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## **ATTORNEY GENERAL**

### **State involvement in legal actions**

- Specifies that the General Assembly and each chamber may intervene as a matter of right at any time in any civil action or proceeding in state or federal court that involves a challenge to the validity, applicability, or constitutionality of the Ohio Constitution or the laws of Ohio.
- Creates exceptions to the law that requires the Attorney General to represent a state agency in any legal action.
- Allows the Speaker of the House and the Senate President to retain their own legal counsel to represent the House, the Senate, or the General Assembly.
- Allows the Governor to retain separate legal counsel in any matter, action, or proceeding the Governor deems to be necessary and proper to protect the interests of the Office of the Governor.

### **Large Settlements and Awards Fund**

- Creates a Large Settlements and Awards Fund and directs the proceeds of any court order, judgment, settlement, or compromise exceeding \$2 million to the fund.
- Requires the Attorney General to send a report to the Senate President and House Speaker if the Attorney General cannot cover legal costs from money received from an order, judgment, settlement, or compromise, or from an available appropriation.

### **Parental notification by social media operators**

- Requires operators of certain online websites, services, and products that target children, or are reasonably anticipated to be accessed by children, to obtain consent from a parent or legal guardian before entering a contract with a person under age 16 years.
- Describes the methods by which an operator may obtain parental consent and requires the operator to subsequently confirm it with the child's parent or legal guardian.
- Requires an operator to provide the parent or legal guardian with a list of features of the website, service, or product related to censoring and moderating content.
- Gives the Attorney General exclusive authority to enforce the requirements and specifies civil penalties for violations.
- Requires the Attorney General to give operators in "substantial compliance" with the bill's requirements notice of alleged violations and an opportunity to cure such violations before commencing a civil action.
- Prohibits a private cause of action for any violation of the bill's requirements.

## Trauma recovery center grants

- Permits the Attorney General to create a grant program to support trauma recovery centers.
- Prohibits the Attorney General from using more than 5% of the money appropriated to the program for administration costs, and requires the Attorney General to use at least 95% of the appropriated amount for grants.
- Permits the Attorney General to adopt rules to establish grant application procedures, if the Attorney General opts to establish the grant program.

## Victims of Human Trafficking Fund administration

- Transfers administration of Ohio's Victims of Human Trafficking Fund from the Department of Job and Family Services to the Attorney General's Office.

## State involvement in legal actions

(R.C. 101.55, 107.13, and 109.02)

### Intervention by the General Assembly or the Governor

The bill specifies that the General Assembly, the House of Representatives and the Senate individually, and the Governor may intervene as a matter of right (that is, become a party to a court case) at any time in any civil action or proceeding that involves a challenge to the Ohio Constitution or the laws of Ohio and that is an important matter of statewide concern. However, continuing law prohibits any public official from entering into a legal agreement that nullifies, suspends, enjoins, alters, or conflicts with any provision of the Revised Code.

In intervening in such a case, the Speaker of the House of Representatives may act on behalf of the House; the Senate President may act on behalf of the Senate; and the Speaker and the President, acting jointly, may act on behalf of the General Assembly. Intervention must be in accordance with the Ohio Rules of Civil Procedure or the Federal Rules of Civil Procedure, as applicable.<sup>19</sup>

### Special counsel

The bill also creates exceptions to the law that requires the Attorney General to represent a state agency in any legal action, either through the Attorney General's office or by appointing special counsel, and that prohibits agencies from obtaining other counsel.

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<sup>19</sup> See R.C. 9.58, not in the bill; [Rule 24 of the Ohio Rules of Civil Procedure \(PDF\)](#), available at [supremecourt.ohio.gov](http://supremecourt.ohio.gov) under "Ohio Rules of Court"; and [Rule 24 of the Federal Rules of Civil Procedure \(PDF\)](#), available at [uscourts.gov](http://uscourts.gov) under "Rules & Policies."

## General Assembly

First, the bill allows the Speaker of the House and the Senate President to retain their own legal counsel, other than from the Attorney General, to intervene in a judicial proceeding, as described above, on behalf of the House, the Senate, or the General Assembly, as applicable. The Speaker and the President, individually or jointly, also may retain attorneys to provide advice and counsel to them on matters that affect the official business of the General Assembly. The House and the Senate may do so only in a civil proceeding, not in any criminal proceeding.

The Speaker and the President, as applicable, must approve all terms of representation and authorize payment for all financial costs incurred. Payment must be from the House's or Senate's operating expenses appropriation line item or from a separate appropriation made for those costs. But, the House, the Senate, or the General Assembly, as applicable, may rescind the retention of a particular legal counsel in a particular matter by adopting a resolution by a simple majority vote.

