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Bill Seitz
State Representative

To: Members of the House Economic Development, Commerce & Labor Committee
From: Representative Bill Seitz
Date: Tuesday, February 14, 2017
Re: House Bill 2 Sponsor Testimony

Chairman Young, Vice Chair DeVitis, Ranking Member Lepore-Hagan, and members of the House Economic Development, Commerce & Labor Committee:

Thank you for allowing me the opportunity to provide sponsor testimony today on House Bill 2.

Last General Assembly, I introduced this legislation as Senate Bill 268. It was brought to me by the Ohio Chamber of Commerce due to concern that Ohio is currently at a competitive disadvantage with employment discrimination laws which are substantially dissimilar to their counterparts at the federal level. Drastically differing state and federal laws create an administrative burden for employers and human resource professionals. Shaping Ohio law to mirror federal law will create greater predictability in matters of workplace discrimination for both employers and employees.

Ohio's judge-made six-year statute of limitation on discrimination claims – the longest by far of any state – creates burdensome recordkeeping expenses for businesses and hampers timely, fair, and efficient resolution of claims for both employers and employees. Indeed when the Supreme Court established a six year statute of limitations, Justice Resnick wrote "I beseech the General Assembly to reclaim this issue and resolve it on a legislative level" as between the six years and the alternate of a one year statute of limitations.¹ After 23 years, we still have not acted on her plea.

Among the principal provisions within HB 2 are:

¹ *Cosgrove v. Williamsburg Mgmt. Company, Inc.*, 70 Ohio St. 3d. 281, 293 (1994).

- **Statute of Limitations:** This bill aligns Ohio law more closely with federal law by creating a one-year statute of limitations for both civil actions and Ohio Civil Rights Commission (OCRC) claims, allowing for claims/lawsuits to be decided more fairly and efficiently and reducing record-keeping burdens on employers. Further, the bill extends the timeframe to file with the OCRC from 180 days under current law to one year. The one-year period is actually MORE generous than federal law, which affords only 300 days in which to file with the EEOC.
- **Dual actions:** HB 2 eliminates the costly and inefficient practice of simultaneously filing both an OCRC claim and a civil action, while preserving a claimant’s right to file a lawsuit. If a claimant files with the OCRC, that action stops the clock on the statute of limitation for a civil court case. When the OCRC claim has reached final resolution, the clock re-starts. Again, this bill is actually MORE generous than federal law which prohibits an employee from going to court until he or she exhausts their administrative remedies at the EEOC.
- **Individual Supervisor Liability:** As in federal law², under this bill individual supervisors or managers cannot be held personally liable under the employment discrimination statutes when that individual is acting in the interest of an employer (unless the individual is himself the employer). Opponents to this legislation have labelled this provision the “sexual predator protection law.” This is wholly inaccurate. The purpose of anti-discrimination law is to protect employees from the effects of discrimination in their jobs by their employer. The supervisor is not the employer. In the event that a supervisor would commit an egregious act of harassment – the type that would fall under the “sexual predator” label – abundant remedies exist under numerous tort laws including assault and battery, libel, slander, defamation and intentional infliction of emotional distress. House Bill 2 will make Ohio consistent with federal case law on this matter.
- **Affirmative Defense:** Allows employers to raise an affirmative defense in hostile work environment harassment claims if they can prove that they had an effective anti-harassment policy, properly educated employees about the policy and complaint procedures, exercised reasonable care to prevent or promptly correct an unlawful practice, and that the complainant failed to take advantage of any preventative or corrective opportunities. The U.S. Supreme Court has held this defense (Faragher-Ellerth Defense) is available in federal employment cases.³
- **Age Discrimination:** Unlike all other discrimination claims under Ohio law, age discrimination claims have numerous different avenues of redress with different remedies and limitation periods. HB 2 changes the law governing age discrimination claims to be uniform with all other types of discrimination claims, and subject to the same remedies and statutes of limitation.

² *Wathen v. GE*, 115 F.3d 400 (6th Cir. 1997); this is also the law as applied to public entity managers and supervisors as found in the Ohio Supreme Court case *Hauser v. Dayton Police Dept.*, 140 Ohio St. 3d. 266. (2014).

³ *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998).

During Senate Civil Justice Committee hearings last year, the Ohio Civil Rights Commission raised several concerns they had with SB 268. These concerns have been addressed in HB 2 in the following ways:

1. SB 268 only allowed for 30 days for an individual to voluntarily dismiss a charge at the OCRC and restart the clock on the statute of limitations to file a lawsuit. We have asked LSC for an amendment for HB 2 to provide 45 days—the same amount of time both parties have after a charge is filed to attempt mediation through the OCRC. Mirroring the 45 days allows a full attempt at mediation while still allowing the decision to voluntarily dismiss.
2. SB 268 had inadvertently removed the requirement that OCRC must resolve all employment cases within one year. HB 2 restores this one year requirement, promoting efficiency.
3. Added language in SB 268 allowed for the potential of challenges to affirmative action policies and procedure. HB 2 has removed all language that could reasonably be construed as legislative intent to prohibit the consideration and collection of a person's membership to any protected class or "any other criteria than qualifications of applicants."
4. SB 268 made some materials confidential from investigations where it was found that there was no probable cause that discrimination occurred. HB 2 mirrors current practice, which makes all materials in an investigation dismissed as "no probable cause" public record once the investigation has been deemed "no probable cause."

House Bill 2 is necessary as it will maintain protections for Ohio employees from discrimination in the workplace while also increasing uniformity between state and federal discrimination laws and improving predictability, stability, and administrative efficiency for Ohio employers.

Thank you for allowing me the opportunity to provide sponsor testimony on this bill and I am happy to answer any questions the committee may have at this time.