



GOVERNOR MIKE DEWINE  
OHIO CIVIL RIGHTS COMMISSION

**CHAIR**  
LORI BARRERAS

**COMMISSIONERS**  
JUAN CESPEDES  
WILLIAM W. PATMON, III  
DR. CAROLYN PETERS  
MADHU SINGH

**ACTING EXECUTIVE DIRECTOR**  
STEPHANIE BOSTOS DEMERS

**Before the House Civil Justice Committee  
Proponent Testimony of Ohio Civil Rights Commission  
House Bill 369  
January 28, 2020**

**Stephanie Bostos Demers, Acting Executive Director**

Chair Hambley, Vice-Chair Patton, Ranking Member Brown and members of the House Civil Justice Committee, on behalf of the Ohio Civil Rights Commission (OCRC), I thank you for allowing the agency this opportunity to share our thoughts on House Bill 369. The question before the General Assembly is whether men and women with a different sexual orientation, gender identity or expression should be protected from discrimination in places of employment, public accommodations, housing, and credit. If enacted, the OCRC would be responsible for administering HB 369. The Ohio Civil Rights Commission (“OCRC”) supports the passage of HB 369 and believes it is necessary to ensure equal opportunity and fair treatment for the following reasons.

**Ohio Has a Strong Public Policy Against Discrimination**

The question of what Ohio’s general policy on discrimination is has been asked and answered several times down through history. The General Assembly and the citizens in the state of Ohio have consistently concluded that discrimination is unfair and unwanted because it violates fundamental values of equality and fair play. The root of Ohio’s policy against discrimination stems from a uniform desire to value and accept the contributions and talents of all individuals.

When the Ohio Civil Rights Act, R.C. Chapter 4112 was enacted approximately 60 years ago and was amended to provide broader protections over time, the General Assembly established a policy and expectation for how Ohio's citizens should be treated in places of employment, public accommodations, and housing. There is little doubt that civil rights laws have made us a better nation and state. Likewise, there is little doubt about the harmful effect of acts of discrimination on individuals and our state as a whole. Discriminatory acts preclude individuals from achieving their highest potential and from enjoying the fruits of the American Dream set forth in our Declaration of Independence, Constitution, and laws. Former Chair of the OCRC, Dr. Arthur L. Peterson, correctly stated in 1964 that, "(there) must be a strong commitment to and faithful execution of the anti-discrimination laws of Ohio...the beneficial results of these laws will speak for themselves." Dr. Peterson's prophetic words are as true today as in 1964.

The passage of civil rights laws (e.g., Ledbetter Act, ADA Amendments Act) by our leaders in the United States Congress, the continuing Executive Orders protecting sexual orientation and gender identity for state employees, and even the more recent amendment to the Ohio Civil Rights Act which prohibited discrimination on account of "military status" by the General Assembly demonstrate the continued commitment in our nation and state to equal opportunity and fair treatment.

Ohio's policy on discrimination was best articulated by former Ohio Supreme Court Justice Andy Douglas who acknowledged "(t)he existence of a strong public policy against discrimination." He further stated that, "(t)ime and time again (the court has found) ...there is no place in this state for any sort of discrimination no matter its size, shape, or form or in what clothes it may masquerade." Genaro v. Central Transport, Inc., (1999) 84 Ohio St. 3d 293.

The passage of HB 369 would therefore be consistent with Ohio's long-standing and strong public policy against discrimination. Passage of HB 369 would also send a strong and clear message that Ohio is a place where all individuals can prosper and reach their highest potential.

## **The Passage of House Bill 369 is Necessary to Ensure Equal Opportunity and Fair Treatment**

The OCRC is charged with the statutory task of studying the problems of discrimination in addition to enforcing Ohio's Civil Rights Act. Although it is no secret that individuals with a different sexual orientation or gender identity or expression do not have explicit protection from discrimination in Ohio, individuals still bring stories of bias and unfair treatment to the attention of the OCRC. The stories involve a variety of issues sometimes resulting in the loss of a job, or apartment, or harassing behavior by others through words and conduct against persons with a different sexual orientation or gender identity. Some acts are hate crimes resulting in physical injury. At its core, such conduct robs individuals of their dignity and sense of self-worth having nothing whatsoever to do with their talent, ability or diligence.

