



# Ohio Legislative Service Commission

## Bill Analysis

Nicholas A. Keller

### H.B. 537

131st General Assembly  
(As Introduced)

Rep. Hayes

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## BILL SUMMARY

- Prohibits a municipal judge, county court judge, probate judge, or elected official who solemnizes a marriage on or after the bill's effective date from subsequently refusing to solemnize the marriage of any persons who have been granted a marriage license by a probate court.
- Requires a probate court to issue, without delay, a marriage license to parties who are entitled to that license.
- Prohibits a state or local law or state or local government official from requiring an ordained or licensed minister who is licensed to solemnize marriages or a religious society to do certain acts contrary to sincerely held beliefs.
- Prohibits a state or local official or other entity that has the authority to issue licenses or other authorizations to engage in an occupation from considering a person's beliefs or lawful expressions about those beliefs expressed in a nonprofessional setting regarding marriage, family, or sexuality.
- Prohibits a person from requiring an ordained or licensed minister who is licensed to solemnize marriages or a religious society to provide any goods, services, grounds, facilities, advantages, or privileges of the minister or society for a marriage celebration or ceremony between individuals that is contrary to sincerely held religious beliefs.
- Prohibits discrimination in employment and housing on the basis of sexual orientation.
- Adds sexual orientation to the list of classes for which wage based discrimination is prohibited under Ohio's Equal Pay Law.

- Requires that each written real estate broker agency agreement contain a statement that it is illegal pursuant to the bill to discriminate in housing accommodations because of sexual orientation.
- Allows aggrieved persons to bring lawsuits to enforce the rights provided under the bill.

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## CONTENT AND OPERATION

### Solemnization of marriage

The bill prohibits a municipal judge, county court judge, probate judge, or elected official who solemnizes a marriage in the person's capacity as a judge or elected official, on or after the bill's effective date, from subsequently refusing to solemnize the marriage of any persons who have been granted a marriage license by a probate court under continuing law. However, a municipal judge, county court judge, probate judge, or elected official who does not solemnize any marriages on or after the bill's effective date cannot be punished, disciplined, or otherwise retaliated against for electing not to exercise the person's authority to solemnize marriages. The bill maintains the current

law power of municipal judges to solemnize marriages anywhere in Ohio, but removes reference to a municipal judge's general "duty" to solemnize marriages.<sup>1</sup>

The bill also changes "husband and wife" to "spouses" in the law that specifies who may solemnize a marriage. Under continuing law, the following persons and entities may solemnize a marriage:

- An ordained or licensed minister of any religious society or congregation within the state who is licensed to solemnize marriages;
- A county court judge;
- A municipal court judge;
- A probate judge;
- The mayor of a municipal corporation in any county in which the municipal corporation lies;
- The Superintendent of the State School for the Deaf;
- A religious society in conformity with the rules of its church.<sup>2</sup>

## **Marriage license**

The bill requires, if the parties to a marriage are entitled to a marriage license under continuing law, a probate court to issue a marriage license without delay.<sup>3</sup>

## **Prohibition of certain government actions with respect to certain beliefs**

### **Ministers and religious organizations**

The bill prohibits a state or local law, rule, ordinance, resolution, or regulation or a state or local government official from requiring an ordained or licensed minister who is licensed to solemnize marriages or a religious society to do any of the following:

- Solemnize a marriage that is contrary to the minister's or religious society's sincerely held religious beliefs;

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<sup>1</sup> R.C. 1901.14, 1907.18, 2101.27, and 3101.081.

<sup>2</sup> R.C. 3101.08.

<sup>3</sup> R.C. 3101.05(E).



