As Reported by the House Civil Justice Committee

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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, Baldridge, John, Kick, Creech, Stein, Holmes, Johnson, Wilkin, Young, B., Dean

A BILL

To enact sections 1355.01, 1355.011, 1355.02, 1355.03, 1355.04, 1355.05, 1355.06, 1355.07, 1355.08, 1355.09, and 1355.10 of the Revised Code relating to the censorship of users' expressions by social media platforms.

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

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

Sec. 1355.01. As used in this chapter:

(A) "Censor" means any action taken to edit, alter, block, ban, delete, remove, deplatform, demonetize, de-boost, regulate, restrict, inhibit the publication or reproduction of, deny equal access or visibility to, suspend a right to post, or otherwise discriminate against expression. "Censor" includes the action of deplatforming a person. It also includes an action taken to
inhibit or restrict a social media platform user's ability to be viewed by or interact with another user of the platform.

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

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

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

(1) An internet service provider;

(2) Electronic mail;

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

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

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

(4) An online service, application, or web site the primary purpose of which is related to academic or scholarly research.
(E) "Unlawful expression" means an expression that is unlawful under the United States Constitution, federal law, the Ohio Constitution, or the laws of this state, including expressions that constitute a tort under the laws of this state or the United States.

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

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

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

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

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

Sec. 1355.02. (A) 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:

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

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

(3) A user's geographic location in this state or any part of this state.
(B) This section applies regardless of whether the viewpoint is expressed on the social media platform or elsewhere.

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.

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

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

(1) Resides in this state;

(2) Does business in this state;

(3) Shares or receives expression in this state.

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

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

(D) Any social media platform described in division (C) of this section is hereby declared to be a common carrier.
(E) This chapter applies to the maximum extent permitted by the United States Constitution and laws of the United States, but no further than the maximum extent permitted by the United States Constitution and laws of the United States.

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

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

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

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

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

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

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

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

(1) Declaratory relief, including costs and reasonable and
necessary attorney's fees;

(2) Injunctive relief.

(C) If a social media platform fails to promptly comply
with a court order in an action brought under this section, the
court shall hold the social media platform in contempt and shall
use all lawful measures to secure immediate compliance with the
order, including daily penalties sufficient to secure immediate
compliance.

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

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

(B) If any application of any provision in this chapter to
any person, group of persons, or circumstances is found by a
court to be invalid or unconstitutional, the remaining
applications of that provision to all other persons and
circumstances shall be severed and may not be affected. All constitutionally valid applications of this chapter shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the general assembly's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds that a substantial amount of the provision's applications are unconstitutional, judged in relation to the provision's plainly legitimate sweep, the applications that do not violate the United States Constitution and laws of the United States, and the Ohio Constitution shall be severed from the remaining applications and shall remain in force, and the provision shall be interpreted, as a matter of state law, as if the provision contained explicit language limiting its application to the persons, group of persons, or circumstances for which the statute's application does not violate the United States Constitution and laws of the United States and the Ohio Constitution.

(C) If any court declares or finds a provision of this chapter facially unconstitutional, when discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating the United States Constitution and laws of the United States and the Ohio Constitution, those applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted by every state and federal court, as a matter of state law, as if the provision contained explicit language limiting its application to the persons, group of persons, or circumstances for which the provision's application will not violate the United States Constitution and laws of the United States and the Ohio Constitution.
(D) The general assembly further declares that it would have enacted this chapter, and each constitutional provision, section, division, sentence, clause, phrase, or word, and all constitutional applications of this chapter, irrespective of the fact that any discrete provision, section, division, sentence, clause, phrase, or word, or applications of this chapter, were to be declared unconstitutional or severed from the remainder of the chapter's provisions and applications.

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

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

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

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

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

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

(B) A person who was a user, as defined by section 1355.01 of the Revised Code, before the effective date of this chapter may bring an action under section 1355.07 of the Revised Code to remedy censorship of the user's ability to share or receive expression that occurred before the effective date of this chapter if the censorship continues after this chapter takes effect and violates Chapter 1355. of the Revised Code.