits, 51
shares, or otherwise publishes or receives expression through an 52
interactive computer service or a social media platform. 53

Sec. 1355.011. The general assembly finds all of the 54
following: 55

(A) Each person in this state has a fundamental interest 56
in the free exchange of ideas and information, including the 57
freedom of others to share and receive ideas and information. 58

(B) This state has a fundamental interest in protecting 59
the free exchange of ideas and information in this state. 60

(C) Some interactive computer services and social media 61
platforms function as common carriers, are affected with a 62
public interest, are public accommodations, are central public 63
forums for public debate, and have enjoyed governmental support 64
in the United States. 65

(D) Interactive computer services and social media 66
platforms with the largest number of users are common carriers 67
by virtue of their market dominance. 68

Sec. 1355.02. (A) An interactive computer service shall 69
not censor a user, a user's expression, or a user's ability to 70
receive the expression of another person based on any of the 71

<u>following:</u>	72
<u>(1) The viewpoint of the user or another person;</u>	73
<u>(2) The viewpoint represented in the user's expression or another person's expression;</u>	74 75
<u>(3) A user's geographic location in this state or any part of this state.</u>	76 77
<u>(B) A social media platform shall not censor a user, a user's expression, or a user's ability to receive the expression of another person based on any of the following:</u>	78 79
<u>(1) The viewpoint of the user or another person;</u>	80 81
<u>(2) The viewpoint represented in the user's expression or another person's expression;</u>	82 83
<u>(3) A user's geographic location in this state or any part of this state.</u>	84 85
<u>(C) This section applies regardless of whether the viewpoint is expressed on the interactive computer service, social media platform, or elsewhere.</u>	86 87 88
<u>Sec. 1355.03. (A) A contractual or other waiver or purported waiver of the protections provided by this chapter is void as unlawful and against public policy, and no court or arbitrator shall enforce or give effect to such a waiver, including in an action brought under section 1355.07 of the Revised Code, notwithstanding any contract or choice-of-law provision in a contract.</u>	89 90 91 92 93 94 95
<u>(B) The waiver prohibition described by division (A) of this section is a public-policy limitation on contractual and other waivers of the highest importance and interest to this</u>	96 97 98

state, and this state is exercising and enforcing this 99
limitation to the full extent permitted by the United States 100
Constitution and the Ohio Constitution. 101

Sec. 1355.04. (A) This chapter applies only to a user to 102
which one of the following applies: 103

(1) Resides in this state; 104

(2) Does business in this state; 105

(3) Shares or receives expression in this state. 106

(B) This chapter applies only to expression that is shared 107
or received in this state. 108

(C) This chapter applies only to an interactive computer 109
service that offers its services to the public. 110

(D) This chapter applies only to an interactive computer 111
service or a social media platform that functionally has more 112
than fifty million active users in the United States in a 113
calendar month. 114

(E) This chapter applies to the maximum extent permitted 115
by the United States Constitution and laws of the United States, 116
but no further than the maximum extent permitted by the United 117
States Constitution and laws of the United States. 118

Sec. 1355.05. This chapter does not subject an interactive 119
computer service or a social media platform to damages or other 120
legal remedies to the extent the interactive computer service or 121
social media platform is protected from those remedies under 122
federal law. 123

Sec. 1355.06. (A) This chapter does not prohibit an 124
interactive computer service or a social media platform from any 125

<u>of the following:</u>	126
<u>(1) Censoring expression that the interactive computer</u>	127
<u>service or social media platform is specifically authorized to</u>	128
<u> censor by federal law;</u>	129
<u>(2) Censoring unlawful expression, including expression</u>	130
<u>that unlawfully harasses individuals or unlawfully incites</u>	131
<u>violence.</u>	132
<u>(B) This chapter shall not be construed to prohibit or</u>	133
<u>restrict an interactive computer service or a social media</u>	134
<u>platform from authorizing or facilitating a user's ability to</u>	135
<u>censor specific expression on the user's own page or platform at</u>	136
<u>the request of that user.</u>	137
<u>(C) This chapter shall not be construed to limit or expand</u>	138
<u>intellectual property law.</u>	139
<u>Sec. 1355.07.</u> <u>(A) A user may bring an action against an</u>	140
<u>interactive computer service or a social media platform that</u>	141
<u>violates this chapter with respect to the user.</u>	142
<u>(B) If the user proves that the interactive computer</u>	143
<u>service or social media platform violated this chapter with</u>	144
<u>respect to the user, the user is entitled to recover any of the</u>	145
<u>following:</u>	146
<u>(1) Declaratory relief, including costs and reasonable and</u>	147
<u>necessary attorney's fees;</u>	148
<u>(2) Injunctive relief.</u>	149
<u>(C) If an interactive computer service or a social media</u>	150
<u>platform fails to promptly comply with a court order in an</u>	151
<u>action brought under this section, the court shall hold the</u>	152
<u>interactive computer service or social media platform in</u>	153

contempt and shall use all lawful measures to secure immediate 154
compliance with the order, including daily penalties sufficient 155
to secure immediate compliance. 156