- Promote marriage or relationships through religious programs, counseling, courses, or retreats in a way that is contrary to that minister's or society's sincerely held religious beliefs;
- Credit for religious purposes a marriage that is contrary to the minister's or religious society's sincerely held religious beliefs;
- Provide any goods, services, grounds, or facilities of the minister or society for a marriage solemnization or celebration that is contrary to the minister's or religious society's sincerely held religious beliefs.<sup>4</sup>

The bill prohibits a state or local law, rule, ordinance, resolution, or regulation or a state or local government official from denying a minister or religious society the authority to legally solemnize marriages based on the minister's or society's refusal to engage in any of the actions described above that is contrary to the minister's or society's sincerely held religious beliefs.<sup>5</sup>

### **Prohibition against retaliation**

The bill prohibits a state or local law, rule, ordinance, resolution, or regulation or a state or local government official from taking any other action against a person in retaliation for the person asserting the rights provided under the bill with respect to the prohibitions discussed under "**Prohibition of certain government actions with respect to certain beliefs**," above and providing goods and services as described under "**Provision of goods and services for a marriage celebration or ceremony**," below, including the following actions:

- Imposing a penalty, fine, or formal discipline;
- Denying benefits required under the Ohio law, including government contracts, grants, licenses, or tax-exempt status;
- Seeking an injunction or other legal or administrative action to require compliance.<sup>6</sup>

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<sup>4</sup> R.C. 3101.16(B).

<sup>5</sup> R.C. 3101.16(C).

<sup>6</sup> R.C. 3101.16(C).



## **Occupational licensing**

The bill prohibits a state or local official or other entity that has the authority to issue licenses or other authorizations to engage in an occupation from denying, revoking, or suspending a person's license or other authorization or otherwise retaliating against a person holding a license or authorization based on the person's beliefs or lawful expressions about those beliefs expressed in a nonprofessional setting regarding marriage, family, or sexuality. The bill defines "sexuality" as an individual's legal sexual conduct or sexual expression or sexual orientation. "Sexual orientation" means an individual's self-identity as heterosexual, homosexual, or bisexual.<sup>7</sup>

## **Civil action – government actions**

The bill allows an aggrieved person to bring a lawsuit to enforce the rights provided under the bill with respect to the prohibitions regarding a minister's or religious society's objections, occupational licensing, or retaliation. The lawsuit must be filed in the court of common pleas of the county in which the state or local government official who is the subject of the complaint resides. The aggrieved person may seek any of the following in the lawsuit:

- Actual damages;
- An injunction or other equitable relief to require the official to comply with the bill's requirements;
- Removal of the official from office for misconduct.

If the court finds that a violation occurred, the bill requires the court to award to the aggrieved person actual damages and any equitable relief it considers appropriate, including a permanent or temporary injunction. The bill allows the court to award reasonable attorney fees and court costs to the prevailing party.<sup>8</sup>

## **Goods and services for a marriage celebration or ceremony**

The bill generally prohibits a person from requiring an ordained or licensed minister who is licensed to solemnize marriages or a religious society to provide any goods, services, grounds, facilities, advantages, or privileges of the minister or society

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<sup>7</sup> R.C. 3101.16(A) and (D).

<sup>8</sup> R.C. 3101.16(E).



for a marriage celebration or ceremony that is contrary to that minister's or society's sincerely held religious beliefs.<sup>9</sup>

The bill allows an aggrieved person to bring a lawsuit to enforce the bill's rights with respect to providing goods and services for a marriage celebration or ceremony. The lawsuit must be filed in the court of common pleas of the county in which the individual who is the subject of the complaint resides or the business that is the subject of the complaint is located. If the court finds that a violation occurred, the bill requires the court to award to the aggrieved person actual damages and any equitable relief it considers appropriate, including a permanent or temporary injunction. The bill allows the court to award reasonable attorney fees and court costs to the prevailing party.<sup>10</sup>

### **Liberal construction – government actions and goods and services**

The bill requires that its provisions with respect to the prohibitions discussed under "**Prohibition of certain government actions with respect to certain beliefs,**" above and providing goods and services as described under "**Provision of goods and services for a marriage celebration or ceremony,**" above are to be construed liberally in favor of the protection of religious beliefs. Nothing in those provisions should be construed to limit the authority of the state or a political subdivision to enforce Ohio criminal and civil rights laws or to lawfully protect the health, safety, and property of Ohio residents.<sup>11</sup>

