



Ohio Legislative Service Commission

Bill Analysis

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Am. Sub. H.B. 176 128th General Assembly (As Passed by the House)

Reps. Stewart and McGregor, Skindell, Celeste, Letson, Garland, Blair, Foley, Yuko, Heard, S. Williams, Harris, Harwood, Carney, Chandler, Boyd, Hagan, Ujvagi, Koziura, Winburn, Luckie, B. Williams, Mallory, Sykes, Yates, Brown, Driehaus, Gerberry, Lundy, Bolon, Dyer, Garrison, Murray, Otterman, Pillich, Slesnick, Szollosi, Weddington

BILL SUMMARY

- Prohibits discriminatory practices on the basis of "sexual orientation" and "gender identity" under many of the Ohio Civil Rights Commission (OCRC) Law's existing prohibitions against various unlawful discriminatory practices.
- Provides that the Ohio Civil Rights Commission must exercise certain of its existing powers and duties also with respect to discrimination on the basis of sexual orientation and gender identity.
- Provides that nothing in the OCRC Law's provisions that govern Commission hearings on alleged unlawful discriminatory practices may be construed to authorize or require any person to observe the proportion that persons of any sexual orientation or gender identity or persons of any of current law's covered characteristics bear to the total population or in accordance with any criterion other than the individual qualifications of an applicant for employment or membership.
- Adds sexual orientation and gender identity to the list of covered characteristics that are specified in various provisions of current law that prohibit persons or entities from discriminating on the basis of most of the covered characteristics.
- Adds sexual orientation and gender identity to the list of covered characteristics that are specified in various provisions of current law that require certain functions or duties to be performed without discrimination, require certain documents to include statements pertaining to nondiscrimination, or pertain to discrimination on the basis of most of the covered characteristics.

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CONTENT AND OPERATION

Ohio Civil Rights Commission Law

Existing law

The Ohio Civil Rights Commission (OCRC) Law currently prohibits various unlawful discriminatory practices by the following: (1) employers, employment agencies, personnel placement services, labor organizations, joint labor-management committees, and persons seeking employment, in employment or employment-related membership situations, (2) proprietors, employees, keepers, and managers of places of public accommodation in making the full enjoyment of these places available to the public, (3) any person in transactions involving housing accommodations, such as the sale or rental of housing accommodations or the extension of financial assistance for the purchase of those accommodations, (4) any creditor in the extension of credit for other types of purchases or transactions, (5) credit reporting agencies in maintaining information, and (6) educational institutions in connection with admission, assignment to programs or housing, awarding of grades, services, or financial aid, or permitting participation in activities with respect to their treatment of individuals with a disability (R.C. 4112.02 and 4112.021; R.C. 4112.022--not in the bill). Existing law defines "unlawful discriminatory practice" as any act prohibited by R.C. 4112.02, 4112.021, or 4112.022 (R.C. 4112.01(A)(8)). These unlawful discriminatory practices include, but are not limited to, discrimination on the basis of the race, color, religion, age, sex, familial status, marital status, military status, national origin, ancestry, or disability (hereafter, "covered characteristics") of an employee; an applicant for employment, for membership, for the purchase, lease, or financing of housing accommodations, or for credit; a person seeking access to a place of public accommodation; or any appropriate person as specified in the laws generally described in (1) to (6), above (R.C. 4112.02(A) to (H) and 4112.021).¹

¹ It should be noted that not every covered characteristic listed in this sentence is necessarily listed in a prohibition in the OCRC Law. For example, "familial status" is listed consistently in R.C. 4112.02, but not in R.C. 4112.021 (creditors and credit reporting agencies) where "marital status" is listed.

