

Overview of Sub. H.B. 2, to be considered by the House Committee on Economic Development, Commerce, and Labor

- A. Exhaustion of Administrative Remedies:** Instead of the original bill's prohibition on filing an OCRC charge and a lawsuit at the same time, the Substitute Bill will now include a workable form of exhaustion of administrative remedies, as follows:
1. A court action may not be filed until the plaintiff timely files a charge with the OCRC and the OCRC has either issued a right to sue notice or waited more than 45 days after receiving a request for a right to sue notice.
 2. A right to sue notice can be requested at any time, but cannot be issued by the OCRC until 60 days after the charge is filed. This means if a request is made the day the charge is filed, the notice can issue after 60 days (and if the OCRC does not issue the notice within 45 days after that, the party can file suit without it);
 3. The OCRC will have one year to complete its investigation and file a complaint. If the OCRC finds no probable cause, it will automatically issue a right to sue notice. If the OCRC finds probable cause, it will attempt to conciliate the charge and proceed to an administrative hearing, but the charging party can elect to withdraw from the process and file a lawsuit after notifying the OCRC. This notification must occur more than 30 days prior to the hearing date. The OCRC will have the right to intervene in cases involving important public policy issues;
 4. Those who file a charge through the federal EEOC instead of the OCRC will not be impacted. Receipt of a right to sue letter from the EEOC after filing a timely dual charge with both agencies will satisfy both state and federal law (i.e. the charging party does not need to obtain two right-to-sue letters from two separate agencies to file a combined state/federal law action); and
 5. No exhaustion of remedies through OCRC will be required for lawsuits seeking *solely* equitable relief (such as a temporary restraining order or injunction). Such actions may be amended to add damages claims, which will relate back to the original court filing date, but only after going through the OCRC/EEOC process.
- B. Two-Year Statute of Limitations for Both Lawsuits and OCRC Charges**
1. Any OCRC charge of employment discrimination must be filed within 2 years.
 2. A discrimination lawsuit must also be filed within 2 years, but the deadline is tolled for 60 days when a charge is filed. This gives those who file a charge just before the deadline a chance to obtain a right to sue notice and file a timely suit.
 3. Unlike an EEOC right to sue letter, an OCRC right to sue letter will not trigger a separate, shorter deadline. The deadline for filing suit will not change based on when the right to sue letter is requested or issued.

C. No Election of Remedies or Shorter Time Limits for Age Discrimination Claims

1. The bill preserves a separate cause of action for age-based discharges and failures to hire, identical to the current Section 4112.14. RC 4112.14 will still include automatic attorney's fees, very limited damages, and a provision that bars a claim under 4112.14 if it is subject to out-of-court arbitration;
2. The bill eliminates RC 4112.02(L) (formerly 4112.02(N)), a separate age discrimination claim that previously provided broad remedies, but included a very short 180-day filing deadline). This means for the first time, age claims will have the same time limit (2 years) as other claims, instead of a shorter time limit.
3. The bill requires a choice between filing an age claim under 4112.14 or 4112.02(A) (i.e. a choice between automatic attorney's fees and a complete damages claim), but it no longer requires a choice between filing an OCRC charge or a lawsuit based on age. This fixes a problem that has caused many employees to waive their right to file suit without realizing it.

D. Individual Liability Will Be Modified, But Not Completely Eliminated

1. The definition of employer will be amended to match the slightly different language of Title VII. This overrules the Ohio Supreme Court's *Genaro* case establishing individual liability, but unlike the prior version of the bill, it will ensure that employers can be held accountable for the actions of their agents;
2. There will still be individual liability under divisions (I) and (J) of RC 4112.02 for those who commit acts of retaliation and those who aid and abet discrimination.
3. Public policy claims for wrongful discharge will not be permitted if they are based on *and* actionable under Chapter 4112 (i.e. redundant public policy claims will be barred, which is consistent with existing Ohio Supreme Court case law).

E. Affirmative Defense Codified for Sexual Harassment Claims

1. The bill codifies an affirmative defense in sexual harassment claims that matches the language of the U.S. Supreme Court in the *Faragher* and *Ellerth* decisions;
2. The affirmative defense will not apply where there is a tangible employment action. The definition of tangible action exactly matches the Supreme Court's, so it includes things like a significant, adverse change in job responsibilities.

F. Damages Caps Codified: the bill explicitly applies the general "tort reform" caps on non-economic and punitive damages to employment discrimination claims. This application of the caps was already widely assumed under existing law. But unlike previous versions of this legislation, there is no provision reducing damages even further by adopting outdated and arbitrary federal Title VII caps for state-law claims.