### **Wage discrimination**

The bill adds sexual orientation to the list of classes for which wage-based discrimination is prohibited under Ohio's Equal Pay Law. Thus, under the bill, an employer cannot discriminate in the payment of wages on the basis of sexual orientation 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 which are performed under similar conditions. Under continuing law, the classes covered by the wage discrimination prohibition are race, color, religion, sex, age, national origin, and ancestry. Under continuing law, whoever violates Ohio's Equal Pay Law may be subject to a lawsuit and is guilty of a minor misdemeanor.<sup>12</sup>

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<sup>9</sup> R.C. 3101.17.

<sup>10</sup> R.C. 3101.17(B).

<sup>11</sup> R.C. 3101.18.

<sup>12</sup> R.C. 4111.17 and R.C. 4111.99, not in the bill.

## Discrimination on the basis of sexual orientation

The bill prohibits discrimination on the basis of sexual orientation with respect to employment, and housing accommodations, and mirrors Ohio's Civil Rights Law<sup>13</sup> in many respects.<sup>14</sup>

A major difference though, is to whom the bill's prohibition against discrimination applies. "Employer," under the bill, includes the state, any political subdivision of the state, any person employing 15 or more persons within Ohio (instead of four as under the Civil Rights Law), and any person acting directly or indirectly in the interest of an employer. An "employer" does not include any of the following:

- An organized religious body, for employment related to the activities of the organized religious body;
- A school, college, university, or other educational institution, or institution of learning that is substantially owned, supported, controlled, or managed by a particular religious corporation, association, or society or that uses curriculum that is directed toward the propagation of a particular religion;
- Any entity that hires and employs individuals based on sexual orientation if sexual orientation is a bona fide occupational qualification reasonably necessary to the normal operation of the entity's business or enterprise.

These exceptions to the bill's discrimination prohibitions, with respect to an organized religious body or educational institution, must be liberally construed in favor of the protection of religious liberty. All significant religious and secular characteristics of an entity must be considered with any of the following construed in favor of a finding that an entity is excluded:

- The entity is not for profit.
- The day-to-day operations of the entity are religious.
- The articles of incorporation of the entity state a religious purpose.
- The entity is owned, affiliated with, or financially supported by a religious body.

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<sup>13</sup> R.C. Chapter 4112., not in the bill.

<sup>14</sup> R.C. 4114.01 to 4114.07.



- A religious body participates in the management of the entity.
- The entity holds itself out as sectarian.
- The entity regularly includes prayer or other forms of worship in its activities.
- If the entity is an educational institution, the curriculum of the entity includes religious instruction.
- Some portion of the membership of the entity are members of the same religion.

The existence or nonexistence of any factor listed above is not, by itself, determinative of the status of an entity as an employer.

"Housing accommodation" is defined in largely the same manner as under the Civil Rights Law.

An "organized religious body" under the bill is any religious corporation, agency, or society.

"Sexual orientation," for this portion of the bill, means an individual's actual or perceived orientation as heterosexual, homosexual, or bisexual.<sup>15</sup>

### **Unlawful discriminatory practices**

The bill defines the following practices as "unlawful discriminatory practices" and prohibits discrimination because of or on the basis of a person's sexual orientation (many of these unlawful discriminatory practices mirror current practices prohibited under the Civil Rights Law for other protected classes):

- For any employer to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment;
- For an employment agency or personnel placement service to do any of the following:
  - Refuse or fail to accept, register, classify properly, or refer for employment, or otherwise discriminate against any person;

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<sup>15</sup> R.C. 4114.01. See R.C. 4112.01, not in the bill, for Civil Rights Law definitions.