Changes proposed by the bill

The bill adds sexual orientation and gender identity to the covered characteristics that can be the basis for unlawful discriminatory practices under the prohibitions of the existing OCRC Law (R.C. 4112.02(A) to (H), and 4112.021). The bill defines "sexual orientation" as heterosexuality, homosexuality, or bisexuality whether actual or perceived (R.C. 4112.01(A)(23)) and "gender identity" as the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth (R.C. 4112.01(A)(24)).²

Current law defines "employer" for purposes of the OCRC Law to include the state, any political subdivision, any person employing four or more persons within Ohio, and any person acting directly and indirectly in the interests of an employer. The bill modifies this definition so that for purposes of discrimination based upon sexual orientation and gender identity, "employer" includes the state, any political subdivision, any person employing 15 or more persons within Ohio, and any person acting directly and indirectly in the interests of an employer. (R.C. 4112.01(A)(2).)

The bill further provides that neither the antidiscrimination provisions of current law nor the bill's new provisions prohibit any religious association, corporation, or society that is not organized for private profit, or any institution organized for educational purposes that is operated, supervised, or controlled by such a religious association, corporation, or society, from doing either of the following: (1) limiting admission or giving preference to persons of the same religion or denomination or (2) in matters related to sexual orientation or gender identity, taking any action with respect to education, employment, housing, and real property, or use of facilities. The bill provides, however, that this exception does not apply to secular business activities regularly carried on in which the religious association, corporation, or society engages if the conduct of those activities is unrelated to the religious and educational purposes for which the association, corporation, or society is organized. (R.C. 4112.02(R).)

The bill provides that nothing in it can be construed to do any of the following:

- Establish an unlawful employment practice based on actual or perceived gender identity due to the denial of access to shared shower or dressing facilities in which being seen unclothed is unavoidable, provided that the employer provides reasonable access to adequate facilities that are not inconsistent with employee's gender identity as established with the employer at the time of initial employment or upon notification to the

² This definition of "sexual orientation" and "gender identity" apply throughout the bill.

employer that the employee has undergone or is undergoing gender transition, whichever is later (R.C. 4112.02(S)).

- Be construed to require the construction of new or additional facilities (R.C. 4112.02(T)).
- Prohibit an employer from implementing, enforcing, or modifying a dress code or grooming standards not prohibited by other provisions of federal, state, or local law and requiring an employee, during the employee's hours at work, to adhere to the dress code or grooming standards, provided that the employer permits any employee who has undergone gender transition before being initially employed, and any employee who has notified the employer that the employee has undergone or is undergoing gender transition after being initially employed, to adhere to the same dress code or grooming standards to which the employee has transitioned or is transitioning (R.C. 4112.04(U)).
- Be construed to authorize or require any private employer, employment agency, or labor organization to implement quotas or affirmative action policies or programs, based on sexual orientation or gender identity (R.C. 4112.02(V)).
- Upon receiving certification of a bona fide occupational qualification from the OCRC, require an employer, whose business is primarily religious in nature to take any employment action that would compromise that business's religious purposes relating to sexual orientation or gender identity (R.C. 4112.02(W)).

The bill provides that it is an unlawful discriminatory practice for any employer, employment agency, or labor organization to limit, segregate, or classify its employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment or otherwise adversely affect the status of the individual as an employee because of the individual's actual or perceived sexual orientation or gender identity.

The bill further prohibits the OCRC from collecting statistics on actual or perceived sexual identity or gender identity from any employer, employment agency, or labor organization or from compelling any of them to collect such statistics.

The bill authorizes only disparate treatment claims, and not disparate impact claims, to be brought on the basis of sexual orientation or gender identity. "Disparate

impact" means a facially neutral policy or practice that has a negative impact on a protected group. (R.C. 4112.02(X).)

The bill also adds sexual orientation and gender identity to the covered characteristics in the provisions of existing law that require the Ohio Civil Rights Commission to do all of the following (R.C. 4112.04(A)(7), (9), and (10)):

(1) Make periodic surveys of the existence and effect of discrimination on the basis of most of the covered characteristics on the enjoyment of civil rights by persons within Ohio;

(2) Receive progress reports from state agencies and entities and from political subdivisions and their agencies and entities regarding: (a) affirmative action programs for the employment of persons against whom discrimination is prohibited by the OCRC Law, (b) affirmative action programs for the employment of persons against whom discrimination is prohibited by the OCRC Law, or (c) affirmative housing accommodations programs developed to eliminate or reduce an imbalance of a covered characteristic.