The provisions described above do not limit any authority of the General Assembly or its members that is granted under the Ohio Constitution or other provisions of the Revised Code. The bill also specifies that the provisions described above do not constitute a waiver of the legislative immunity or legislative privilege of the Speaker, the President, or any member, officer, or staff of either house of the General Assembly.

The concepts of legislative privilege and immunity come from the Speech and Debate Clause of the Ohio Constitution, which provides that, "for any speech, or debate, in either House, . . . [Senators and Representatives] shall not be questioned elsewhere." The courts have interpreted this clause to mean that members of the General Assembly, and to some extent their staff, may not be prosecuted or sued for their legitimate legislative activities and that members of the General Assembly and sometimes their staff enjoy an evidentiary privilege that prevents certain legislative activities from being used in court as evidence against them.<sup>20</sup>

## Governor

Similarly, the bill allows the Governor to retain legal counsel, other than from the Attorney General, to intervene in a judicial proceeding, as described above, or to provide advice and counsel to the Governor on matters that affect the official business of the Office of the Governor. The Governor may do so only in a civil proceeding, not in any criminal proceeding.

The Governor must approve all terms of representation and authorize payment for all financial costs incurred from the Governor's operating expenses appropriation line item or from a separate appropriation made for those costs. A representation agreement entered into under the bill is not subject to continuing-law requirements that agencies follow DAS contracting

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<sup>20</sup> Ohio Constitution, Article II, Section 12. See also *Hicksville v. Blakeslee*, 103 Ohio St. 508 (1921) and *Dublin v. State of Ohio*, 138 Ohio App.3d 753 (10<sup>th</sup> Dist. Ct. App. 2000).

procedures and receive Controlling Board approval before awarding a contract worth \$50,000 or more without competitive bidding.<sup>21</sup>

The provisions described above do not limit any authority of the Governor that is granted under the Ohio Constitution or other provisions of the Revised Code. Finally, the bill specifies that it does not constitute a waiver of any executive privilege of the Governor or any executive officer or staff. Although the Ohio Constitution and the Revised Code do not mention executive privilege, the Ohio Supreme Court has recognized that a limited executive privilege applies under the common law. Under certain circumstances, executive privilege protects the confidentiality of communications between the Governor and executive agencies, and might also protect the confidentiality of documents and other materials related to the deliberative process by which the Governor formulates policies and makes decisions.<sup>22</sup>

## **Large Settlements and Awards Fund**

(R.C. 109.11, 109.111, 109.112, and 109.113; Section 812.12)

Beginning in 2024, the bill modifies the disbursements of settlement and award funds received by the state. Settlements or awards under \$2 million are deposited into the Attorney General Court Order and Settlement Fund (currently called the Attorney General Court Order Fund) and then disbursed by the Attorney General to a fund determined by the OBM Director. For settlements or awards of \$2 million or more, the Attorney General must transfer the funds to the Large Settlements and Awards Fund, which the bill creates in the state treasury. Under continuing law, all amounts the Attorney General receives as reimbursement for legal services and other services, or as reimbursement for costs and fees associated with representation, are paid into the Attorney General Reimbursement Fund.

Also beginning in 2024, the bill requires the Attorney General, when seeking an order or judgment of a court or when entering into a settlement agreement or other compromise of claims on behalf of the state, to seek to secure payment of all costs, expenses, and contractual obligations related to the legal services and other services provided, unless those items are to be paid with available funds. If the Attorney General is unable to secure payment of those items, the Attorney General must file a report with the Senate President and the House Speaker detailing the costs, expenses, and obligations incurred and the efforts made to secure payment, including a description of any cost sharing arrangements with other state attorneys general.

## **Parental notification by social media operators**

(R.C. 1349.09)

The bill establishes several new requirements for operators of online websites, services, or products that target children, or are reasonably anticipated to be accessed by children. The bill defines “child” as any consumer under 16 who is not emancipated. The bill requires the Attorney General to investigate alleged noncompliance with the bill’s requirements, and

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<sup>21</sup> See R.C. 125.05 and 127.16.

<sup>22</sup> *State ex rel. Dann v. Taft*, 109 Ohio St.3d 364 (2006).

authorizes a civil action by which a court may impose a temporary restraining order, preliminary or permanent injunction, civil penalty, or other appropriate remedy upon a noncompliant operator.

### **Scope**

The bill applies only to operators of online websites, services, or products that (1) have users in Ohio, (2) target children or are reasonably anticipated to be accessed by children, and (3) allow users to do all of the following:

- Interact socially with other users;
- Construct a public or semipublic profile;
- Populate a list of other users with whom the user shares a social connection;
- Create or post content viewable by other users (including on message boards, video channels, and chats).

The bill lists several factors that may be considered as evidence that the online service targets children or is reasonably anticipated to be accessed by a child. These include subject matter, language, visual and audio content, design elements, use of animated characters or child-oriented activities and incentives, age of models, presence of child celebrities or celebrities who appeal to children, advertisements, empirical evidence of audience composition, and evidence regarding the operator's intended audience.

