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## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Hillyer and Skindell

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### SUMMARY

- Creates the Ohio Fairness Act, which specifies that any provision found in the Ohio Revised Code respecting discrimination on the basis of "sex" includes discrimination on the basis of "sexual orientation," and "gender identity or expression."
- Adds mediation as an informal method by which compliance with the Ohio Civil Rights Commission Law can be induced.
- Upholds existing religious exemptions currently provided under Ohio law.

### DETAILED ANALYSIS

#### Ohio Fairness Act – overview

The bill creates the Ohio Fairness Act, which generally expands anti-discrimination laws to include sexual orientation and gender identity. The bill does so by specifying that any provision in the Ohio Revised Code respecting discrimination on the basis of sex includes discrimination on the basis of sexual orientation and gender identity or expression.<sup>1</sup> In addition, the Ohio Fairness Act adds mediation as an informal method by which compliance with the Ohio Civil Rights Commission (OCRC) Law can be induced and upholds existing religious exemptions currently provided under Ohio law. This analysis provides an overview of these changes and some prominent examples of existing Ohio laws that prohibit discrimination on the basis of sex.

#### Ohio Civil Rights Commission Law

The OCRC Law currently prohibits various unlawful discriminatory practices on the basis of sex by the following: (1) employers, employment agencies, personnel placement services,

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<sup>1</sup> R.C. 4112.01(C).

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, and (5) credit reporting agencies in maintaining information.

These prohibited discriminatory practices include discrimination against: an employee; an applicant for employment; a person seeking to purchase, lease, or acquire financing for housing accommodations; an applicant for credit; or a person seeking access to a place of public accommodation.<sup>2</sup>

### **Enforcement provisions – mediation**

Under continuing law, before instituting formal hearing 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 as an informal method by which compliance with the OCRC Law can be induced.<sup>3</sup>

### **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 sex. A selection of these laws are as follows:

1. 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.<sup>4</sup>
2. 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.<sup>5</sup>

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<sup>2</sup> R.C. 4112.02, 4112.021, and 4112.022, not in the bill.

<sup>3</sup> R.C. 4112.05.

<sup>4</sup> R.C. 124.93, not in the bill.

<sup>5</sup> R.C. 340.12, not in the bill.

3. 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 making a differentiation in the treatment of persons.<sup>6</sup>
4. A municipal corporation – prohibited from denying housing accommodations to, or withholding housing accommodations from, elderly persons or persons of low and moderate income.<sup>7</sup>
5. 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.<sup>8</sup>
6. 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:
  - a. Any person 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 sex, 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 sex, 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.<sup>9</sup>
7. An employer – prohibited from discriminating 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.<sup>10</sup>

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<sup>6</sup> R.C. 511.03, not in the bill.

<sup>7</sup> R.C. 717.01, not in the bill.

<sup>8</sup> R.C. 1751.18, not in the bill.

<sup>9</sup> R.C. 2927.03, not in the bill.

<sup>10</sup> R.C. 4111.17, not in the bill.

8. 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.<sup>11</sup>
9. The State Speech and Hearing Professionals Board and any committees established by the Board – prohibited from discriminating against an applicant or license holder.<sup>12</sup>
10. 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.<sup>13</sup>
11. 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.<sup>14</sup>
12. 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.<sup>15</sup>
13. A homeowners association board of directors – required to comply with all applicable state and federal laws concerning prohibitions against discrimination.<sup>16</sup>

## 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, including the following:

1. **Department of Natural Resources leases and contracts.** Require 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 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.<sup>17</sup>
2. **Preschool program standards.** Require the State Board of Education rules that prescribe minimum standards for certain preschool programs to include standards ensuring that

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<sup>11</sup> R.C. 4725.67, not in the bill.

<sup>12</sup> R.C. 4744.54, not in the bill.

<sup>13</sup> R.C. 4757.07, not in the bill.

<sup>14</sup> R.C. 5104.09, not in the bill.

<sup>15</sup> R.C. 5126.07, not in the bill.

<sup>16</sup> R.C. 5312.04, not in the bill.

<sup>17</sup> R.C. 1501.012, not in the bill.

preschool staff members and nonteaching employees are recruited, employed, and otherwise treated without discrimination.<sup>18</sup>

3. **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.<sup>19</sup>
4. **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.<sup>20</sup>
5. **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.<sup>21</sup>
6. **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.<sup>22</sup>
7. **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 between persons of essentially the same class and the same hazard or expectation of life.<sup>23</sup>
8. **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 discrimination.<sup>24</sup>
9. **Real estate brokers.** Require every real estate broker's office to prominently display a statement that it is illegal to discriminate in the sale or rental of housing or residential

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<sup>18</sup> R.C. 3301.53, not in the bill.

<sup>19</sup> R.C. 3304.15, not in the bill.

<sup>20</sup> R.C. 3304.50, not in the bill.

<sup>21</sup> R.C. 3314.06, not in the bill.

<sup>22</sup> R.C. 3332.09, not in the bill.

<sup>23</sup> R.C. 3905.55, not in the bill.

<sup>24</sup> R.C. 4117.19, not in the bill.

lots, in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services.<sup>25</sup>

10. **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 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.<sup>26</sup>
11. **Emergency Medical, Fire, and Transportation Services Board.** Authorize the State Board of Emergency Medical, Fire, and Transportation Services to suspend or revoke a certificate of accreditation or a certificate of approval for discrimination in the acceptance of students.<sup>27</sup>
12. **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.<sup>28</sup>
13. **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 in a discriminatory manner.<sup>29</sup>
14. **Nursing facilities.** Require every provider agreement with the provider of a nursing facility to prohibit the facility from discriminating against any resident.<sup>30</sup>
15. **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.<sup>31</sup>

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<sup>25</sup> R.C. 4735.16, not in the bill.

<sup>26</sup> R.C. 4735.55, not in the bill.

<sup>27</sup> R.C. 4765.18, not in the bill.

<sup>28</sup> R.C. 5107.26, not in the bill.

<sup>29</sup> R.C. 5123.351, not in the bill.

<sup>30</sup> R.C. 5165.08, not in the bill.

<sup>31</sup> R.C. 5709.832, not in the bill.

## Existing religious exemptions

The bill specifies that it upholds existing religious exemptions.<sup>32</sup>

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### HISTORY

Action	Date
Introduced	03-16-21

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<sup>32</sup> Section 3.