Current law requires the OCRC to prepare a comprehensive educational program, in cooperation with the state Department of Education, for Ohio public school students and all other Ohio residents that is designed to eliminate prejudice on the basis of most of the covered characteristics, to further good will among the groups with the covered characteristics, and to emphasize the origin of prejudice against those groups, its harmful effects, and its incompatibility with American principles of equality and fair play.

The bill instead requires the OCRC to prepare a comprehensive educational program, in cooperation with the state Department of Education, for Ohio primary and secondary public school students and all other Ohio residents that is designed to eliminate prejudice and discrimination in Ohio, and to emphasize the origin of prejudice and discrimination, their harmful effects, and their incompatibility with American principles of equality and fair play. (R.C. 4112.04(A)(9).)

Sexual orientation and gender identity is also added to the covered characteristics in current law's provisions (1) that authorize the Commission itself, or authorize the Commission to empower local and statewide advisory agencies and conciliation councils the Commission creates, to study the problems of discrimination on the basis of most of the covered characteristics in all or specific fields of human relationships and (2) that authorize the Commission to issue any publications and the results of investigations and research that in its judgment will tend to promote good

will and minimize or eliminate discrimination on the basis of most of the covered characteristics (R.C. 4112.04(B)(4)(a) and (5)).

The bill provides that nothing in the OCRC Law's provisions that govern Commission hearings on alleged unlawful discriminatory practices may be construed to authorize or require any person to observe the proportion that persons of any sexual orientation or gender identity or persons of any of current law's covered characteristics bear to the total population or in accordance with any criterion other than the individual qualifications of an applicant for employment or membership. And, nothing in the OCRC Law may be considered as repealing any provision of Ohio law relating to discrimination because of sexual orientation or gender identity or any covered characteristic. Similar provisions exist in current law relative to discrimination on the basis of most of the covered characteristics. Additionally, the bill provides that the OCRC Law does not limit actions, procedures, and remedies afforded under federal law. (R.C. 4112.05(E) and 4112.08.)

Under continuing law, before instituting formal enforcement proceedings under the OCRC Law, the OCRC is required to attempt to induce compliance by informal methods of conference, conciliation, and persuasion. The bill adds mediation to the informal methods by which compliance with the OCRC Law can be induced. (R.C. 4112.05(A).)

Other laws' prohibitions against discrimination

Various provisions of current law prohibit persons or entities from discriminating on the basis of most or all of the covered characteristics described above under "**Ohio Civil Rights Commission Law.**" Some of those existing provisions also include another characteristic (such as inability to pay, political affiliation, or health status), in addition to the covered characteristics, that applies to the particular situation covered by the provision. The bill adds sexual orientation and gender identity as defined by the bill to the list of covered characteristics specified in the following provisions (see **COMMENT**). The persons or entities that are prohibited from doing the described acts are as follows:

(1) A governing body of a political subdivision--generally from using public funds to publish, distribute, or otherwise communicate information that promotes illegal discrimination on the basis of race, color, religion, national origin, handicap, age, or ancestry (R.C. 9.03(C)(1)(c)).

(2) A health insuring corporation that enters into or renews a contract with the Department of Administrative Services under R.C. 124.82 (group health insurance for state employees)--from refusing to contract with a physician for the provision of health

care services because of a physician's race, color, religion, sex, national origin, military status, disability, age, or ancestry (R.C. 124.93(B)).

(3) A board of alcohol, drug addiction, and mental health services or any agency, corporation, or association under contract with such a board--from discriminating in the provision of services under its authority, in employment, or contract on the basis of race, color, sex, creed, disability, or national origin (R.C. 340.12).

