Written testimony from Barbara Letcher
On behalf of
The Human Resources Association of Central Ohio (HRACO)
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 HB 2 regarding Ohio's Fair Employment Practices Act found in Ohio Revised Code 4112. My name is Barbara Letcher and I am an attorney with Letcher Legal, LLC. I've been practicing employment law for the past twenty-three years and have been recognized as a Board Certified Specialist in labor and employment law by the Ohio State Bar Association since 2002.

I am here today on behalf of the Human Resources Association of Central Ohio (HRACO) an affiliate of the Society for Human Resources Management ("SHRM") and Ohio SHRM State Council. I serve as the Vice-President for Government Affairs for HRACO. 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 around the world. In Ohio, the Ohio SHRM State Council represents over 25 local chapters and more than 12,000 members. In Central Ohio, HRACO represents over 1,000 HR professionals.

Ohio's civil rights laws are duplicative of, yet not consistent with, their federal counterparts, making it more difficult for HR professionals, particularly in smaller companies, to navigate these laws. This is the first time I have testified as a proponent or opponent of any legislation. HB 2 addresses important enough issues both to HR professionals and employment attorneys that I felt it was important to do so in this case.

One of the goals of SHRM's national public policy platform that promotes a 21st Century Workplace is that it be 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. HB 2 furthers this goal by simplifying the laws in Ohio addressing discrimination in the workplace.

Manager/Supervisor Liability

HB 2 eliminates liability for individual managers and supervisor for discriminatory actions, while still retaining an employer's vicarious liability for discriminatory actions taken by these managers and supervisors. Managers and supervisors, 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 individually liable when acting in the interest of their employer. Employment law and the risk of personal liability do not prevent managers and supervisors from discriminating against other employees. What does ensure compliance is the threat of discipline or termination facing that manager or supervisor if he or she chooses to engage in discriminatory conduct in the workplace.

Opponents claim the bill eliminates an employer's vicarious liability for employment actions and leaves employees without any recourse. The language in the bill clearly retains such vicarious liability. The bill also does not take away an employee's right to file a lawsuit against another employee for assault, battery or intentional infliction of emotional distress in those particularly egregious cases where one employee attempts to or in fact does physically touch another employee. In addition, the bill does not limit economic damage recovery for employees that successfully prove discriminatory acts against an employer.

Statute of Limitations

In its present form, Ohio's statute of limitations for employment discrimination claims is too long. The six year time frame in which to bring an action was adopted by the Ohio Supreme Court more than 20 years ago. Even then, the Court recognized the need to clarify the statute of limitations and left the responsibility for doing so to the General Assembly.

A shorter statute of limitations encourages employees to bring their claims when the conduct occurs and allows employers to correct discriminatory behavior in a timely manner. It encourages employers to develop policies that provide a mechanism for reporting discrimination so that employers have the first shot at correcting the problem before it has been allowed to fester and impact other employees in the workplace.

In practice, the six year statute of limitations has had unintended consequences that have made it more difficult for employers to defend employment discrimination claims. According to a report released by the U.S. Department of Labor's Bureau of Labor Statistics on September 22, 2016, the average number of years that wage and salary workers had been with their current employers was only 4.2 years. When you consider the demographic of workers age 25 to 34, this number drops to 2.8 years. Employee turnover impacts the availability of witnesses and persons knowledgeable about the workplace during the relevant time period. This presents a challenge for the employer defending a charge of discrimination as well as the employee or former employee attempting to pursue a claim.

Age Discrimination

In Ohio, age is an outlier among the protected classes. The current version of Chapter 4112 of the Ohio Revised Code provides employees with multiple avenues by which to seek redress and creates confusion for HR professionals and employment law practitioners. HB 2 eliminates the separate causes of action addressing age discrimination and brings the law governing age discrimination in line with the law governing other protected classes.

Exhaustion of Administrative Remedies

The EEOC has long served as the gate keeper to the federal court system. Before a Title VII claim alleging employment discrimination can be filed in federal court, the aggrieved party must file an administrative charge. The charge provides the employer with timely notice of the alleged discrimination with the opportunity to resolve it before it reaches the court system.

A similar requirement built into the Ohio statute would accomplish the same goal. Litigation is expensive and time consuming. The OCRC has the expertise to evaluate charges of discrimination to determine whether the charges are meritorious and allowing employees to simply bypass the process to go directly to court is not in the best interests of employers or employees. An aggrieved party would still have the ability to request a "right to sue" letter to seek a remedy in court.

If all claims are first filed with the OCRC, the OCRC will be better able to track incidents of discrimination to determine how best to allocate resources aimed at educating employers in the prevention of discrimination.

HB 2 comprehensively reforms Ohio's employment laws, but does not address every inconsistency between federal and state law – and that's ok. The bill does NOT:

- Increase the number of employees necessary for the law to apply – current Ohio law states "4 or more" employees, federal law covers employers with "15 or more;" or
- Establish damage caps. The federal Civil Rights Act of 1991 placed caps on non-economic and punitive damages for employment discrimination claims at a maximum of $300,000 for the largest employers. While this would be preferable, HB 2 does not contain the same caps.

Conclusion

Ohio's employment laws should protect employee's civil rights while not making it too complicated for HR professionals to comply. HB 2 accomplishes both goals by bringing Ohio law in step with its federal counterpart, Title VII.

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.