

As Introduced

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H. B. No. 208

Representatives Hillyer, Skindell

Cosponsors: Representatives Boyd, Crossman, Leland, Kelly, Lepore-Hagan, Denson, Russo, Sykes, Brent, Sweeney, Brown, Miller, A., Miranda, Galonski, Ingram, Lightbody, Smith, K., Liston, Sobecki, Howse, West, Weinstein, Miller, J., Blackshear, Boggs, Crawley, Hicks-Hudson, Jarrells, O'Brien, Robinson, Sheehy, Smith, M., Troy, Upchurch, Lampton

A BILL

To amend sections 4112.01 and 4112.05 of the Revised Code to enact the Ohio Fairness Act to prohibit discrimination on the basis of sexual orientation or gender identity or expression, to add mediation as an informal method that the Ohio Civil Rights Commission may use, and to uphold existing religious exemptions under Ohio's Civil Rights Law.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4112.01 and 4112.05 of the Revised Code be amended to read as follows:

Sec. 4112.01. (A) As used in this chapter:

(1) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and other organized groups of persons. "Person" also includes,

but is not limited to, any owner, lessor, assignor, builder, 16
manager, broker, salesperson, appraiser, agent, employee, 17
lending institution, and the state and all political 18
subdivisions, authorities, agencies, boards, and commissions of 19
the state. 20

(2) "Employer" means the state, any political subdivision 21
of the state, or a person employing four or more persons within 22
the state, and any agent of the state, political subdivision, or 23
person. 24

(3) "Employee" means an individual employed by any 25
employer but does not include any individual employed in the 26
domestic service of any person. 27

(4) "Labor organization" includes any organization that 28
exists, in whole or in part, for the purpose of collective 29
bargaining or of dealing with employers concerning grievances, 30
terms or conditions of employment, or other mutual aid or 31
protection in relation to employment. 32

(5) "Employment agency" includes any person regularly 33
undertaking, with or without compensation, to procure 34
opportunities to work or to procure, recruit, refer, or place 35
employees. 36

(6) "Commission" means the Ohio civil rights commission 37
created by section 4112.03 of the Revised Code. 38

(7) "Discriminate" includes segregate or separate. 39

(8) "Unlawful discriminatory practice" means any act 40
prohibited by section 4112.02, 4112.021, or 4112.022 of the 41
Revised Code. 42

(9) "Place of public accommodation" means any inn, 43

restaurant, eating house, barbershop, public conveyance by air, 44
land, or water, theater, store, other place for the sale of 45
merchandise, or any other place of public accommodation or 46
amusement of which the accommodations, advantages, facilities, 47
or privileges are available to the public. 48

(10) "Housing accommodations" includes any building or 49
structure, or portion of a building or structure, that is used 50
or occupied or is intended, arranged, or designed to be used or 51
occupied as the home residence, dwelling, dwelling unit, or 52
sleeping place of one or more individuals, groups, or families 53
whether or not living independently of each other; and any 54
vacant land offered for sale or lease. "Housing accommodations" 55
also includes any housing accommodations held or offered for 56
sale or rent by a real estate broker, salesperson, or agent, by 57
any other person pursuant to authorization of the owner, by the 58
owner, or by the owner's legal representative. 59

(11) "Restrictive covenant" means any specification 60
limiting the transfer, rental, lease, or other use of any 61
housing accommodations because of race, color, religion, sex, 62
military status, familial status, national origin, disability, 63
or ancestry, or any limitation based upon affiliation with or 64
approval by any person, directly or indirectly, employing race, 65
color, religion, sex, military status, familial status, national 66
origin, disability, or ancestry as a condition of affiliation or 67
approval. 68

(12) "Burial lot" means any lot for the burial of deceased 69
persons within any public burial ground or cemetery, including, 70
but not limited to, cemeteries owned and operated by municipal 71
corporations, townships, or companies or associations 72
incorporated for cemetery purposes. 73

(13) "Disability" means a physical or mental impairment 74
that substantially limits one or more major life activities, 75
including the functions of caring for one's self, performing 76
manual tasks, walking, seeing, hearing, speaking, breathing, 77
learning, and working; a record of a physical or mental 78
impairment; or being regarded as having a physical or mental 79
impairment. 80

(14) Except as otherwise provided in section 4112.021 of 81
the Revised Code, "age" means an individual aged forty years or 82
older. 83

(15) "Familial status" means either of the following: 84

(a) One or more individuals who are under eighteen years 85
of age and who are domiciled with a parent or guardian having 86
legal custody of the individual or domiciled, with the written 87
permission of the parent or guardian having legal custody, with 88
a designee of the parent or guardian; 89