(4) A board of township trustees, in establishing the terms of any rental agreement or lease of all or part of any hall, lodge, or recreational facility of the township--from making a differentiation in the treatment of persons on the basis of race, color, religion, national origin, sex, or political affiliation (R.C. 511.03).

(5) A municipal corporation--from denying housing accommodations to, or withholding housing accommodations from, elderly persons or persons of low and moderate income because of race, color, religion, sex, familial status, military status, disability, ancestry, or national origin. Any elderly person or person of low or moderate income who is aggrieved by such denial or withholding may file a charge with the Ohio Civil Rights Commission. (R.C. 717.01(AA).)

(6) A health insuring corporation, or health care facility or provider through which the health insuring corporation has made arrangements to provide health care services, unless otherwise required by state or federal law--from discriminating against any individual with regard to enrollment, disenrollment, or the quality of health care services rendered, on the basis of the individual's race, color, sex, age, religion, or status as a recipient of Medicare or medical assistance, military status, or any health status-related factor in relation to the individual (R.C. 1751.18(A)(2)).

(7) Any person, whether or not acting under color of law, by force or threat of force--from willfully injuring, intimidating, or interfering with, or attempting to injure, intimidate, or interfere with, any of the following (R.C. 2927.03(A)):

(a) Any person because of race, color, religion, sex, familial status, military status, national origin, disability, or ancestry and because that person is or has been selling, purchasing, renting, financing, occupying, contracting, or negotiating for the sale, purchase, rental, financing, or occupation of any housing accommodations, or applying for or participating in any service, organization, or facility relating to the business of selling or renting housing accommodations;

(b) Any person because that person is or has been participating, or in order to intimidate that person or any other person or any class of persons from participating, without discrimination on account of race, color, religion, sex, familial status, military

status, national origin, disability, or ancestry, in any of the activities, services, organizations, or facilities described in (a), above;

(c) Any person because that person is or has been, or in order to discourage that person or any other person from, lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, familial status, military status, national origin, disability, or ancestry, in any of the activities, services, organizations, or facilities described in (a), above, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate.

(8) A board of education--from discriminating on the basis of sex, race, religion, or national origin when assigning pupils to attendance schedules (R.C. 3313.481(C)).

(9) An employer, including the state and its political subdivisions--from discriminating in the payment of wages on the basis of race, color, religion, sex, age, national origin, or ancestry by paying wages to any employee at a rate less than the rate at which the employer pays wages to another employee for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar conditions. An employer is not prohibited from paying wages at a different rate if the payment is made pursuant to a wage differential determined by any factor other than race, color, religion, sex, age, national origin, or ancestry. (R.C. 4111.17(A) and (B)(4).)

(10) The Counselor, Social Worker, and Marriage and Family Therapist Board and its professional standards committees--from discriminating against any licensee, registrant, or applicant for a license or certificate of registration under R.C. Chapter 4757. because of the person's race, color, religion, sex, national origin, disability, or age. The Board or committee, as appropriate, must afford a hearing to any person who files with the Board or committee a statement alleging discrimination based on that reason. (R.C. 4757.07.)

(11) The Chemical Dependency Professionals Board--from discriminating against any licensee, certificate holder, or applicant for a license or certificate under R.C. Chapter 4758. because of the individual's race, color, religion, gender, national origin, disability, or age. The Board must afford a hearing to any individual who files with it a statement alleging discrimination based on that reason. (R.C. 4758.16.)

(12) An administrator, licensee, or child-care staff member--from discriminating in the enrollment of children in a child day-care center on the basis of race, color, religion, sex, or national origin (R.C. 5104.09(C)).

(13) A county board of mental retardation and developmental disabilities or any agency, corporation, or association under contract with such a county board--from discriminating in the provision of services under its authority or contract on the basis of race, color, sex, creed, disability, national origin, or the inability to pay (current law). Each county board of mental retardation and developmental disabilities must provide a plan of affirmative action describing its goals and methods for the provision of equal employment opportunities for all persons under its authority and must ensure nondiscrimination in employment under its authority or contract on the basis of race, color, sex, creed, disability, or national origin. (R.C. 5126.07.)