Sec. 1355.08. Notwithstanding any other law, the 157
requirements of this chapter shall be enforced exclusively 158
through the private civil actions described in section 1355.07 159
of the Revised Code. No enforcement of this chapter may be taken 160
or threatened by this state, a political subdivision, a county 161
prosecuting attorney or city attorney, or any executive or 162
administrative officer or employee of this state or a political 163
subdivision against any person, except as provided in section 164
1355.07 of the Revised Code. 165

Sec. 1355.09. (A) Mindful of *Leavitt v. Jane L.*, 518 U.S. 166
137 (1996), in which in the context of determining the 167
severability of a state statute the United States supreme court 168
held that an explicit statement of legislative intent is 169
controlling, it is the intent of the general assembly that every 170
provision, section, division, sentence, clause, phrase, or word 171
in this chapter, and every application of the provisions in this 172
chapter, are severable from each other. 173

(B) If any application of any provision in this chapter to 174
any person, group of persons, or circumstances is found by a 175
court to be invalid or unconstitutional, the remaining 176
applications of that provision to all other persons and 177
circumstances shall be severed and may not be affected. All 178
constitutionally valid applications of this chapter shall be 179
severed from any applications that a court finds to be invalid, 180
leaving the valid applications in force, because it is the 181
general assembly's intent and priority that the valid 182
applications be allowed to stand alone. Even if a reviewing 183

court finds that a substantial amount of the provision's 184
applications are unconstitutional, judged in relation to the 185
provision's plainly legitimate sweep, the applications that do 186
not violate the United States Constitution and laws of the 187
United States, and the Ohio Constitution shall be severed from 188
the remaining applications and shall remain in force, and the 189
provision shall be interpreted, as a matter of state law, as if 190
the provision contained explicit language limiting its 191
application to the persons, group of persons, or circumstances 192
for which the statute's application does not violate the United 193
States Constitution and laws of the United States and the Ohio 194
Constitution. 195

(C) If any court declares or finds a provision of this 196
chapter facially unconstitutional, when discrete applications of 197
that provision can be enforced against a person, group of 198
persons, or circumstances without violating the United States 199
Constitution and laws of the United States and the Ohio 200
Constitution, those applications shall be severed from all 201
remaining applications of the provision, and the provision shall 202
be interpreted by every state and federal court, as a matter of 203
state law, as if the provision contained explicit language 204
limiting its application to the persons, group of persons, or 205
circumstances for which the provision's application will not 206
violate the United States Constitution and laws of the United 207
States and the Ohio Constitution. 208

(D) The general assembly further declares that it would 209
have enacted this chapter, and each constitutional provision, 210
section, division, sentence, clause, phrase, or word, and all 211
constitutional applications of this chapter, irrespective of the 212
fact that any discrete provision, section, division, sentence, 213
clause, phrase, or word, or applications of this chapter, were 214

to be declared unconstitutional or severed from the remainder of 215
the chapter's provisions and applications. 216

(E) If any provision of this chapter is found by any court 217
to be unconstitutionally vague, then the applications of that 218
provision that do not present constitutional vagueness problems 219
shall be severed and remain in force. 220

(F) No court shall decline to enforce the severability 221
requirements of divisions (A) to (E) of this section on the 222
grounds that severance would rewrite the statute or involve the 223
court in legislative or lawmaking activity. A court that 224
declines to enforce or enjoins a state official from enforcing a 225
statutory provision is never rewriting the statute, as the 226
statute continues to contain the exact same words as it did 227
before the court's decision. A judicial injunction or 228
declaration of unconstitutionality is all of the following: 229

(1) Nothing more than an edict prohibiting enforcement 230
that may subsequently be vacated by a later court if that court 231
has a different understanding of the requirements of the Ohio 232
Constitution or the United States Constitution or laws of the 233
United States; 234

(2) Not a formal amendment of the language in a statute; 235

(3) No more rewrites a statute than a decision by the 236
executive not to enforce a duly enacted statute in a limited and 237
defined set of circumstances. 238

Sec. 1355.10. (A) This chapter applies only to an action 239
taken on or after the effective date of this chapter. 240

(B) A person who was a user, as defined by section 1355.01 241
of the Revised Code, before the effective date of this chapter 242
may bring an action under section 1355.07 of the Revised Code to 243

<u>remedy censorship of the user's ability to share or receive</u>	244
<u>expression that occurred before the effective date of this</u>	245
<u>chapter if the censorship continues after this chapter takes</u>	246
<u>effect and violates Chapter 1355. of the Revised Code.</u>	247