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Bill Analysis

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SUMMARY

- Creates the Ohio Fairness Act to prohibit discrimination on the basis of sexual orientation or gender identity or expression.
- With respect to the Ohio Civil Rights Commission (OCRC) Law, expands many of the existing prohibitions against various unlawful discriminatory practices to apply to discriminatory practices on the basis of “sexual orientation,” or “gender identity or expression,” both of which are defined by the bill.
- Modifies the current list of characteristics excluded from the definition of “physical or mental impairment,” for purposes of the OCRC Law.
- Requires the OCRC to exercise certain of its existing powers and duties also with respect to discrimination on the basis of sexual orientation and gender identity or expression.
- Modifies the scope and content of the comprehensive educational program regarding prejudice that the OCRC must prepare.
- Includes sexual orientation and gender identity or expression in a provision stating that nothing in the OCRC Law that governs OCRC hearings on alleged unlawful discriminatory practices may be construed to authorize any person to observe the proportion that persons of a covered characteristic bear to the total population or in accordance with any criterion other than the individual qualifications of an applicant for employment or membership.
- Provides that nothing in the OCRC Law: (1) may be considered as repealing any Ohio law relating to discrimination because of sexual orientation or gender identity or expression, or (2) limits actions, procedures, or remedies afforded under federal law.
- Adds mediation as an informal method by which compliance with the OCRC Law can be induced.

- Adds sexual orientation and gender identity or expression to the list of covered characteristics specified in various provisions outside the OCRC Law that generally prohibit persons or entities from discriminating on the basis of some or all of the covered characteristics.
- Adds sexual orientation and gender identity or expression to the list of covered characteristics specified in various provisions outside the OCRC Law that require certain functions or duties to be performed without discrimination, require certain documents to include statements pertaining to nondiscrimination, or generally pertain to discrimination on the basis of some or all of the covered characteristics.

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DETAILED ANALYSIS

Ohio Fairness Act – overview

The bill creates the Ohio Fairness Act, which generally expands the list of protected classes throughout the Revised Code to include sexual orientation and gender identity or expression.

The bill specifies in its statement of intent that (1) lesbian, gay, bisexual, and transgender individuals are too often the victims of discrimination, and may be fired from jobs, denied access to housing and educational institutions, refused credit, and excluded from public accommodations because of their sexual orientation or gender identity or expression, (2) it is essential that Ohio protect the civil rights of all its residents, and (3) the Ohio Fairness Act is intended to protect civil rights by prohibiting discrimination against lesbian, gay, bisexual, and

transgender individuals. In addition, the Ohio Fairness Act upholds existing religious exemptions currently provided under Ohio law.¹

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 (unions), joint labor-management committees, and persons seeking employment, in specified employment situations 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 specified transactions involving housing accommodations, such as the sale, rental, or financing of housing accommodations or the extension of financial assistance for the purchase, construction, repair, etc., of those accommodations, (4) any creditor in the extension of credit, or other specified credit-related matters, 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.²

These unlawful discriminatory practices include discrimination regarding the specified matter on the basis of the race, color, religion, age, sex, familial status, marital status, military status, national origin, ancestry, or disability (“covered characteristics”) of an employee; of an applicant for employment, for membership, for the purchase, lease, or financing of housing accommodations, or for credit; of a person seeking access to a place of public accommodation; or of a person as specified in the laws generally described in (1) to (6), above.³

Not every covered characteristic listed in the preceding sentence is included in each prohibition against unlawful discriminatory practices. For example, “familial status” is listed consistently in the law governing unlawful discriminatory practices generally, but not in the law governing unlawful discriminatory practices by creditors and credit reporting agencies, where “marital status” is included in the list.

Operation of the bill

The bill adds “sexual orientation” and “gender identity or expression” to the list of covered characteristics that can be the basis for unlawful discriminatory practices under the prohibitions of the existing OCRC Law.⁴ The bill defines “sexual orientation” as actual or

¹ Section 4.

² R.C. 4112.02 and 4112.021; R.C. 4112.022, not in the bill.