(b) Any person who is pregnant or in the process of 90
securing legal custody of any individual who is under eighteen 91
years of age. 92

(16) (a) Except as provided in division (A) (16) (b) of this 93
section, "physical or mental impairment" includes any of the 94
following: 95

(i) Any physiological disorder or condition, cosmetic 96
disfigurement, or anatomical loss affecting one or more of the 97
following body systems: neurological; musculoskeletal; special 98
sense organs; respiratory, including speech organs; 99
cardiovascular; reproductive; digestive; genito-urinary; hemic 100
and lymphatic; skin; and endocrine; 101

(ii) Any mental or psychological disorder, including, but 102

not limited to, intellectual disability, organic brain syndrome,	103
emotional or mental illness, and specific learning disabilities;	104
(iii) Diseases and conditions, including, but not limited	105
to, orthopedic, visual, speech, and hearing impairments,	106
cerebral palsy, autism, epilepsy, muscular dystrophy, multiple	107
sclerosis, cancer, heart disease, diabetes, human	108
immunodeficiency virus infection, intellectual disability,	109
emotional illness, drug addiction, and alcoholism.	110
(b) "Physical or mental impairment" does not include any	111
of the following:	112
(i) Homosexuality and bisexuality;	113
(ii) Transvestism, transsexualism, pedophilia,	114
exhibitionism, voyeurism, gender identity disorders not	115
resulting from physical impairments, or other sexual behavior	116
disorders;	117
(iii) Compulsive gambling, kleptomania, or pyromania;	118
(iv) Psychoactive substance use disorders resulting from	119
the current illegal use of a controlled substance or the current	120
use of alcoholic beverages.	121
(17) "Dwelling unit" means a single unit of residence for	122
a family of one or more persons.	123
(18) "Common use areas" means rooms, spaces, or elements	124
inside or outside a building that are made available for the use	125
of residents of the building or their guests, and includes, but	126
is not limited to, hallways, lounges, lobbies, laundry rooms,	127
refuse rooms, mail rooms, recreational areas, and passageways	128
among and between buildings.	129
(19) "Public use areas" means interior or exterior rooms	130

or spaces of a privately or publicly owned building that are	131
made available to the general public.	132
(20) "Controlled substance" has the same meaning as in	133
section 3719.01 of the Revised Code.	134
(21) "Disabled tenant" means a tenant or prospective	135
tenant who is a person with a disability.	136
(22) "Military status" means a person's status in "service	137
in the uniformed services" as defined in section 5923.05 of the	138
Revised Code.	139
(23) "Aggrieved person" includes both of the following:	140
(a) Any person who claims to have been injured by any	141
unlawful discriminatory practice described in division (H) of	142
section 4112.02 of the Revised Code;	143
(b) Any person who believes that the person will be	144
injured by any unlawful discriminatory practice described in	145
division (H) of section 4112.02 of the Revised Code that is	146
about to occur.	147
(24) "Unlawful discriminatory practice relating to	148
employment" means both of the following:	149
(a) An unlawful discriminatory practice that is prohibited	150
by division (A), (B), (C), (D), (E), or (F) of section 4112.02	151
of the Revised Code;	152
(b) An unlawful discriminatory practice that is prohibited	153
by division (I) or (J) of section 4112.02 of the Revised Code	154
that is related to employment.	155
(25) "Notice of right to sue" means a notice sent by the	156
commission to a person who files a charge under section 4112.051	157

of the Revised Code that states that the person who filed the 158
charge may bring a civil action related to the charge pursuant 159
to section 4112.052 or 4112.14 of the Revised Code, in 160
accordance with section 4112.052 of the Revised Code. 161

(B) For the purposes of divisions (A) to (F) of section 162
4112.02 of the Revised Code, the terms "because of sex" and "on 163
the basis of sex" include, but are not limited to, because of or 164
on the basis of pregnancy, any illness arising out of and 165
occurring during the course of a pregnancy, childbirth, or 166
related medical conditions. Women affected by pregnancy, 167
childbirth, or related medical conditions shall be treated the 168
same for all employment-related purposes, including receipt of 169
benefits under fringe benefit programs, as other persons not so 170
affected but similar in their ability or inability to work, and 171
nothing in division (B) of section 4111.17 of the Revised Code 172
shall be interpreted to permit otherwise. This division shall 173
not be construed to require an employer to pay for health 174
insurance benefits for abortion, except where the life of the 175
mother would be endangered if the fetus were carried to term or 176
except where medical complications have arisen from the 177
abortion, provided that nothing in this division precludes an 178
employer from providing abortion benefits or otherwise affects 179
bargaining agreements in regard to abortion. 180

