
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 (VETOED)

- Would have created a Large Settlements and Awards Fund and directed the proceeds of any court order, judgment, settlement, or compromise exceeding \$2 million to the fund (VETOED).
- Would have required the Attorney General to send a report to the Senate President and House Speaker if the Attorney General could not cover legal costs from money received from an order, judgment, settlement, or compromise, or from an available appropriation (VETOED).

Parental notification by social media operators

- Beginning January 15, 2024, 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.
- 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 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 requirements.

Victims of Human Trafficking Fund

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

Sexual assault examination kits

- Defines "victim" as a person from whom a sexual assault examination kit was collected.
- Permits a victim to request certain information to be delivered in writing, by electronic mail, or by telephone, as specified by the victim.
- Requires the appropriate official with custody of the kit to inform the victim when there is any change in the status of the case, including if the case has been closed or reopened.
- Permits a victim to request written notice of the destruction or disposal date of the kit and requires delivery of that notice at least 60 days before the intended destruction or disposal.
- Permits a victim to request that the victim's sexual assault examination kit or its probative contents be preserved beyond the intended destruction or disposal date for up to 30 years.
- Requires the appropriate official with custody of the kit to also provide the victim with information about the victim's right to apply for a reparations award.
- Requires government evidence-retention entities to submit annual reports regarding sexual assault examination kit inventory to the Attorney General.
- Requires the Attorney General to compile data from the annual reports into a summary report, including a list of all governmental evidence-retention entities that failed to participate in the report's preparation.
- Requires the annual summary report to be made public on the Attorney General's website, and to be reported to the Governor, the Speaker of the House, and the Senate President.

State involvement in legal actions

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

Intervention by the General Assembly or the Governor

The act 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 a case, the Speaker may act on behalf of the House, the Senate President may act on behalf of the Senate, and the Speaker and the President may act jointly 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.¹⁷

Special counsel

The act 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.

General Assembly

First, the act 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. 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.

These provisions 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 act 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.

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.¹⁸

¹⁷ See R.C. 9.58, not in the act; [Rule 24 of the Ohio Rules of Civil Procedure \(PDF\)](#), available at supremecourt.ohio.gov under "Ohio Rules of Court"; and [Rule 24 of the Federal Rules of Civil Procedure \(PDF\)](#), available at uscourts.gov under "Rules & Policies."

¹⁸ 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 (10th Dist. Ct. App. 2000).

Governor

Similarly, the act 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 act is not subject to continuing-law requirements that agencies follow DAS contracting procedures and receive Controlling Board approval before awarding a contract worth \$50,000 or more without competitive bidding.¹⁹

These provisions do not limit any authority of the Governor that is granted under the Ohio Constitution or other provisions of the Revised Code. Finally, the act 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.²⁰

Large Settlements and Awards Fund (VETOED)

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

The Governor vetoed a provision that, beginning in 2024, would have modified the disbursements of settlement and award funds received by the state. Settlements or awards under \$2 million would have been 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 would have been required to transfer the funds to the Large Settlements and Awards Fund, which the act would have created in the state treasury. The veto preserves the law requiring that all amounts the Attorney General receives as reimbursement for legal services and other services, or as reimbursement for costs and fees associated with representation, be paid into the Attorney General Reimbursement Fund.

Also beginning in 2024, the act would have required 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 were to be paid with available funds. If unable to secure payment of those items, the

¹⁹ See R.C. 125.05 and 127.16.

²⁰ *State ex rel. Dann v. Taft*, 109 Ohio St.3d 364 (2006).

Attorney General would have been required to 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 act establishes several new requirements for operators of online websites, services, or products that target children, or are reasonably anticipated to be accessed by children. For this purpose, the act defines “child” as any consumer under age 16 who is not emancipated.

The Attorney General is required to investigate alleged noncompliance with the act’s requirements. If it appears that a violation has occurred, the Attorney General may bring a civil action against the operator, and a court may impose a temporary restraining order, preliminary or permanent injunction, civil penalty, or other appropriate remedy. The requirements and the associated enforcement mechanisms apply beginning January 15, 2024.

