

As Reported by the House Civil Justice Committee

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Sub. 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 social media platforms. 5

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

Section 1. That sections 1355.01, 1355.011, 1355.02, 6
1355.03, 1355.04, 1355.05, 1355.06, 1355.07, 1355.08, 1355.09, 7
and 1355.10 of the Revised Code be enacted to read as follows: 8

Sec. 1355.01. As used in this chapter: 9

(A) "Censor" means any action taken to edit, alter, block, 10
ban, delete, remove, deplatform, demonetize, de-boost, regulate, 11
restrict, inhibit the publication or reproduction of, deny equal 12
access or visibility to, suspend a right to post, or otherwise 13
discriminate against expression. "Censor" includes the action of 14
deplatforming a person. It also includes an action taken to 15

inhibit or restrict a social media platform user's ability to be 16
viewed by or interact with another user of the platform. 17

(B) "Expression" means any word, music, sound, still or 18
moving image, number, or other perceivable communication. 19

(C) "Receive," with respect to an expression, means to 20
read, hear, look at, access, or gain access to the expression. 21

(D) "Social media platform" means an internet search 22
engine, internet web site, internet system, access software 23
provider, or application that is open to the public and allows a 24
user of the platform to create an account for the primary 25
purpose of communicating with other users, including by posting 26
information, comments, messages, images, or videos. The term 27
does not include any of the following: 28

(1) An internet service provider; 29

(2) Electronic mail; 30

(3) An online service, application, or web site to which 31
both of following applies: 32

(a) It consists primarily of news, sports, entertainment, 33
or other information or content that is not user-generated but 34
is preselected by the provider; 35

(b) Any of its chat, comments, or interactive 36
functionality is incidental to, directly related to, or 37
dependent on the provision of the content described by division 38
(D) (3) (a) of this section; 39

(4) An online service, application, or web site the 40
primary purpose of which is related to academic or scholarly 41
research. 42

(E) "Unlawful expression" means an expression that is 43
unlawful under the United States Constitution, federal law, the 44
Ohio Constitution, or the laws of this state, including 45
expressions that constitute a tort under the laws of this state 46
or the United States. 47

(F) "User" means a person who posts, uploads, transmits, 48
shares, or otherwise publishes or receives expression through a 49
social media platform. 50

Sec. 1355.011. The general assembly finds all of the 51
following: 52

(A) Each person in this state has a fundamental interest 53
in the free exchange of ideas and information, including the 54
freedom of others to share and receive ideas and information. 55

(B) This state has a fundamental interest in protecting 56
the free exchange of ideas and information in this state. 57

(C) Some social media platforms function as common 58
carriers, are affected with a public interest, are public 59
accommodations, are central public forums for public debate, and 60
have enjoyed governmental support in the United States. 61

Sec. 1355.02. (A) A social media platform shall not censor 62
a user, a user's expression, or a user's ability to receive the 63
expression of another person based on any of the following: 64

(1) The viewpoint of the user or another person; 65

(2) The viewpoint represented in the user's expression or 66
another person's expression; 67

(3) A user's geographic location in this state or any part 68
of this state. 69

(B) This section applies regardless of whether the 70
viewpoint is expressed on the social media platform or 71
elsewhere. 72

Sec. 1355.03. (A) A contractual or other waiver or 73
purported waiver of the protections provided by this chapter is 74
void as unlawful and against public policy, and no court or 75
arbitrator shall enforce or give effect to such a waiver, 76
including in an action brought under section 1355.07 of the 77
Revised Code, notwithstanding any contract or choice-of-law 78
provision in a contract. 79

(B) The waiver prohibition described by division (A) of 80
this section is a public-policy limitation on contractual and 81
other waivers of the highest importance and interest to this 82
state, and this state is exercising and enforcing this 83
limitation to the full extent permitted by the United States 84
Constitution and the Ohio Constitution. 85

Sec. 1355.04. (A) This chapter applies only to a user to 86
which one of the following applies: 87

(1) Resides in this state; 88

(2) Does business in this state; 89

(3) Shares or receives expression in this state. 90

(B) This chapter applies only to expression that is shared 91
or received in this state. 92

(C) This chapter applies only to a social media platform 93
that functionally has more than fifty million active users in 94
the United States in a calendar month. 95

(D) Any social media platform described in division (C) of 96
this section is hereby declared to be a common carrier. 97

(E) This chapter applies to the maximum extent permitted 98
by the United States Constitution and laws of the United States, 99
but no further than the maximum extent permitted by the United 100
States Constitution and laws of the United States. 101

Sec. 1355.05. This chapter does not subject a social media 102
platform to damages or other legal remedies to the extent the 103
social media platform is protected from those remedies under 104
federal law. 105

Sec. 1355.06. (A) This chapter does not prohibit a social 106
media platform from any of the following: 107

(1) Censoring expression that the social media platform is 108
specifically authorized to censor by federal law; 109

(2) Censoring unlawful expression, including expression 110
that unlawfully harasses individuals or unlawfully incites 111
violence. 112

(B) This chapter shall not be construed to prohibit or 113
restrict a social media platform from authorizing or 114
facilitating a user's ability to censor specific expression on 115
the user's own page or platform at the request of that user. 116

(C) This chapter shall not be construed to limit or expand 117
intellectual property law. 118

Sec. 1355.07. (A) A user may bring an action against a 119
social media platform that violates this chapter with respect to 120
the user. 121

(B) If the user proves that the social media platform 122
violated this chapter with respect to the user, the user is 123
entitled to recover any of the following: 124