Other provisions of law

Various sections of the Revised Code have provisions that require certain functions or duties to be performed without discrimination, require certain documents to include statements pertaining to nondiscrimination, or pertain to discrimination on the basis of some or all of the covered characteristics described above under "**Ohio Civil Rights Commission Law.**" Some of those existing provisions also include another characteristic (such as health status, geographic location, or inability to pay), in addition to the covered characteristics, that applies to the particular situation covered by the provision. The bill modifies the current provisions by adding sexual orientation and gender identity as defined by the bill to the list of covered characteristics specified in each provision that does the following (see **COMMENT**):

(1) Requires every contract for or on behalf of the state or any of its political subdivisions for any purchase, to contain provisions by which the contractor agrees to both of the following: (a) that, in the hiring of employees for the performance of work under the contract or any subcontract, no contractor or subcontractor, by reason of race, color, religion, sex, age, disability, military status, national origin, or ancestry, will discriminate against any citizen of Ohio in the employment of a person qualified and available to perform the work to which the contract relates, and (b) that no contractor, subcontractor, or person acting on behalf of any contractor or subcontractor, in any manner, will discriminate against, intimidate, or retaliate against any employee hired for the performance of work under the contract on account of race, color, religion, sex, age, disability, military status, national origin, or ancestry (R.C. 125.111(A)(1) and (2)).

(2) Requires leases and contracts negotiated by the Director of Natural Resources for the construction and operation of certain public service facilities in state parks and for major renovation of existing public service facilities by the lessees of lands in state parks, to include in their terms and conditions a requirement that the facility be available to all members of the public without regard to sex, race, color, creed, ancestry, national origin, or disability (R.C. 1501.012(C)(9)).

(3) Provides that a shelter for victims of domestic violence does not qualify for funds from the county's collection of fees for marriage licenses and as additional costs in annulment, divorce, or dissolution of marriage actions if it discriminates in its admissions or provision of services on the basis of race, religion, color, age, marital status, national origin, or ancestry (R.C. 3113.36(B)).

(4) Requires the State Board of Education rules that prescribe minimum standards for certain preschool programs to include standards ensuring that preschool staff members and nonteaching employees are recruited, employed, assigned, evaluated, and provided inservice education without discrimination on the basis of age, color, national origin, race, or sex (R.C. 3301.53(A)(3)).

(5) Authorizes the Rehabilitation Services Commission to delegate to the Administrator of the Commission the authority to appoint, remove, and discipline without regard to sex, race, creed, color, age, or national origin, such other professional, administrative, and clerical staff members as necessary to carry out the Commission's functions and duties (R.C. 3304.14).

(6) Authorizes the Ohio Independent Living Council to delegate to the Council's Executive Director the authority to appoint, remove, and discipline without regard to sex, race, creed, color, age, or national origin, such other professional, administrative, and clerical staff members as are necessary to carry out the Council's functions and duties (R.C. 3304.50).

(7) Requires the governing authority of each community school to adopt admission procedures that specify that there will be no discrimination in the admission of students to the school on the basis of race, creed, color, handicapping condition, or sex except that single-gender schools may be established if certain conditions are met (R.C. 3314.06(D)(1)).

(8) Authorizes the State Board of Career Colleges and Schools to limit, suspend, revoke, or refuse to issue or renew a certificate of registration or program authorization or to impose a penalty for discrimination in the acceptance of students on the basis of race, color, religion, sex, or national origin (R.C. 3332.09(K)).

(9) Requires the rights of residents of a home to include, upon admission and thereafter, the right to adequate and appropriate medical treatment and nursing care and to other ancillary services that comprise necessary and appropriate care consistent with the program for which the resident contracted, and that this care will be provided without regard to considerations such as race, color, religion, national origin, age, or the source of payment for care (current law) (R.C. 3721.13(A)(3)).

