Written testimony from Tony Fiore
On behalf of
The Ohio SHRM State Council
In Support of
HB 2 – Employment Law Uniformity Act
Before the
House Economic Development, Commerce & Labor Committee
On
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Chairman Young, Vice Chair DeVitis, Ranking member Lepore-Hagan and members of the House Economic Development, Commerce & Labor Committee, thank you for the opportunity to provide proponent testimony on long overdue reforms in HB 2 regarding Ohio's Fair Employment Practices Act found in Ohio Revised Code 4112. My name is Tony Fiore and I am an attorney with the Columbus based law firm of Kegler Brown Hill + Ritter. I helped craft the original legislation seeking to harmonize federal and state employment law over 15 years. Therefore, I'm hopeful this committee, the full House and Senate feel it is time to make such changes to state law.

I am here today on behalf of the Ohio SHRM State Council. The Society for Human Resources Management ("SHRM") was founded in 1948 in Berea, Ohio. SHRM is the world's largest HR membership organization devoted to human resources management. Representing more than 275,000 members in over 160 countries, the Society is the leading provider of resources to serve the needs of HR professionals and advance the professional practice of human resource management. SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China, India and United Arab Emirates. In Ohio, the Ohio SHRM State Council represents over 25 local chapters and more than 12,000 members.

I call human resource professionals the "guardians" of employees civil rights because they are, and should be, the first line of defense to help eviscerate discrimination in our state. But, many of Ohio's civil rights laws are duplicative and make it more difficult for HR professionals, whether at a small or large company, to navigate this employment compliance maze.

SHRM has developed a national public policy platform that promotes a 21st Century Workplace. A 21st Century Workplace is:

1) **Innovative:** The 21st Century Workplace provides employers and employees the flexibility to address how, when and where work is accomplished and allows for the design of employee benefit programs that attract and retain employees, while managing the fiscal realities of modern business.
2) **Fair**: The 21st Century Workplace provides fair employment practices in hiring, training, and compensation, regardless of non-job related characteristics, and encourages practices that meet the goals of the organization and the needs of its employees.
3) **Competitive**: The 21st Century Workplace gives employers the ability to attract, recruit, hire and train talent, as needed, to remain competitive in a global economy.

I will highlight a few of the bill's provisions to illustrate how HB 2 furthers the goal of providing a 21st Century Workplace.

Manager/Supervisor Liability

This provision removes individual manager/supervisor liability, but retains an employer's vicarious liability for discriminatory actions. Until the Ohio Supreme Court decided the *Genaro v. Cent. Transport, Inc.* case in 1999 manager/supervisor liability did not exist. In fact, federal law does not permit individual liability (see *Wathen v. GE* decided in 1997) and Ohio is among a minority of states that permit it. In addition, the Ohio Supreme Court eliminated individual supervisor liability for public employers in 2014 with its *Hauser v. Dayton Police Dept.* case. Supervisors and managers, whether working for an Ohio public or private employer, need to be able to exercise their best professional judgment when making employment decisions without fear of being individual liable when acting in the interest of their employer.

Statute of Limitations

Ohio has maintained the longest statute of limitations in the nation for filing employment discrimination claims for over 20 years. The Ohio Supreme Court set a 6-year timeframe for filing such claims in the *Cosgrove v. Williamsburg of Cincinnati Management Company, Inc.* case decided in 1994. But, in deciding the Cosgrove case the Court directed the General Assembly to clarify the statute of limitations.

HB 2 provides for a 1 year statute of limitations for filing a charge either with the OCRC or a civil action directly in court. This effectively extends Ohio's statute of limitations for filing charges with the Ohio Civil Rights Commission (OCRC) from 180 days to 365 days for all charges. By way of comparison, the statute of limitations to file a charge with the Equal Employment Opportunity Commission (EEOC) is 300 days. In addition, many states require a one or two year statute of limitation for filing an employment discrimination claim.

While Ohio SHRM supports the statute of limitation provisions in HB 2 since it is much better than current law the preference would be to make it identical to the federal statute of limitations, which is effectively 300 days. The same timeframe for filing an allegation of discrimination under federal and state law would make it much easier to navigate for both employers and employees.

One additional recommendation would be to establish a similar process for filing claims in Ohio as federal claims are filed. This process would require all claims to be filed first with the OCRC. If someone wants their day in court they can request a "right to sue" letter. Otherwise they can exhaust administrative remedies at the OCRC. This process would provide the OCRC the ability to track and tell us all how many allegations of discrimination are occurring in Ohio – something they cannot do under current law due to the opportunity to file an allegation of discrimination directly to the courts and no requirement on the courts to tell them what has been filed around the state.

In Ohio the first time an employer may be aware of an allegation of discrimination may be when a civil suit is filed in court and it receives a nice date stamped notice of the filing. As under federal law and some other states the process should first be reported directly to the employer to address any allegations of discrimination, then to the administrative agency (EEOC or OCRC) for exhaustion of remedies, then to court if other remedies have failed.

Age Discrimination

HB 2 brings age discrimination claims in line with every other type of discrimination claim regarding the filing of a claim, remedies available and statute of limitations. This provision ensures that there is consistency and equal protection among protected classes of employees. It also makes Ohio law less cumbersome for HR professionals to navigate.

Other Items for Consideration

I also wanted to bring to the Committee's attention an employment issue our national SHRM organization is working on in Congress. SHRM believes that employment decisions should be made on the basis of qualifications for a job, not on non-job-related characteristics, including sexual orientation and gender identity. SHRM supports public policy efforts to ban workplace discrimination based on sexual orientation and gender identity.

One additional item to consider is the duplicative nature of Ohio's Fair Employment Practices Act. In 1959, Ohio became the 16th state to ratify legislation prohibiting discrimination in employment on the basis of race, color, religion, national origin and ancestry. A few years later Congress passed the Civil Rights Act of 1964. Since then we have been running on a parallel and duplicative track with the same types of causes of action under state law that are covered under federal law. This further supports the idea of making Ohio law more consistent with federal law to reduce overlapping and duplicative causes of action for both employers and employees.

Conclusion

Every employment law should strike the right balance between employee rights and employer obligations. When the pendulum swings too far toward employee rights, as it did in the 1990s with several bad Ohio Supreme Court decisions, balance must be brought back to the system. HB 2 strikes and appropriate balance between employers and employees.

Chairman Young, Vice Chair DeVitis and Ranking member Lepore-Hagan and members of the committee, thank you for the opportunity to provide testimony today. I would be happy to answer any questions.