The bill's requirements do not apply to e-commerce reviews, comments on news stories, cloud storage or computing services, broadband internet access services, or search engine services.

### **Parental consent**

The operator of an online website, service, or product subject to the bill's requirements must obtain verifiable consent from a parent or legal guardian before entering a contract with a child, including terms of service to register, sign up, or otherwise create a unique username to access the website, service, or product. The operator may obtain such consent by requiring a parent or legal guardian to do any of the following:

- Sign and return a form consenting to the terms of service by postal mail, fax, or email;
- Use, in connection with a monetary transaction, a credit card, debit card, or other online payment system that provides notification of each discrete transaction to the primary account holder;
- Call a toll-free telephone number implemented by the operator and staffed by trained personnel;
- Connect to the operator's trained personnel via videoconference;
- Submit a form of government-issued identification that the operator must check against databases of such information.

If an operator obtains consent through submission of government-issued identification, the bill requires the operator to delete the parent's identification from its records promptly after verification is complete.

### **Content moderation features**

In addition to obtaining verifiable consent, the operator must provide the child's parent or guardian with a list of features of the online website, service, or product related to censoring or moderating content, including features that can be disabled for a particular profile. The operator must also provide the parent or guardian a website link that may be used to access and review the list of features at another time.

### **Confirmation**

After obtaining verified parental or legal guardian consent, the operator must send written confirmation of the consent to the parent or legal guardian via email, postal mail, or fax. If the online operator made every reasonable effort but cannot secure the necessary contact information to send the written confirmation, the operator may instead verify consent via telephone.

### **Termination of access**

If the parent or legal guardian fails to give consent or refuses to give consent to the terms of service, the bill operator must deny access or use of the online website, service, or product services to the child. If the parent or legal guardian receives confirmation of consent but determines the consent was given in error, or chooses to withdraw consent, the parent or guardian may notify the operator and the operator must terminate the child's use of, or access to the online website, service, or product within 30 days of receiving the notification.

### **Enforcement**

Enforcement of the bill's provisions is exclusively under the authority of the Attorney General. The bill does not allow for a private right of action. The bill requires the Attorney General to investigate an operator's noncompliance in the same manner, by the same means, and with the same jurisdiction, powers, and duties that apply to investigations of alleged violations of security breach disclosure requirements under continuing law.

The bill authorizes the Attorney General to bring a civil action against a noncompliant operator for appropriate relief, including a temporary restraining order, preliminary or permanent injunction, and civil penalties. If a court finds that an online operator entered into a contract with a child without parental or legal guardian consent, the operator is liable to the Attorney General for the Attorney General's costs in conducting an investigation and bringing an action. In addition, the court must impose a civil penalty up to \$1,000 for each day the operator failed to comply with the bill's provisions. If the violation continues past 60 days, the court must impose a civil penalty up to \$5,000 for each day starting on the 61<sup>st</sup> day of the continued violation. If the violation continues past 90 days, the court must impose a civil penalty up to \$10,000 for each day starting on the 91<sup>st</sup> day that the violation continues. The civil penalties must be deposited to the Consumer Protection Enforcement Fund, the proceeds of which are used, under

continuing law, to pay for expenses incurred by the Consumer Protection Section of the Attorney General's Office.

If an operator is in substantial compliance with the bill's requirements, the Attorney General must provide written notice to the operator before initiating a civil action. The notice must identify the alleged violations. If, within 90 days after the notice is sent, the operator cures the alleged violation and provides the Attorney General written documentation that the alleged violations have been cured, and sufficient measures have been taken to prevent future violations, the Attorney General is prohibited from commencing a civil action against the operator and a court is prohibited from imposing a civil penalty for any cured violation.

### **Trauma recovery center grants**

(R.C. 109.461)

Under the bill, the Attorney General may develop a grant program to support trauma recovery centers. Additionally, the Attorney General must adopt administrative rules to establish procedures for trauma recovery centers to apply for the grant, if the Attorney General opts to establish the grant program. The bill defines a "trauma recovery center" as a treatment center with a multidisciplinary staff of clinicians that provides at least the following resources, treatments, and recovery services to victims of crime, including the family members of victims of homicide:

- Mental health services;
- Assertive community-based outreach and clinical care and case management;
- Coordination of care among medical and mental health providers, other social services, and government agencies as needed by the client.

The Attorney General must use at least 95% of the money appropriated to the grant program for providing grants to trauma recovery centers, and is prohibited from using more than 5% of the appropriated money to pay costs associated with administering the program.

### **Victims of Human Trafficking Fund administration**

(R.C. 5101.87)

The bill transfers administration of the Victims of Human Trafficking Fund from the Department of Job and Family Services to the Attorney General's Office.