



*BEFORE THE HOUSE ECONOMIC DEVELOPMENT, COMMERCE, & LABOR COMMITTEE
PROPONENT TESTIMONY ON HB 2
Tuesday, May 9th, 2017*

Chairman Young, Vice Chairman DeVitis, Ranking Member Lepore-Hagan, and members of the House Economic Development, Commerce, and Labor committee, thank you for the opportunity to again provide proponent testimony on Substitute House Bill 2 (HB 2). My name is Don Boyd and I am the Director of Labor and Legal Affairs for the Ohio Chamber of Commerce.

The Ohio Chamber is the state's leading business advocate, and we represent nearly 8,000 companies that do business in Ohio. Our mission is to aggressively champion free enterprise, economic competitiveness and growth for the benefit of all Ohioans. The Ohio Chamber of Commerce is a champion for Ohio business so our state enjoys economic growth and prosperity.

Overview

I am here today to discuss the changes included in the substitute version of HB 2 and express the Ohio Chamber's continued support for this legislation. We have been working with the Ohio Civil Rights Commission (OCRC) and other interested parties on this legislation for some time now. Through many meetings, conference calls, and numerous drafts of the bill, we have been able to work towards what is now contained in substitute HB 2. Some of the changes I will mention were made in previous versions of the bill but I want to reiterate their inclusion in this legislation.

The Problem

As I have stated previously before this committee, we have consistently heard from our members that Ohio's employment discrimination statutes are problematic for employers due to their drastic difference from federal law and the laws in other states in a few key ways. First, Ohio's statute of limitation for bringing these types of claims is the longest in the country—six years. Second, employers are forced to defend claims simultaneously before the OCRC and in civil court which is a waste of both employer and state resources. Lastly, the imposition of individual liability due to the *Genaro* decision has led to technical issues in civil cases that have previously been discussed. We believe that substitute HB 2 addresses these issues while retaining robust protection from discrimination for employees and creating good public policy for the State of Ohio.

Statute of Limitations & Dual Venues

Substitute HB 2 creates a uniform two-year statute of limitation to both file a claim before the OCRC and bring a civil lawsuit. After a claim is filed with the OCRC, an individual would be able to decide whether to continue with the OCRC process or request the ability to go to civil court. This provision is good for employees because claims or lawsuits are decided more fairly and efficiently when addressed quickly—the involved parties have fresher memories, and company records are more readily accessible. This also benefits employers because a more reasonable statute of limitation reduces costs for employers by eliminating the financial and logistical burden of maintaining six years' worth of employee records. Further, alleged incidents of discrimination will be disclosed to employers in a timelier manner, and employers won't be surprised with lawsuits six years after alleged incidents and after employees and managers may have moved on from the company.

Additionally, under current law, individuals can file an OCRC claim and a civil action at the same time causing employers to defend both simultaneously, which is costly and inefficient. Substitute HB 2 prevents this wasteful use of resources by requiring claimants to first file a claim with the OCRC before pursuing civil litigation. This will allow an individual to utilize the resources of the OCRC at the outset of their complaint and will still be able to go to court if they wish. Employees will also have the ability to go straight to civil court if emergency injunctive relief is needed. Lastly, the OCRC will be able to track all alleged cases of employment discrimination in the state which, up till now, they have been unable to do because claimants can currently bypass the OCRC and go straight to court. This is good public policy for the state of Ohio.

Individual Liability

Under HB 2, individual supervisors or managers cannot be held personally liable under the employment law statutes when that individual is acting in the interest of an employer (unless that individual is the employer). This will allow supervisors and managers to exercise sound judgment without fear of being sued when making management decisions on matters such as employee discipline or termination.

However, individual liability for claims of retaliation and aiding and abetting discrimination will be retained under HB 2. Further, in the event that a supervisor would commit an egregious act of harassment, additional remedies exist under other laws, such as intentional torts, and are not impacted by HB 2. Also, this change will make the law consistent private and public employers as individual liability for public employer supervisors and managers was eliminated with the *Hauser* decision.

Definition of Employer & Vicarious Liability

Previous changes to the definition of employer under ORC 4112 are retained in this substitute version of the bill. First, language requiring a business to have four or more employees for 20 or more calendar weeks was removed. Second, agent language similar to Title VII was added to ensure that there was still vicarious liability for employers due to the acts of their agents is in this version of HB 2.

Conclusion

HB 2 fixes the problems I previously laid out in a manner that is workable for employers, employees, and the state. It reduces the statute of limitation to a reasonable two years. It prevents employers from having to defend a claim before the OCRC and in civil court simultaneously. Individual liability for

supervisors and managers is limited to retaliation and aiding and abetting claims. Age discrimination claims are simplified—to the benefit of everyone.

Simply put, substitute HB 2 restores balance to Ohio's employment discrimination statutes and reclaims legislative control of this significant issue. It does so in a way that addresses the concerns many businesses have with the statutes while still protecting Ohio's workers and creating good public policy for the state. We urge you to support substitute HB 2. Thank you for the opportunity to provide this testimony and I would be happy to answer any questions you may have at this time.