(C) For purposes of the Revised Code, any provision 181
respecting sex discrimination includes discrimination because of 182
a person's sexual orientation or gender identity or expression. 183

Sec. 4112.05. (A) (1) With the exception of unlawful 184
discriminatory practices relating to employment, the commission, 185
as provided in this section, shall prevent any person from 186
engaging in unlawful discriminatory practices. 187

(2) The commission may at any time attempt to resolve 188
allegations of unlawful discriminatory practices other than 189
allegations concerning unlawful discriminatory practices 190
relating to employment by the use of alternative dispute 191
resolution, provided that, before instituting the formal hearing 192
authorized by division (B) of this section, it shall attempt, by 193
informal methods of conference, conciliation, mediation, and 194
persuasion, to induce compliance with this chapter. 195

(B) (1) Any person may file a charge with the commission 196
alleging that another person has engaged or is engaging in an 197
unlawful discriminatory practice. In the case of a charge 198
alleging an unlawful discriminatory practice that is not an 199
unlawful discriminatory practice relating to employment and that 200
is described in division (G), (I), or (J) of section 4112.02 or 201
in section 4112.021 or 4112.022 of the Revised Code, the charge 202
shall be in writing and under oath and shall be filed with the 203
commission within six months after the alleged unlawful 204
discriminatory practice was committed. In the case of a charge 205
alleging an unlawful discriminatory practice described in 206
division (H) of section 4112.02 of the Revised Code, the charge 207
shall be in writing and under oath and shall be filed with the 208
commission within one year after the alleged unlawful 209
discriminatory practice was committed. 210

(a) An oath under this section may be made in any form of 211
affirmation the person deems binding on the person's conscience. 212
Acceptable forms include, but are not limited to, declarations 213
made under penalty of perjury. 214

(b) Any charge timely received, via facsimile, postal 215
mail, electronic mail, or otherwise, may be signed under oath 216
after the limitations period for filing set forth under division 217

(B) (1) of this section and will relate back to the original 218
filing date. 219

(2) Upon receiving a charge other than a charge concerning 220
unlawful discriminatory practices relating to employment, the 221
commission may initiate a preliminary investigation to determine 222
whether it is probable that an unlawful discriminatory practice 223
has been or is being engaged in. The commission also may 224
conduct, upon its own initiative and independent of the filing 225
of any charges, a preliminary investigation relating to any of 226
the unlawful discriminatory practices that are not unlawful 227
discriminatory practices relating to employment and that are 228
described in division (I) or (J) of section 4112.02 or in 229
section 4112.021 or 4112.022 of the Revised Code. Prior to a 230
notification of a complainant under division (B) (4) of this 231
section or prior to the commencement of informal methods of 232
conference, conciliation, mediation, and persuasion, or 233
alternative dispute resolution, under that division, the members 234
of the commission and the officers and employees of the 235
commission shall not make public in any manner and shall retain 236
as confidential all information that was obtained as a result of 237
or that otherwise pertains to a preliminary investigation other 238
than one described in division (B) (3) of this section. 239

(3) (a) Unless it is impracticable to do so and subject to 240
its authority under division (B) (3) (d) of this section, the 241
commission shall complete a preliminary investigation of a 242
charge filed pursuant to division (B) (1) of this section that 243
alleges an unlawful discriminatory practice described in 244
division (H) of section 4112.02 of the Revised Code, and shall 245
take one of the following actions, within one hundred days after 246
the filing of the charge: 247

(i) Notify the complainant and the respondent that it is 248
not probable that an unlawful discriminatory practice described 249
in division (H) of section 4112.02 of the Revised Code has been 250
or is being engaged in and that the commission will not issue a 251
complaint in the matter; 252

(ii) Initiate a complaint and schedule it for informal 253
methods of conference, conciliation, mediation, and persuasion, 254
or alternative dispute resolution; 255

(iii) Initiate a complaint and refer it to the attorney 256
general with a recommendation to seek a temporary or permanent 257
injunction or a temporary restraining order. If this action is 258
taken, the attorney general shall apply, as expeditiously as 259
possible after receipt of the complaint, to the court of common 260
pleas of the county in which the unlawful discriminatory 261
practice allegedly occurred for the appropriate injunction or 262
order, and the court shall hear and determine the application as 263
expeditiously as possible. 264

(b) If it is not practicable to comply with the 265
requirements of division (B) (3) (a) of this section within the 266
one-hundred-day period described in that division, the 267
commission shall notify the complainant and the respondent in 268
writing of the reasons for the noncompliance. 269

