



*BEFORE THE HOUSE CIVIL JUSTICE COMMITTEE
PROPONENT TESTIMONY ON HOUSE BILL 352*

Chairman Hambley, Vice Chair Patton, Ranking Member Brown, and members of the House Civil Justice Committee, thank you for the opportunity to provide testimony in support of House Bill 352 (HB 352). My name is Bill Nolan and I am the Managing Partner of the Columbus office for the law firm Barnes & Thornburg LLP, and have represented a wide range of Ohio employers for 30 years.

Barnes & Thornburg is a Midwestern-based law firm with 15 offices across the United States. Businesses of all sizes and in many industries rely on our legal counsel to help them navigate a range of legal issues including regulatory compliance, corporate governance, taxation, and labor and employment. My practice focuses on representing employers in discrimination and other employment disputes, and dispute avoidance through drafting effective policies, training for executives and managers, and counseling employers through workplace issues. I also regularly serve as a voluntary mediator of charges for the U.S. Equal Employment Opportunity Commission (EEOC).

Outside the practice of law, currently I serve as Chair of the Columbus Bar Association's Managing Partners' Diversity Initiative, where our goal is to implement a coordinated approach in law firms for the recruitment and retention of lawyers who will create a diverse community of legal practitioners in our state's capital. Previously I was the Mayor and an 8-year city council member in Powell, Ohio, and was Chair of the Board of Directors of the United Way of Delaware County.

I am here today as a proponent of HB 352 and will specifically discuss how lowering the nation's longest statute of limitation for filing civil workplace discrimination claims and requiring the exhaustion of administrative remedies before filing a workplace discrimination lawsuit will benefit Ohio's business community while also preserving important rights of our state's employees.

Ohio's current 6-year **statute of limitation** for filing civil workplace discrimination claims under R.C. 4112.99 is not the product of action by the Ohio General Assembly. R.C. 4112.99 does not specify a statute of limitation. Instead, the Supreme Court of Ohio in the *Cosgrove* decision from 1994 applied the six-year statute of limitation from RC 2305.07, which is largely for unwritten contracts, to Ohio's workplace discrimination law.

At the time, it was a rather stunning decision; a 6-year statute of limitation is unheard of for a workplace discrimination claim. My colleagues in other states will sometimes have an Ohio issue and, after taking a preliminary look at our discrimination laws, will call me to ask: Does Ohio *really* have a 6-year statute of limitation?

A shorter statute of limitation would have multiple benefits. For Ohio businesses doing business elsewhere, it adds consistency. It lessens the need to maintain departed employees' personnel records long after they have departed. It diminishes the possibility of a dispute where multiple company witnesses have retired, moved on or

– frankly, given the amount of time – forgotten details that may be important to the case. It's simply not fair to expect an employer to defend a claim brought 5-1/2 years after the fact with no prior notice that involved individuals should be preserving recollections.

In addition to the nation's longest statute of limitation for workplace discrimination, current law in Ohio does not preclude individuals from simultaneously filing a charge with the Ohio Civil Rights Commission (OCRC) and a lawsuit. The lack of an **administrative exhaustion requirement** for workplace discrimination claims in Ohio law negatively impacts the state's legal climate because employers and public agencies must use additional resources to fight the same claim in multiple venues.

This is different than federal law and most states' laws. Under federal law, an employee cannot go straight to court without first bringing an administrative charge before the EEOC, the agency charged with enforcing the federal discrimination laws – just as the OCRC is charged with enforcing Ohio's discrimination laws. And there is a process whereby the EEOC and OCRC in effect coordinate so they are not simultaneously investigating the same charge.

But Ohio has the unusual situation where the employee can go to court without going through the OCRC first – or doing so simultaneously with the administrative charge. It's simply inefficient, and unnecessarily uses both the parties' and our states' resources.

HB 352 has the potential to improve Ohio's business and legal climates because it proposes lowering the statute of limitation for filing a civil claim of workplace discrimination from 6-years to 2-years and would require the exhaustion of administrative remedies at OCRC. These reforms will bring our statute of limitation for civil claims in line with many other states and will mirror federal law, which requires the exhaustion of administrative remedies at the EEOC prior to commencing a civil lawsuit.

HB 352 does not unfairly diminish employee rights. As noted, it is consistent with federal and other states' laws. I find that most experienced employee-side lawyers find these changes to be reasonable and inappropriate. In addition, HB 352 actually would extend the filing deadline at the OCRC from 180 days to 2 years, toll the statute of limitation for filing a civil claim while the OCRC investigates the charge, and maintains the employee's right to file a civil claim in court regardless of the OCRC findings. Further, the new statute of limitation and filing deadlines under HB 352 are more generous than federal law which requires civil claims to be filed within 1-year and administrative claims to be filed within 300 days.

In totality, the reforms in HB 352 will improve the legal and business climates in Ohio by reducing the length of potential civil liability for employers and prohibiting the simultaneous filing of administrative and civil workplace discrimination claims while still assuring employees can seek redress for harm caused by any on the job discrimination. I urge your favorable consideration of HB 352 and I can answer questions from the committee.