(1) Declaratory relief, including costs and reasonable and 125

<u>necessary attorney's fees;</u>	126
<u>(2) Injunctive relief.</u>	127
<u>(C) If a social media platform fails to promptly comply</u>	128
<u>with a court order in an action brought under this section, the</u>	129
<u>court shall hold the social media platform in contempt and shall</u>	130
<u>use all lawful measures to secure immediate compliance with the</u>	131
<u>order, including daily penalties sufficient to secure immediate</u>	132
<u>compliance.</u>	133
<u>Sec. 1355.08. Notwithstanding any other law, the</u>	134
<u>requirements of this chapter shall be enforced exclusively</u>	135
<u>through the private civil actions described in section 1355.07</u>	136
<u>of the Revised Code. No enforcement of this chapter may be taken</u>	137
<u>or threatened by this state, a political subdivision, a county</u>	138
<u>prosecuting attorney or city attorney, or any executive or</u>	139
<u>administrative officer or employee of this state or a political</u>	140
<u>subdivision against any person, except as provided in section</u>	141
<u>1355.07 of the Revised Code.</u>	142
<u>Sec. 1355.09. (A) Mindful of <i>Leavitt v. Jane L.</i>, 518 U.S.</u>	143
<u>137 (1996), in which in the context of determining the</u>	144
<u>severability of a state statute the United States supreme court</u>	145
<u>held that an explicit statement of legislative intent is</u>	146
<u>controlling, it is the intent of the general assembly that every</u>	147
<u>provision, section, division, sentence, clause, phrase, or word</u>	148
<u>in this chapter, and every application of the provisions in this</u>	149
<u>chapter, are severable from each other.</u>	150
<u>(B) If any application of any provision in this chapter to</u>	151
<u>any person, group of persons, or circumstances is found by a</u>	152
<u>court to be invalid or unconstitutional, the remaining</u>	153
<u>applications of that provision to all other persons and</u>	154

circumstances shall be severed and may not be affected. All 155
constitutionally valid applications of this chapter shall be 156
severed from any applications that a court finds to be invalid, 157
leaving the valid applications in force, because it is the 158
general assembly's intent and priority that the valid 159
applications be allowed to stand alone. Even if a reviewing 160
court finds that a substantial amount of the provision's 161
applications are unconstitutional, judged in relation to the 162
provision's plainly legitimate sweep, the applications that do 163
not violate the United States Constitution and laws of the 164
United States, and the Ohio Constitution shall be severed from 165
the remaining applications and shall remain in force, and the 166
provision shall be interpreted, as a matter of state law, as if 167
the provision contained explicit language limiting its 168
application to the persons, group of persons, or circumstances 169
for which the statute's application does not violate the United 170
States Constitution and laws of the United States and the Ohio 171
Constitution. 172

(C) If any court declares or finds a provision of this 173
chapter facially unconstitutional, when discrete applications of 174
that provision can be enforced against a person, group of 175
persons, or circumstances without violating the United States 176
Constitution and laws of the United States and the Ohio 177
Constitution, those applications shall be severed from all 178
remaining applications of the provision, and the provision shall 179
be interpreted by every state and federal court, as a matter of 180
state law, as if the provision contained explicit language 181
limiting its application to the persons, group of persons, or 182
circumstances for which the provision's application will not 183
violate the United States Constitution and laws of the United 184
States and the Ohio Constitution. 185

(D) The general assembly further declares that it would 186
have enacted this chapter, and each constitutional provision, 187
section, division, sentence, clause, phrase, or word, and all 188
constitutional applications of this chapter, irrespective of the 189
fact that any discrete provision, section, division, sentence, 190
clause, phrase, or word, or applications of this chapter, were 191
to be declared unconstitutional or severed from the remainder of 192
the chapter's provisions and applications. 193

(E) If any provision of this chapter is found by any court 194
to be unconstitutionally vague, then the applications of that 195
provision that do not present constitutional vagueness problems 196
shall be severed and remain in force. 197

(F) No court shall decline to enforce the severability 198
requirements of divisions (A) to (E) of this section on the 199
grounds that severance would rewrite the statute or involve the 200
court in legislative or lawmaking activity. A court that 201
declines to enforce or enjoins a state official from enforcing a 202
statutory provision is never rewriting the statute, as the 203
statute continues to contain the exact same words as it did 204
before the court's decision. A judicial injunction or 205
declaration of unconstitutionality is all of the following: 206

(1) Nothing more than an edict prohibiting enforcement 207
that may subsequently be vacated by a later court if that court 208
has a different understanding of the requirements of the Ohio 209
Constitution or the United States Constitution or laws of the 210
United States; 211

(2) Not a formal amendment of the language in a statute; 212

(3) No more rewrites a statute than a decision by the 213
executive not to enforce a duly enacted statute in a limited and 214

<u>defined set of circumstances.</u>	215
<u>Sec. 1355.10. (A) This chapter applies only to an action</u>	216
<u>taken on or after the effective date of this chapter.</u>	217
<u>(B) A person who was a user, as defined by section 1355.01</u>	218
<u>of the Revised Code, before the effective date of this chapter</u>	219
<u>may bring an action under section 1355.07 of the Revised Code to</u>	220
<u>remedy censorship of the user's ability to share or receive</u>	221
<u>expression that occurred before the effective date of this</u>	222
<u>chapter if the censorship continues after this chapter takes</u>	223
<u>effect and violates Chapter 1355. of the Revised Code.</u>	224