(c) Prior to the issuance of a complaint under division 270
(B) (3) (a) (ii) or (iii) of this section or prior to a 271
notification of the complainant and the respondent under 272
division (B) (3) (a) (i) of this section, the members of the 273
commission and the officers and employees of the commission 274
shall not make public in any manner and shall retain as 275
confidential all information that was obtained as a result of or 276
that otherwise pertains to a preliminary investigation of a 277

charge filed pursuant to division (B)(1) of this section that 278
alleges an unlawful discriminatory practice described in 279
division (H) of section 4112.02 of the Revised Code. 280

(d) Notwithstanding the types of action described in 281
divisions (B)(3)(a)(ii) and (iii) of this section, prior to the 282
issuance of a complaint or the referral of a complaint to the 283
attorney general and prior to endeavoring to eliminate an 284
unlawful discriminatory practice described in division (H) of 285
section 4112.02 of the Revised Code by informal methods of 286
conference, conciliation, mediation, and persuasion, or by 287
alternative dispute resolution, the commission may seek a 288
temporary or permanent injunction or a temporary restraining 289
order in the court of common pleas of the county in which the 290
unlawful discriminatory practice allegedly occurred. 291

(4) If the commission determines after a preliminary 292
investigation other than one concerning an alleged unlawful 293
discriminatory practice relating to employment or one described 294
in division (B)(3) of this section that it is not probable that 295
an unlawful discriminatory practice has been or is being engaged 296
in, it shall notify any complainant under division (B)(1) of 297
this section that it has so determined and that it will not 298
issue a complaint in the matter. If the commission determines 299
after a preliminary investigation other than one concerning an 300
alleged unlawful discriminatory practice relating to employment 301
or one described in division (B)(3) of this section that it is 302
probable that an unlawful discriminatory practice has been or is 303
being engaged in, it shall endeavor to eliminate the practice by 304
informal methods of conference, conciliation, mediation, and 305
persuasion, or by alternative dispute resolution. 306

(5) Nothing said or done during informal methods of 307

conference, conciliation, mediation, and persuasion, or during 308
alternative dispute resolution, under this section shall be 309
disclosed by any member of the commission or its staff or be 310
used as evidence in any subsequent hearing or other proceeding. 311
If, after a preliminary investigation and the use of informal 312
methods of conference, conciliation, mediation, and persuasion, 313
or alternative dispute resolution, under this section, the 314
commission is satisfied that any unlawful discriminatory 315
practice will be eliminated, it may treat the charge involved as 316
being conciliated and enter that disposition on the records of 317
the commission. If the commission fails to effect the 318
elimination of an unlawful discriminatory practice by informal 319
methods of conference, conciliation, mediation, and persuasion, 320
or by alternative dispute resolution under this section and to 321
obtain voluntary compliance with this chapter, the commission 322
shall issue and cause to be served upon any person, including 323
the respondent against whom a complainant has filed a charge 324
pursuant to division (B)(1) of this section, a complaint stating 325
the charges involved and containing a notice of an opportunity 326
for a hearing before the commission, a member of the commission, 327
or a hearing examiner at a place that is stated in the notice 328
and that is located within the county in which the alleged 329
unlawful discriminatory practice has occurred or is occurring or 330
in which the respondent resides or transacts business. The 331
hearing shall be held not less than thirty days after the 332
service of the complaint upon the complainant, the aggrieved 333
persons other than the complainant on whose behalf the complaint 334
is issued, and the respondent, unless the complainant, an 335
aggrieved person, or the respondent elects to proceed under 336
division (A)(2) of section 4112.055 of the Revised Code when 337
that division is applicable. If a complaint pertains to an 338
alleged unlawful discriminatory practice described in division 339

(H) of section 4112.02 of the Revised Code, the complaint shall 340
notify the complainant, an aggrieved person, and the respondent 341
of the right of the complainant, an aggrieved person, or the 342
respondent to elect to proceed with the administrative hearing 343
process under this section or to proceed under division (A) (2) 344
of section 4112.055 of the Revised Code. 345

(6) The attorney general shall represent the commission at 346
any hearing held pursuant to division (B) (5) of this section and 347
shall present the evidence in support of the complaint. 348

(7) Any complaint issued pursuant to division (B) (5) of 349
this section after the filing of a charge under division (B) (1) 350
of this section shall be so issued within one year after the 351
complainant filed the charge with respect to an alleged unlawful 352
discriminatory practice. 353

(C) (1) Any complaint issued pursuant to division (B) of 354
this section may be amended by the commission, a member of the 355
commission, or the hearing examiner conducting a hearing under 356
division (B) of this section. 357