- Comply with an employer's request for referral of applicants for employment if the request directly or indirectly indicates that the employer fails to comply with the bill's prohibitions against unlawful discriminatory practices.
- For any labor organization (essentially, a union) to do any of the following:
  - Limit or classify its membership;
  - Discriminate against, limit the employment opportunities of, or otherwise adversely affect the employment status, wages, hours, or employment conditions of any person as an employee.
- For any employer, labor organization, or joint labor-management committee controlling apprentice training programs to discriminate against any person in admission to, or employment in, any program established to provide apprentice training;
- For any employer, employment agency, personnel placement service, or labor organization, before employment or admission to membership, to do any of the following:
  - Elicit or attempt to elicit any information concerning the sexual orientation of an applicant for employment or membership;
  - Make or keep a record of an applicant's sexual orientation;
  - Use any form of application for employment, or personnel or membership blank, seeking to elicit information regarding sexual orientation (however, an employer holding a contract containing a nondiscrimination clause with the U.S. government or any U.S. department or agency may require an employee or applicant for employment to furnish documentary proof of U.S. citizenship, retain that proof in the employer's personnel records, and use photographic or fingerprint identification for security purposes);
  - Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification, or discrimination;
  - Announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership

opportunities of any group because of the sexual orientation of that group;

- Utilize in the recruitment or hiring of persons any employment agency, personnel placement service, training school or center, labor organization, or any other employee-referring source known to discriminate against persons because of their sexual orientation.
- For any person seeking employment to publish or cause to be published any advertisement that specifies or in any manner indicates that person's sexual orientation, or expresses a limitation or preference as to the sexual orientation of any prospective employer;
- Unless an exception exists (see "**Exceptions to unlawful discriminatory practices: Housing**," below), for any person to do any of the following:
  - 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;
  - Represent to any person that housing accommodations are not available for inspection, sale, or rental, when in fact they are available;
  - Discriminate against any person in the making or purchasing of loans or providing other financial assistance for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations, or any person in the making or purchasing of loans or providing other financial assistance that is secured by residential real estate, provided that the person lends money as one of the principal aspects or incident to the person's principal business and not only as a part of the purchase price of an owner-occupied residence the person is selling nor merely casually or occasionally to a relative or friend;
  - Discriminate against any person in the terms or conditions of selling, transferring, assigning, renting, leasing, or subleasing any housing accommodations or in furnishing facilities, services, or privileges in connection with the ownership, occupancy, or use of any housing accommodations, including the sale of fire, extended coverage, or homeowners insurance;

- Print, publish, or circulate any statement or advertisement, or make or cause to be made any statement or advertisement, relating to the sale, transfer, assignment, rental, lease, sublease, or acquisition of any housing accommodations, or relating to the loan of money for the acquisition or construction or repair of housing accommodations, that indicates any preference, limitation, specification, or discrimination based upon sexual orientation, or an intention to make any preference, limitation, specification, or discrimination;
- Inquire, elicit any information, make or keep any record, or use any form of application containing questions or entries concerning sexual orientation in connection with the sale or lease of any housing accommodations or the loan of any money, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations (however, the bill allows a person to make inquiries, and make and keep records, concerning sexual orientation for the purpose of monitoring compliance with the bill's discrimination prohibitions);
- Include in any transfer, rental, or lease of housing accommodations any restrictive covenant, or honor or exercise, or attempt to honor or exercise, any restrictive covenant;
- Induce or solicit, or attempt to induce or solicit, a housing accommodations listing, sale, or transaction by representing that a change has occurred or may occur with respect to the sexual orientation composition of the block, neighborhood, or other area in which the housing accommodations are located, or induce or solicit, or attempt to induce or solicit, a housing accommodations listing, sale, or transaction by representing that the presence or anticipated presence of persons of any sexual orientation, in the block, neighborhood, or other area will or may have results including the following:
  - The lowering of property values;
  - A change in the sexual orientation composition of the block, neighborhood, or other area;
  - An increase in criminal or antisocial behavior in the block, neighborhood, or other area;