³ R.C. 4112.02(A) to (H) and 4112.021.

⁴ R.C. 4112.02(A) to (H) and 4112.021.

perceived heterosexuality, homosexuality, or bisexuality. “Gender identity or expression” means the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, without regard to the individual’s designated sex at birth.⁵ Also, in the definitions that apply to the OCRC Law, the bill includes “sexual orientation” and “gender identity or expression.” The bill also reorganizes the covered characteristic to list them in a consistent order.⁶

Exclusion from the definition of “physical or mental impairment”

Current law excludes various characteristics and disorders from the definition of “physical or mental impairment” under the OCRC Law. (Physical or mental impairment is part of the definition of “disability” under the OCRC Law.) The bill removes homosexuality, bisexuality, transvestism, transexualism, and gender identity disorders not resulting from physical impairments from the current law list of excluded characteristics and disorders, and qualifies the current law exclusion for “other sexual behavior disorders” to only exclude those sexual behavior disorders that have corresponding criminal behavior.⁷

Statistics, surveys, and progress reports

The bill adds sexual orientation and gender identity or expression to the covered characteristics in the provisions of existing law (and reorganizes the list of covered characteristics) that require the OCRC to do both of the following:

1. Make periodic surveys of the existence and effect of discrimination on the basis of any of the covered characteristics on the enjoyment of civil rights by persons within Ohio;
2. Receive progress reports from state agencies and entities, etc., and from political subdivisions and their agencies and entities, etc., regarding: (a) affirmative action programs for the employment of persons against whom discrimination is prohibited by the OCRC Law, or (b) affirmative housing accommodations programs developed to eliminate or reduce an imbalance in relation to a covered characteristic.⁸

OCRC duty – comprehensive educational program

Continuing law requires the OCRC, in cooperation with the state Department of Education, to develop a comprehensive education program for Ohio public school students and all other Ohio residents. The program must be designed to do both of the following: (1) eliminate prejudice on the basis of each covered characteristic, (2) to further good will among those groups, and (3) emphasize the origin of prejudice and, as added by the bill, discrimination, their harmful effects, and their incompatibility with American principles of equality and fair play.

⁵ R.C. 4112.01(A)(24) and (25).

⁶ R.C. 4112.01(A)(11), 4112.02(A) to (H), and 4112.021.

⁷ R.C. 4112.01(A)(13) and (A)(16).

⁸ R.C. 4112.04(A)(7) and (10).

The bill adds “sexual orientation” and “gender identity or expression” to the list of covered characteristics and specifies the program is for primary and secondary students.⁹

OCRC authority – study discrimination problems and issue publications

The bill adds sexual orientation and gender identity or expression to the covered characteristics in the current provisions (and reorganizes the list of covered characteristics) that: (1) authorize the OCRC itself, or authorize the OCRC to empower local and statewide advisory agencies and conciliation councils it creates, to study the problems of discrimination on the basis of any of the covered characteristics in all or specific fields of human relationships, and (2) authorize the OCRC 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 any of the covered characteristics.¹⁰

Enforcement provisions

The bill provides that nothing in the OCRC Law that governs OCRC 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 expression bear to the total population or in accordance with any criterion other than the individual qualifications of an applicant for employment or membership. Current law contains a similar statement regarding persons in any of the currently covered characteristics. (The bill also reorganizes the list of covered characteristics.)

In addition, under the bill, 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 expression. But a person filing a charge with the OCRC alleging an unlawful discriminatory practice concerning age is barred from instituting a civil action under the OCRC Law with respect to the practice alleged. A similar provision exists in current law relative to discrimination on the basis of any of the currently covered characteristics. (The bill also reorganizes the list of covered characteristics.)

The bill states that the OCRC Law does not limit actions, procedures, and remedies afforded under federal law.

Under continuing law, the OCRC Law is to be construed liberally for the accomplishment of its purposes, and that any law inconsistent with any provision of the OCRC Law does not apply.¹¹

Also under continuing law, before instituting formal hearing enforcement proceedings under the OCRC Law, the OCRC is required to attempt to induce compliance by informal

⁹ R.C. 4112.04(A)(9).

