Proponent testimony from Tony Fiore
On behalf of
The Ohio SHRM State Council
Regarding
HB 352 – Employment Law Uniformity Act
Before the
Senate Judiciary Committee
On
December 9, 2020

Chairman Eklund, Vice Chair Manning, Ranking member Thomas and members of the Senate Judiciary Committee, thank you for the opportunity to provide proponent testimony on long overdue reforms in HB 352 [sponsored by Rep. Jon Cross (R-Kenton) and Rep. George Lang (R-West Chester)] 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 nearly 20 years ago. Therefore, I am hopeful this committee and the full Senate feel it is time to make such changes to state law, especially after an overwhelming bipartisan vote of 76 to 13 coming out of the House.

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 300,000 members with over 115 million employees 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 15,000 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.

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 individually liable when acting in the interest of their employer.

The exception to this provision permits a person to exhaust administrative remedies, but then file a lawsuit alleging that a person other than the employer retaliated against the person for exercising legal protections against unlawful discriminatory practices related to employment or aided and abetted an unlawful discriminatory practice relating to employment.

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 352 requires a charge to be filed with the Ohio Civil Rights Commission (OCRC) within 2 years after the alleged unlawful discriminatory practice relating to employment was committed. This effectively extends Ohio's statute of limitations for filing charges with the OCRC from 180 days to 2 years 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.

This process would require all state 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.

The bill also requires lawsuits based on federal anti-discrimination laws, other than under 1981 claims, be brought within two years after the cause of action accrues.

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. This process and these timeframes are fair to both employers and employees.

Age Discrimination

HB 352 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. Under current law, a person alleging

age discrimination has three avenues to file a lawsuit. 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.

The bill also codifies affirmative defenses as well as non-economic and punitive damage caps already applied in such actions by courts today. The caps referenced in state law today are more favorable to claimant employees than those prescribed by the federal Civil Rights Act of 1991 capping such benefits for small employers (with more than 14, but fewer than 101 employees) around $50,000 and larger employers (with more than 500 employees) around $300,000.

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 352 strikes and appropriate balance between employers and employees.

Chairman Eklund, Vice Chair Manning, Ranking member Thomas and members of the committee, thank you for the opportunity to provide proponent testimony today. I would be happy to answer any questions.