- A decline in the quality of the schools serving the block, neighborhood, or other area.
  - Deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting housing accommodations, or discriminate against any person in the terms or conditions of that access, membership, or participation;
  - Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person's having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the bill's provisions relating to unlawful discriminatory practices in housing accommodations;
  - Discourage or attempt to discourage the purchase by a prospective purchaser of housing accommodations, by representing that any block, neighborhood, or other area has undergone or might undergo a change with respect to its sexual orientation composition;
  - Discriminate against any person in the selling, brokering, or appraising of real property because of sexual orientation;
  - Discriminate against any person in the terms or conditions of any loan of money for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations.
- For any person to discriminate in any manner against any other person because that person has opposed any unlawful discriminatory practice defined in the bill or because that person has made a charge, testified, assisted, or participated in any manner in a proceeding related to any unlawful discriminatory practice under the bill;
  - For any person to aid, abet, incite, compel, or coerce the doing of any act declared by the bill to be an unlawful discriminatory practice, to obstruct or prevent any person from complying with the bill's provisions concerning unlawful discriminatory practices or any order issued under it,

or to attempt directly or indirectly to commit any unlawful discriminatory practice under the bill.<sup>16</sup>

## **Exceptions to unlawful discriminatory practices**

### **Employment**

The bill does not bar an organized religious body or a nonprofit charitable or educational organization that is operated, supervised, or controlled by or in connection with such an entity from providing employment to an individual regardless of that individual's sexual orientation.<sup>17</sup>

### **Housing**

The bill creates certain exceptions to the unlawful discriminatory practices in housing accommodations discussed above. Under the bill, an organized religious body or a nonprofit charitable or educational organization that is operated, supervised, or controlled by or in connection with such an entity or persons who have a contract with that entity may do any of the following:

- Limit the sale, rental, or occupancy of housing accommodations that it owns or operates for other than a commercial purpose to persons of the same religion or limit such activity to persons of a particular religion or sexual orientation;
- Give preference in the sale, rental, or occupancy of housing accommodations to persons of the same religion or to persons of a particular religion or sexual orientation;
- Provide sale, rental, or occupancy of housing accommodations that the entity owns or operates to persons regardless of sexual orientation.

The bill also does not do any of the following:

- Prohibit any bona fide private or fraternal organization that, incidental to its primary purpose, owns or operates lodgings for other than a commercial purpose, from limiting the rental or occupancy of the lodgings to its members or from giving preference to its members;

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<sup>16</sup> R.C. 4114.02(A).

<sup>17</sup> R.C. 4114.02(C).

- Limit the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy housing accommodations;
- Prohibit the owners or managers of housing accommodations from implementing reasonable occupancy standards based on the number and size of sleeping areas or bedrooms and the overall size of a dwelling unit, provided that the standards are not implemented to circumvent the purposes of the bill's provisions relating to housing accommodations and are formulated, implemented, and interpreted in a manner consistent with the bill's provisions and any applicable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy housing accommodations;
- Require that housing accommodations be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to others' property;
- Prohibit an owner of four or fewer dwelling units who rents those units from applying a preference in renting those units based on sexual orientation.<sup>18</sup>

### **Rights of expression**

The bill cannot be construed to infringe upon the freedom of expressive association or the free exercise of religion protected by the U.S. and Ohio Constitutions. Additionally, the bill allows an employee to express the employee's religious or moral beliefs and commitments in the workplace in a reasonable, nondisruptive, and nonharassing way on equal terms with similar types of expression allowed by the employer in the workplace, unless the expression is in direct conflict with the essential business-related interests of the employer.

The bill prohibits an employer from discharging, demoting, refusing to hire, retaliating against, harassing, or discriminating against an otherwise qualified person in matters of compensation or in terms, privileges, and conditions of employment for the person's lawful expression outside of the workplace regarding the person's religious, political, or personal convictions, including convictions about marriage, family, or

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<sup>18</sup> R.C. 4114.02(B).

sexuality, unless the expression is in direct conflict with the business-related interests of the employer.<sup>19</sup>

### **Civil action – unlawful discriminatory practices**

The bill allows a person aggrieved by an unlawful discriminatory practice to bring a lawsuit regarding that practice. The lawsuit must be filed in the court of common pleas of the county in which the alleged unlawful discriminatory practice occurred within one year after it allegedly occurred. Upon application by the aggrieved person, the bill allows the court to appoint an attorney for the aggrieved person and to authorize the commencement of a lawsuit without payment of costs upon a proper showing and where the court considers just. The bill grants each party to the lawsuit has a right to a jury trial of the action and requires the lawsuit to be heard and determined as expeditiously as possible.

