



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 505
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Becker and Crossman

Alyssa Bethel, Attorney

Erika Kramer, Attorney

SUMMARY

- Eliminates specific authority for certain residential facilities to operate within residentially zoned areas.

DETAILED ANALYSIS

Residential facilities in residential areas

The bill eliminates provisions of current law that specifically allow certain residential facilities to operate within a residentially zoned area. Residential facilities provide long-term care to unrelated adults. In Ohio, a residential facility can be regulated by the Department of Mental Health and Addiction Services (OhioMHAS) or the Department of Developmental Disabilities (ODDD), depending on the residents it admits and services it provides.

Because residential facilities often house unrelated individuals, their operation within a residentially zoned area otherwise may be prohibited by local zoning regulations, which typically allow only related persons to live together within certain residentially zoned areas. Essentially, the bill eliminates the protection state law provides to residential facilities to operate within residentially zoned areas.¹

Impacted residential facilities

The bill eliminates the residential zoning exceptions for two categories of residential facilities: class two OhioMHAS-licensed facilities and certain ODDD-licensed facilities. Therefore, under the bill, these two types of residential facilities would no longer have the authority to operate within residentially zoned areas of a political subdivision.

¹ R.C. 5119.341, repealed and 5123.19(M) to (P), repealed.

OhioMHAS licenses three different classes of residential facilities. The bill impacts class two residential facilities, which provide accommodations, supervision, and personal care services to (1) one or two unrelated adults with mental illness, (2) one or two unrelated adults receiving Residential State Supplement payments, or (3) three to 16 unrelated adults. Class two facilities may admit residents with mental illness, but they are not licensed for the purpose of providing mental health services and are not required to provide those services.² Residents can receive mental health services from community providers who come into the facility.³

The bill also impacts residential facilities licensed by ODDD (those in which individuals with a developmental disability reside), although the following types of facilities are excluded:

- The home of a relative or legal guardian in which an individual with a developmental disability resides;
- A dwelling in which the only residents with developmental disabilities are in independent living arrangements or are being provided supported living;
- A respite care home (a home that provides short-term, temporary care to a person with a developmental disability);⁴
- A county home or district home operated by a board of county commissioners or a board of county hospital trustees of a county hospital.⁵

Anti-discrimination laws

It is possible that the bill will have effects that implicate the Americans with Disabilities Act of 1990⁶ (ADA) and the Fair Housing Act⁷ (FHA). That is because residential facilities serve residents with mental illness (including addiction) and developmental disabilities, which are considered disabilities for purposes of those laws.⁸ Because the bill removes the specific authority for residential facilities to operate in residential zones, it is possible that a political subdivision, through its zoning authority, could restrict the operation of residential facilities in a way that violates the ADA, the FHA, or both.

² Compare with class one facilities, which are licensed for the additional, primary purpose of providing mental health services to residents and are required to provide mental health treatment to at least one resident to remain eligible for class one licensure. Ohio Administrative Code (O.A.C.) 5122-30-29(A) and (C).

³ R.C. 5119.34(B)(1)(b) and (J); Ohio Department of Mental Health and Addiction Services, *About Residential Care Facilities*, <https://mha.ohio.gov/Schools-and-Communities/Community-and-Housing/Housing-Resources/About-Residential-Care-Facilities>.

⁴ R.C. 5123.171 and 5126.05, not in the bill.

⁵ R.C. 5123.19(A)(5); R.C. Chapter 5155, not in the bill.

⁶ 42 United States Code (U.S.C.) 12101, et seq., as amended by the ADA Amendments Act of 2008.

⁷ 42 U.S.C. 3601 to 3619.

⁸ 42 U.S.C. 12101, et seq.; 42 U.S.C. 3602 and 3604; 24 C.F.R. 100.201(a)(2).

Americans with Disabilities Act

The ADA prohibits discrimination on the basis of disability in employment, public services (state and local governments), public accommodations, commercial facilities, transportation, and telecommunications. An individual is considered disabled, and therefore protected under the ADA, if that individual has a physical or mental impairment that substantially limits one or more major life activities, has a record of an impairment, or is regarded as having an impairment. “Major life activities” include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, and engaging in major bodily functions.⁹

Fair Housing Act

The federal FHA and the Ohio Fair Housing Law¹⁰ both prohibit discrimination in housing on the basis of handicap or disability.¹¹ Specifically, the law prohibits political subdivisions from making zoning or land use decisions that exclude or otherwise discriminate against protected persons, including individuals with disabilities.¹² The protection against disability discrimination is extended to any person who has “a physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment.”¹³

COMMENT

The bill’s changes cannot be applied retroactively to discontinue the existence of residential facilities or foster homes currently located within residential districts. Uses of property that began lawfully but later become nonconforming are allowed to continue, because the Ohio Constitution prohibits retroactive legislation that impairs or takes away vested or substantive rights.¹⁴ Owners are permitted to continue the nonconforming use based on the recognition that

⁹ 42 U.S.C. 12102(2).

¹⁰ R.C. 4112.02(H).

¹¹ For purposes of fair housing laws, federal law uses the term “handicapped” and state law uses the legally equivalent term “disability.”

¹² U.S. Department of Housing and Urban Development and the U.S. Department of Justice, *Joint Statement of the Department of Housing and Urban Development and the Department of Justice, State and Local Land Use Laws and Practices and the Application of the Fair Housing Act* (November 10, 2016), <https://www.justice.gov/opa/file/912366/download>.

¹³ R.C. 4112.01(A)(13), 42 U.S.C. 3602(h), and 24 C.F.R. § 100.201.

¹⁴ Ohio Constitution, Article II, Section 28. See also R.C. 303.19, 519.19, and 713.15, not in the bill.

one should not be deprived of a substantial investment that exists before the enactment of a zoning resolution or amendment.¹⁵

HISTORY

Action	Date
Introduced	02-12-20

H0505-I-133/ec

¹⁵ *Curtiss v. Cleveland*, 170 Ohio St. 127 (1959) and *State ex rel. Fairmount Center Co. v. Arnold*, 138 Ohio St. 259 (1941).