¹⁰ R.C. 4112.04(B)(4)(a) and (5).

¹¹ R.C. 4112.05(E) and 4112.08.

methods of conference, conciliation, and persuasion. The bill adds mediation as an informal method by which compliance with the OCRC Law can be induced.¹²

Discrimination prohibitions outside the OCRC Law

Various provisions of current law located outside the OCRC Law prohibit persons or entities from discriminating on the basis of most or all of the covered characteristics described above under **“Operation of the bill.”** 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 or expression to the list of covered characteristics specified in many of those provisions, but it does not add those characteristics to all of the provisions. In the provisions of current law to which the bill adds sexual orientation and gender identity or expression to the list of covered characteristics, the bill’s definitions of those terms apply. Additionally, the bill reorganizes the listed covered characteristics to list them in a consistent order.

The provisions of current law to which the bill adds sexual orientation and gender identity or expression to the list of covered characteristics specified in the provisions, and the persons or entities that are prohibited from doing the described acts, are as follows:

1. A governing body of a political subdivision – generally prohibited from using public funds to publish, distribute, or otherwise communicate information that promotes illegal discrimination on the basis of race, color, religion, age, ancestry, national origin, or handicap.¹³
2. A health insuring corporation that contracts with the Department of Administrative Services under the law governing group health insurance for state employees – prohibited from refusing to contract with a physician for the provision of health care services because of the physician’s race, color, religion, sex, age, ancestry, national origin, disability, or military status.¹⁴
3. A board of alcohol, drug addiction, and mental health services or any community addiction or mental health services provider under contract with such a board – prohibited from discriminating in the provision of services under its authority, in employment, or under a contract on the basis of race, color, religion, sex, age, ancestry, national origin, disability, or military status.¹⁵
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 – prohibited from

¹² R.C. 4112.05(A) and (B).

¹³ R.C. 9.03.

¹⁴ R.C. 124.93.

¹⁵ R.C. 340.12.

making a differentiation in the treatment of persons on the basis of race, color, religion, sex, national origin, or political affiliation.¹⁶

5. A municipal corporation – prohibited 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, ancestry, national origin, familial status, disability, or military status. Any elderly person or person of low or moderate income who is aggrieved by such denial or withholding may file a charge with the OCRC.¹⁷
6. A health insuring corporation, or its agents, unless otherwise required by state or federal law – prohibited from discriminating against any individual with regard to enrollment or the quality of health care services rendered, on the basis of the individual’s race, color, sex, religion, age, military status, or status as a recipient of Medicare or medical assistance, or any health status-related factor in relation to the individual.¹⁸
7. Any person by force or threat of force – prohibited from willfully injuring, intimidating, or interfering with, or attempting to injure, intimidate, or interfere with, any of the following:¹⁹
 - a. Any person because of race, color, religion, sex, ancestry, national origin, familial status, disability, or military status 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 those same covered characteristics, in any of the activities, services, organizations, or facilities described in the preceding bullet point;
 - 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 those same covered characteristics, in any of the activities, services, organizations, or facilities described in the second preceding bullet point, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate.

¹⁶ R.C. 511.03.

¹⁷ R.C. 717.01.

¹⁸ R.C. 1751.18.

¹⁹ R.C. 2927.03.