Scope

The act 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 act lists several factors that may be considered as evidence that an online website, service, or product 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 act’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 act’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 operator must delete the parent's or guardian'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 operator made every reasonable effort but cannot secure the necessary contact information to send the written confirmation, the operator instead may 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 operator must deny access or use of the online website, service, or product 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 website, service, or product within 30 days of receiving the notification.

Enforcement

Enforcement of the act's parental consent requirements is exclusively under the authority of the Attorney General. The act does not allow a private right of action. Instead, it 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 act 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 the civil action. In addition, the court must impose a civil penalty up to \$1,000 for each day the operator failed to comply with the act's requirements. If the violation continues past 60 days, the court must impose a civil penalty up to \$5,000 for each day starting on the 61st 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 91st day that the violation continues. The civil penalties must be deposited to the Consumer Protection Enforcement Fund, the proceeds of which are used to pay for expenses incurred by the Consumer Protection Section of the Attorney General's office.

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

Victims of Human Trafficking Fund

(R.C. 5101.87)

The act transfers administration of the Victims of Human Trafficking Fund from the Department of Job and Family Services to the Attorney General.

Sexual assault examination kits access and information

(R.C. 109.42, 109.68, 2933.82, and 2933.821)

The act defines "victim," in reference to the statewide sexual assault examination kit tracking system, as meaning a person from whom a sexual assault examination kit was collected. A victim may request that the appropriate official with custody of the kit provide the following information in writing, by electronic mail, or by telephone, as designated by the victim:

- Information regarding the testing date and results of the kit;
- Whether a DNA profile was obtained from the kit;
- Whether a match was found to that DNA profile in state or federal databases;
- The estimated destruction date of the kit.

If a victim requests information regarding tracking the victim's sexual assault examination kit, the act requires the appropriate official with custody of the kit to inform the victim when there is any change in the status of the case, including if the case has been closed or reopened. A victim may request written notification of the destruction or disposal date of the kit and must

receive that notice at least 60 days before the date of the intended destruction or disposal. Additionally, a victim may request further preservation of the kit or its probative contents beyond the intended destruction or disposal date for up to 30 years.

In responding to a victim's request for information regarding tracking the victim's sexual assault examination kit, the appropriate official with custody of the kit must also provide the victim with information about the victim's right to apply for an award of reparations.

Under the act, all governmental evidence-retention entities must submit annual reports regarding sexual assault examination kit inventory to the Attorney General. The report must contain the following information:

- The total number of all tested and untested sexual assault examination kits in the possession of each governmental evidence-retention entity, and for each untested kit whether the sexual assault was reported to law enforcement or whether the victim chose not to file a report with law enforcement;
- If the governmental evidence-retention entity is a medical facility, the date each untested kit was reported to law enforcement, if applicable, and the date the kit was delivered to the medical facility;
- If the governmental evidence-retention entity is a law enforcement agency, the date each untested kit was received from a medical facility, the date the kit was submitted to a crime laboratory, or for any kit not submitted to a crime laboratory, the reason the kit was not submitted;
- If an untested kit belongs to another jurisdiction, the date that jurisdiction was notified and the date the kit was retrieved by that jurisdiction, if applicable;
- If the governmental evidence-retention entity is a crime laboratory:
 - The date each kit was received from law enforcement and from which agency it was received;
 - The date the kit was tested, if applicable;
 - The date the kit test results were entered into the combined DNA index system maintained by the Bureau of Criminal Identification and Investigation or other relevant state or local DNA databases, if applicable, or if a DNA profile has not been created, the reason it was not created;
 - For untested kits, the reason the kit has not been tested;
 - The total number of kits in possession of the entity for more than 30 days;
 - The total number of kits destroyed and the reason for the destruction.

The Attorney General will compile the data from all of the reports into a summary report, which will include a list of all governmental evidence-retention entities that failed to participate in preparing the report. The annual summary report must be made public on the Attorney General's website, and submitted to the Governor, the Speaker of the House, and the Senate President.