If the court or jury finds that an unlawful discriminatory practice is about to occur, the court may order any affirmative action it considers appropriate, including a permanent or temporary injunction or temporary restraining order.

If the court or jury finds that an unlawful discriminatory practice occurred, the bill requires the court to award to the plaintiff or aggrieved person actual damages, reasonable attorney fees, court costs incurred in the prosecution of the action, expert witness fees, and other litigation expenses. The bill allows the court to award other relief that it considers appropriate, including a permanent or temporary injunction, a temporary restraining order, or other order and punitive damages. Any sale, encumbrance, or rental consummated before the issuance of a court order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the lawsuit's existence is not affected by the court order.<sup>20</sup>

### **Compliance with local laws**

The bill requires an employer or person to comply with any ordinance, regulation, or other action taken by a political subdivision that relates to the prohibition of discrimination in housing, employment, or a place of public accommodation to the extent that the ordinance, regulation, or action does not conflict with the bill's provisions concerning unlawful discriminatory practices regarding sexual orientation (see **COMMENT**).<sup>21</sup>

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<sup>19</sup> R.C. 4114.04 and 4114.05.

<sup>20</sup> R.C. 4114.03.

<sup>21</sup> R.C. 4114.06.



## **Liberal construction – unlawful discriminatory practices**

The bill's prohibitions against unlawful discriminatory practices, and its exceptions, are to be construed liberally for the accomplishment of the bill's purposes and any law inconsistent with any of these provisions does not apply. The bill also specifies that nothing in the bill's prohibitions against unlawful discriminatory practices are to be considered to repeal any of the provisions of law relating to discrimination because of sexual orientation.<sup>22</sup>

## **Real estate broker agency agreements**

The bill requires that each written agency agreement contain a statement that it is illegal pursuant to the bill's provisions to discriminate in housing accommodations because of sexual orientation. Under continuing law, an "agency agreement" is a contract between any individual licensed as a real estate broker or salesperson by the Ohio Real Estate Commission and a client in which the client promises to pay the 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. Continuing law requires such a statement with regard to existing federal and state laws that prohibit discrimination in housing accommodations on the basis of race, color, religion, sex, ancestry, national origin, familial status, disability, or military status.<sup>23</sup>

## **Severability**

The bill states that it is a result of the General Assembly's balancing of competing interests and if any phrase, clause, sentence, provision, or subsection enacted or amended by the bill is held invalid in a final judgment by a court of last resort, regardless of the rule of statutory construction requiring the invalid provisions to be severed, the remainder of the enactments and amendments made by the bill are void.<sup>24</sup>

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## **COMMENT**

The Home Rule Amendment to Ohio's Constitution grants a municipal corporation authority over matters of local self-government and local police, sanitary, and other regulations that are not in conflict with general laws of the state.<sup>25</sup> Under the bill, an employer or other person must comply with any ordinance, regulation, or other

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<sup>22</sup> R.C. 4114.07.

<sup>23</sup> R.C. 4735.55 and R.C. 4735.51, not in the bill.

<sup>24</sup> Section 3.

<sup>25</sup> Ohio Const., Art. XVIII, Sec. 3.





action taken by a political subdivision that relates to the prohibition against discrimination in employment, housing, or places of public accommodation to the extent that the ordinance, regulation, or action does not conflict with the bill's prohibitions against unlawful discriminatory practices and its exceptions to those prohibitions.<sup>26</sup> Because the bill may be considered to limit a municipal corporation's home rule authority, it may raise issues under the Home Rule Amendment.

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## HISTORY

ACTION	DATE
Introduced	04-28-16

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<sup>26</sup> R.C. 4114.06.