8. An employer – prohibited from discriminating in the payment of wages on the basis of race, color, religion, sex, age, ancestry, or national origin 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 comparable jobs unless the payment is made pursuant to any of several specified criteria, including a wage differential determined by any factor other than those covered characteristics.²⁰
9. The State Vision Professionals Board and any committees established by the Board – prohibited from discriminating against an applicant or holder of a certificate, license, registration, or endorsement issued under the Vision Professionals Law because of the person’s race, color, religion, sex, age, national origin, or disability. A person who files with the Board or committee a statement alleging discrimination based on any of those reasons may request a hearing.²¹
10. The State Speech and Hearing Professionals Board and any committees established by the Board – prohibited from discriminating against an applicant or license holder because of the person’s race, color, religion, sex, age, national origin, or disability. A person who files with the Board or committee a statement alleging discrimination based on any of those reasons may request a hearing.²²
11. The Counselor, Social Worker, and Marriage and Family Therapist Board and its professional standards committees – prohibited from discriminating against any licensee, registrant, or applicant under the Counselor, Social Worker, and Marriage and Family Therapist Law because of the person’s race, color, religion, sex, age, national origin, or disability. 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 any of those reasons.²³
12. The Chemical Dependency Professionals Board – prohibited from discriminating against any licensee, certificate or endorsement holder, or applicant under the Chemical Dependency Professionals Law because of the individual’s race, color, religion, gender, age, national origin, or disability. The Board must afford a hearing to any individual who files with it a statement alleging discrimination based on any of those reasons. Also, the bill replaces the term “gender” with the term “sex.”²⁴

²⁰ R.C. 4111.17.

²¹ R.C. 4725.67.

²² R.C. 4744.54.

²³ R.C. 4757.07.

²⁴ R.C. 4758.16.

13. An administrator, licensee, or child-care staff member of a child day-care center – prohibited from discriminating in the enrollment of children in a child day-care center on the basis of race, color, religion, sex, or national origin.²⁵
14. A county board of developmental disabilities or any entity under contract with such a board – prohibited from discriminating in the provision of services under its authority or contract on the basis of race, color, creed, sex, national origin, disability, or the inability to pay. Each county board 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, creed, sex, national origin, or disability.²⁶
15. A homeowners association board of directors – required to comply with all applicable state and federal laws concerning prohibitions against discrimination on the basis of race, color, religion, sex, age, ancestry, national origin, disability, or military status.²⁷

Other discrimination-related provisions

There are also sections of the Revised Code located outside the OCRC Law that require certain functions or duties to be performed without discrimination, require certain documents to include statements pertaining to nondiscrimination, or otherwise pertain to discrimination, on the basis of some or all of the covered characteristics described above under “**Operation of the bill.**” 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 adds sexual orientation and gender identity or expression to the list of covered characteristics specified in many of those provisions, but it does not add those characteristics to all of the provisions. In the provisions of current law to which the bill adds sexual orientation and gender identity or expression to the list of covered characteristics specified in the provisions, the bill’s definitions of those terms apply. Additionally, the bill reorganizes the listed covered characteristics to list them in a consistent order.

The bill adds sexual orientation and gender identity or expression to the list of covered characteristics specified in the existing provisions that do the following:

1. **Department of Natural Resources leases and contracts.** Require leases and contracts negotiated by the Director of Natural Resources for the construction, renovation, and operation of certain public service facilities in state parks to include in their terms and

²⁵ R.C. 5104.09.

²⁶ R.C. 5126.07.

²⁷ R.C. 5312.04.

conditions a requirement that the facility be available to all members of the public without regard to race, color, creed, sex, ancestry, national origin, or disability.²⁸

2. **Domestic violence shelters.** Disqualify a shelter for victims of domestic violence for funds from its local county's collection of fees for marriage licenses and as additional costs in divorce actions if it discriminates in its admissions or provision of services on the basis of race, color, religion, age, ancestry, national origin, or marital status.²⁹
3. **Preschool program standards.** Require 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, and otherwise treated without discrimination on the basis of race, color, sex, age, or national origin.³⁰
4. **Opportunities for Ohioans with Disabilities Agency.** Authorize the Governor to grant the Executive Director of the Opportunities for Ohioans with Disabilities Agency 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 Agency's functions and duties.³¹
5. **Ohio Independent Living Council.** Authorize the Ohio Independent Living Council to delegate to the Council's Executive Director the authority to appoint, remove, and discipline, without regard to race, color, creed, sex, age, or national origin, staff as are necessary to carry out the Council's functions and duties.³²
6. **Community schools.** Require the governing authority of each community school to adopt admission procedures that specify there will be no discrimination in the admission of students to the school on the basis of race, color, creed, sex, or disability, except that single-gender schools and schools serving both autistic students and students who are not disabled may be established if certain conditions are met.³³
7. **Career colleges and schools.** Authorize 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.³⁴

²⁸ R.C. 1501.012.