(10) Generally authorizes an insurance agent to charge a consumer a fee if all of specified conditions are met, including the condition that the agent, in charging the fee, does not discriminate on the basis of race, sex, national origin, religion, disability, health status, age, marital status, military status, or geographic location (current law) (R.C. 3905.55(A)(7)).

(11) Requires the annual report filed by an employee organization with the State Employment Relations Board to include a pledge that the organization will comply with the laws of Ohio and that it will accept members without regard to age, race, color, sex, creed, religion, ancestry, national origin, military status, disability, or physical disability (R.C. 4117.19(B)(5)).

(12) Requires every real estate broker's office to include in the statement that is prominently displayed in the same immediate area as licenses are displayed a statement that it is illegal to discriminate against any person because of race, color, religion, sex, familial status, military status, national origin, disability, or ancestry, in the sale or rental of housing or residential lots, in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services (R.C. 4735.16(D)).

(13) Requires each written agency agreement (a contract between a licensee and a client in which the client promises to pay the real estate broker a valuable consideration, or agrees that the licensee may receive a valuable consideration from another, for performing an act that requires a real estate license) to contain a statement that it is illegal, pursuant to the Ohio Fair Housing Law and the Federal Fair Housing Law to refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status, military status, national origin, disability, or ancestry or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services (R.C. 4735.55(A)(2) and R.C. 4735.51--not in the bill).

(14) Authorizes the State Board of Emergency Medical Services to suspend or revoke a certificate of accreditation or a certificate of approval issued under R.C. 4765.17 for discrimination in the acceptance of students on the basis of race, color, religion, sex, or national origin (R.C. 4765.18(I)).

(15) For purposes of the current provision preventing any assistance group member from losing or being denied eligibility to participate in Ohio Works First if the termination of employment was because an assistance group member or recipient of transitional child day-care or transitional Medicaid secured comparable or better

employment or the county department of job and family services certifies that the member or recipient terminated the employment with just cause, specifies that just cause includes discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, or national origin (R.C. 5107.26(C)(1)).

(16) Requires every provider agreement with a nursing facility or intermediate care facility for the mentally retarded to prohibit the facility from discriminating against any patient on the basis of race, sex, color, creed, or national origin (R.C. 5111.31(A)(3)).

(17) Requires the Director of Mental Health, with respect to facilities and programs established and operated for mentally ill and emotionally disturbed persons, to withhold state or federal funds from a board of alcohol, drug addiction, and mental health services that denies available service on the basis of religion, race, color, creed, sex, national origin, age, disability, or the inability to pay (R.C. 5119.61(D)).

(18) Requires the Director of Mental Retardation and Developmental Disabilities, with respect to the eligibility for state reimbursement of expenses incurred by facilities and programs established and operated for persons with mental retardation or a developmental disability, to withhold state funds from an agency, corporation, or association denying or rendering service on the basis of race, color, sex, religion, ancestry, national origin, disability, or the inability to pay (R.C. 5123.351(E)).

(19) Requires that commercial advertising placed on buildings located in roadside rest areas under the jurisdiction of the Department of Transportation not promote illegal discrimination on the basis of race, religion, national origin, handicap, age, or ancestry (R.C. 5515.08(B)(2)).

(20) For purposes of the current requirement that the legislative authority of a county, township, or municipal corporation that grants an exemption from taxation under certain laws must develop policies to ensure that the recipient of the exemption practices nondiscriminatory hiring in its operations, modifies the definition of "nondiscriminatory hiring" that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry (R.C. 5709.832).

COMMENT

It appears that the bill does not include sections of the Revised Code that provide protection pertaining to only a limited number of protected characteristics. For example, many of those sections protect only race, color, creed, national origin, or a combination of those characteristics. The bill also does not include sections that deal with maintaining statistics based on certain characteristics.

HISTORY

ACTION	DATE
Introduced	05-12-09
Reported, H. State Government	06-18-09
Passed House (56-39)	09-15-09

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