I have attached a summary of discriminatory incidents brought to our attention along with cases that we have been asked to investigate as examples of the harm suffered by those with a different sexual orientation or gender identity. Each of these stories demonstrates that harmful discriminatory acts against persons on the basis of sexual orientation or gender identity are indeed occurring in our state. The passage of HB 369 would therefore address this problem and seek to eliminate this egregious discriminatory conduct.

### **The Passage of House Bill 369 Will Clarify and Standardize Existing Law**

The general public today is not well acquainted with the nuances of laws against discrimination relating to sexual orientation and gender identity. Many of the charging parties and respondents who we work with are not even aware that the state has no separate protected class on these bases. Depending on the facts of the case, a charging party may not be able to file a charge based on sexual orientation or gender identity, but still be able to file a charge of sex-based discrimination if the nature of the discriminatory treatment is based on gender stereotyping or sex harassment. This leads to an array of charges that OCRC may or may not be able to investigate in part or in total, making it difficult for citizens to understand their rights and more difficult for employers to stay within the law.

Protections against sexual orientation and gender identity discrimination are made all the more confusing by the various municipal ordinances prohibiting discrimination on these lines. Increasingly, local municipalities are proactively protecting lesbian, gay and transgender citizens; however, each ordinance is unique with different limitations, penalties, and enforcement mechanisms. Many of these local ordinances respect and acknowledge OCRC's experience and efficiency and already include provisions that pass cases along to OCRC for investigation and enforcement when the agency has jurisdiction over the allegations. If HB 369 passes, OCRC will also have jurisdiction over allegations of discrimination based on sexual orientation and gender identity and more cases could be handled through our agency instead of through local municipalities with limited capacity and experience.

House Bill 369 would provide the state with clear protections, enforcement, and punishment. This standard law would make it possible for organizations like OCRC to provide clear guidance and education for employers, business owners and housing providers to prevent discrimination. It will also clarify for citizens what their rights are regardless of where they live or where the discrimination takes place.

### **The Passage of House Bill 369 Will Not Bestow “Special Rights” Upon Any Persons**

The passage of HB 369 will not bestow special rights or privileges upon any persons other than the commonly accepted right to be free of discrimination in places of employment, public accommodations, and housing. There is nothing “special” about recognizing and reiterating Ohio's long-standing policy against discrimination. Rather than bestowing special rights or privileges, the passage of HB 369 would merely provide a level playing field so that all persons can enjoy the fruits of their labor. Citizens who need protection against discrimination certainly do not consider themselves “special” just because our civil rights laws would afford them the same equal opportunity as enjoyed by others.

The granting of this right will not result in a detriment to others just as the granting of civil rights protections to others down through time did not result in a detriment. Every citizen in the State of Ohio can avail themselves of Ohio's civil rights protections at some point in their lives. For example, Ohio's prohibition against race discrimination is applicable to all races. Likewise, the prohibition against sex discrimination applies to both males and females. The prohibition

against religious discrimination is inclusive of all religions and not just a select few. Prohibitions against age discrimination benefit all citizens that are 40 years of age or older. Like these existing protections, providing statutory protections for the LGBTQ community, though objectionable to some, is simply the next step in the civil rights movement. The passage of HB 369 would ensure that all persons, no matter their sexual orientation or gender identity, can work, find housing, dine, shop and simply enjoy the benefits of living in the great state of Ohio with the peace of mind of legal protection.