²⁹ R.C. 3113.36.

³⁰ R.C. 3301.53.

³¹ R.C. 3304.15.

³² R.C. 3304.50.

³³ R.C. 3314.06.

³⁴ R.C. 3332.09.

8. **Nursing homes and residential care facilities.** Require that the rights of residents of a nursing home, residential care facility, etc., include the right, upon admission and thereafter, to adequate and appropriate care and to other ancillary services that are consistent with the program for which the resident contracted and that is provided without regard to race, color, religion, age, national origin, or the source of payment for care.³⁵
9. **Insurance agents.** Generally authorize an insurance agent to charge a consumer a fee if specified conditions are met, including the condition that the agent, in charging the fee, does not discriminate on the basis of race, religion, sex, age, national origin, marital status, disability, military status, health status, or geographic location, and does not unfairly discriminate between persons of essentially the same class and the same hazard or expectation of life.³⁶
10. **State Employment Relations Board filings.** Require the annual report that a public employee union files with the State Employment Relations Board to contain specified information and statements, including a pledge that the union will accept members without regard to race, color, religion, creed, sex, age, ancestry, national origin, disability, military status, or physical disability.³⁷
11. **Real estate brokers.** Require every real estate broker's office to prominently display a statement that it is illegal to discriminate against any person because of race, color, religion, sex, ancestry, national origin, familial status, disability, or military status, 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.³⁸
12. **Real estate agency agreements.** Require each written agency agreement to contain a statement that it is illegal, pursuant to the Ohio Fair Housing Law and the Federal Fair Housing Law, to deny or make unavailable housing accommodations because of race, color, religion, sex, ancestry, national origin, familial status, disability, or military status 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.³⁹
13. **Emergency Medical, Fire, and Transportation Services Board.** Authorize the State Board of Emergency Medical, Fire, and Transportation Services to suspend or revoke a

³⁵ R.C. 3721.13.

³⁶ R.C. 3905.55.

³⁷ R.C. 4117.19.

³⁸ R.C. 4735.16.

³⁹ R.C. 4735.55.

certificate of accreditation or a certificate of approval for discrimination in the acceptance of students on the basis of race, color, religion, sex, or national origin.⁴⁰

14. **Ohio Works First.** For purposes of the provision preventing any Ohio Works First assistance group member from losing or being denied eligibility to participate in Ohio Works First if the member's termination of employment was because an assistance group member or recipient of transitional child care 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, specify that just cause includes discrimination by an employer based on race, color, religious beliefs, sex, age, national origin, or handicap. Also, the bill replaces the term "handicap" with the term "disability."⁴¹
15. **Facilities and programs for persons with a developmental disability.** Require the Director of Developmental Disabilities, with respect to the eligibility for state reimbursement of expenses incurred by facilities and programs for persons with a developmental disability, to withhold state funds from an entity denying or rendering service on the basis of race, color, religion, sex, ancestry, national origin, disability, or the inability to pay.⁴²
16. **Nursing facilities.** Require every provider agreement with the provider of a nursing facility to prohibit the facility from discriminating against any resident on the basis of race, color, creed, sex, or national origin.⁴³
17. **Roadside rest area advertising.** Require that commercial advertising placed in Department of Transportation roadside rest areas not promote illegal discrimination on the basis of race, religion, age, ancestry, national origin, or handicap.⁴⁴
18. **Local government tax exemptions.** For purposes of the requirement that local governments that grant an exemption from taxation under certain laws must develop policies to ensure that the exemption recipient practices nondiscriminatory hiring in its operations, specify that "nondiscriminatory hiring" means that no individual may be denied employment solely on the basis of race, color, religion, sex, ancestry, national origin, or disability.⁴⁵

⁴⁰ R.C. 4765.18.

⁴¹ R.C. 5107.26.

⁴² R.C. 5123.351.

⁴³ R.C. 5165.08.

⁴⁴ R.C. 5515.08.

⁴⁵ R.C. 5709.832.

HISTORY

Action	Date
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