The OCRC is not tone deaf to concerns, religious and otherwise, raised by those who oppose the granting of these rights. The OCRC has a long history of balancing the interests of all parties and applying the law in a fair and just manner, and the protections set forth in HB 369 will receive the same approach. This is a natural extension of civil rights laws and the provision of these civil rights protections would not be a zero-sum game. Everyone benefits when our state is free of invidious discrimination.

For of these reasons, the Commission believes that House Bill 369 is the right legislation, for the right reasons, and at the right time.

## **Discriminatory Allegations Brought to the Ohio Civil Rights Commission**

### *1. Barski v. Midas*

An employee and military veteran was accused by a manager of being gay and was harassed about his sexual orientation and not conforming to sex stereotypes. The manager harassed the charging party, including repeatedly making the comment, “that’s how I know you’re gay,” after the charging party would do something. The manager also mocked the charging party for being medically released from military duty, saying “you’re not tough enough for the military.” When the charging party reported the behavior to a supervisor, the manager continued the harassment by calling him and saying “Barksy, you’re gay” when he picked up.

### *2. Wilson v. Securitas Security Systems*

A female National Guard member serving as a site supervisor took military leave from her job as she had done for the past five years. Her supervisor’s supervisor made comments about her sexual orientation and other gender stereotyping remarks. When she returned to work and inquired about her work schedule, the company informed her they could not put her on the schedule and told her she was terminated.

### *3. Landlord Prevents Care and Comfort*

A transgender male charging party has a terminal illness and disability which requires access to caregivers as a reasonable accommodation. He alleged that his landlord prevented caregivers from entering his unit as necessary. Friends of the charging party were also denied access because the sex on their identification did not match their gender expression. The landlord threatened eviction because charging party was failing to comply with guest restrictions, however the landlord did not treat other tenants the same way.

### *4. Association Discrimination*

A male charging party worked in the healthcare field and was married to a transgender woman. The charging party alleged that he was subjected to harassment because of his wife, including coworkers saying, “Stay away from him; he has HIV” in front of charging party’s patients. Charging party reported this treatment to HR only to be subsequently disciplined and later fired.

### *5. Schaffnit v. Fresh Vegetables*

A lesbian and 10-year employee, the charging party had served as Operations Manager with distinction. When a new Plant Manager was hired, the charging party was subjected to physical and verbal abuse based on her “different sexual orientation.” When she

complained to the human resource department, she was terminated three days later due to the “issues” that existed between her and the Plant Manager.

6. *Maitland v. Aveda*

A male Jewish youth with feminine qualities was harassed by his instructors at a beauty school. He was informed publicly that “Jewish faggots are not welcome,” and he was removed from the class. After several attempts he was finally removed permanently from the class. At the same school, the only African American gay student was also harassed. When he took a leave for personal reasons, he was denied re-entry though there were no discipline or performance issues on his record.

7. *Porter v. U.S. Express Enterprises*

A transgender woman was subjected to harassment during the onboarding training program. She was asked about her sex, called a “he/she,” segregated from the other trainees, and told that by the manager that he would be personally disgusted to share training space with her.

8. *Brunner v. All-N-One Food & Fuel*

A female employee was harassed by co-workers for not being “feminine.” She was chastised for not wearing makeup, told to start acting like a girl, and advised by a male supervisor that he was going to bring the “bitch” out of her. Her hours were slashed and eventually she was terminated as her female coworkers were not comfortable working with her.

9. *Rose v. YMCA*

The charging party began transitioning from male to female, including a legal name change and adoption of female identity, and was subjected to differential treatment, denied opportunities for career advancement, and eventually fired for minor infractions that were tolerated from other employees. A supervisor said of the charging party, “I don’t understand how they can let someone like that work here... You’re a man dressing like a woman ... it’s just not right.”

10. *McClellan v. XO Nightclub*

A transgender woman attended a “transgender night” Pride Week event at a nightclub. When she went to use the women’s restroom, she was told by staff that she had to stay out of that restroom. During the altercation, she was subjected to racial and anti-transgender slurs, was choked and was subjected to other physical violence.