(a) Except as provided in division (C) (1) (b) of this 358
section, a complaint issued pursuant to division (B) of this 359
section may be amended at any time prior to or during the 360
hearing. 361

(b) If a complaint issued pursuant to division (B) of this 362
section alleges an unlawful discriminatory practice described in 363
division (H) of section 4112.02 of the Revised Code, the 364
complaint may be amended at any time up to seven days prior to 365
the hearing and not thereafter. 366

(2) The respondent has the right to file an answer or an 367
amended answer to the original and amended complaints and to 368

appear at the hearing in person, by attorney, or otherwise to 369
examine and cross-examine witnesses. 370

(D) The complainant shall be a party to a hearing under 371
division (B) of this section, and any person who is an 372
indispensable party to a complete determination or settlement of 373
a question involved in the hearing shall be joined. Any 374
aggrieved person who has or claims an interest in the subject of 375
the hearing and in obtaining or preventing relief against the 376
unlawful discriminatory practices complained of shall be 377
permitted to appear only for the presentation of oral or written 378
arguments, to present evidence, perform direct and cross- 379
examination, and be represented by counsel. The commission shall 380
adopt rules, in accordance with Chapter 119. of the Revised Code 381
governing the authority granted under this division. 382

(E) In any hearing under division (B) of this section, the 383
commission, a member of the commission, or the hearing examiner 384
shall not be bound by the Rules of Evidence but, in ascertaining 385
the practices followed by the respondent, shall take into 386
account all reliable, probative, and substantial statistical or 387
other evidence produced at the hearing that may tend to prove 388
the existence of a predetermined pattern of employment or 389
membership, provided that nothing contained in this section 390
shall be construed to authorize or require any person to observe 391
the proportion that persons of any race, color, religion, sex, 392
military status, familial status, national origin, disability, 393
age, or ancestry bear to the total population or in accordance 394
with any criterion other than the individual qualifications of 395
the applicant. 396

(F) The testimony taken at a hearing under division (B) of 397
this section shall be under oath and shall be reduced to writing 398

and filed with the commission. Thereafter, in its discretion, 399
the commission, upon the service of a notice upon the 400
complainant and the respondent that indicates an opportunity to 401
be present, may take further testimony or hear argument. 402

(G) (1) (a) If, upon all reliable, probative, and 403
substantial evidence presented at a hearing under division (B) 404
of this section, the commission determines that the respondent 405
has engaged in, or is engaging in, any unlawful discriminatory 406
practice, whether against the complainant or others, the 407
commission shall state its findings of fact and conclusions of 408
law and shall issue and, subject to the provisions of Chapter 409
119. of the Revised Code, cause to be served on the respondent 410
an order requiring the respondent to do all of the following: 411

(i) Cease and desist from the unlawful discriminatory 412
practice; 413

(ii) Take any further affirmative or other action that 414
will effectuate the purposes of this chapter, including, but not 415
limited to, hiring, reinstatement, or upgrading of employees 416
with or without back pay, or admission or restoration to union 417
membership; 418

(iii) Report to the commission the manner of compliance. 419

If the commission directs payment of back pay, it shall 420
make allowance for interim earnings. 421

(b) If the commission finds a violation of division (H) of 422
section 4112.02 of the Revised Code, in addition to the action 423
described in division (G) (1) (a) of this section, the commission 424
additionally may require the respondent to undergo remediation 425
in the form of a class, seminar, or any other type of 426
remediation approved by the commission, may require the 427

respondent to pay actual damages and reasonable attorney's fees, 428
and may, to vindicate the public interest, assess a civil 429
penalty against the respondent as follows: 430

(i) If division (G)(1)(b)(ii) or (iii) of this section 431
does not apply, a civil penalty in an amount not to exceed ten 432
thousand dollars; 433

(ii) If division (G)(1)(b)(iii) of this section does not 434
apply and if the respondent has been determined by a final order 435
of the commission or by a final judgment of a court to have 436
committed one violation of division (H) of section 4112.02 of 437
the Revised Code during the five-year period immediately 438
preceding the date on which a complaint was issued pursuant to 439
division (B) of this section, a civil penalty in an amount not 440
to exceed twenty-five thousand dollars; 441

(iii) If the respondent has been determined by a final 442
order of the commission or by a final judgment of a court to 443
have committed two or more violations of division (H) of section 444
4112.02 of the Revised Code during the seven-year period 445
immediately preceding the date on which a complaint was issued 446
pursuant to division (B) of this section, a civil penalty 447
damages in an amount not to exceed fifty thousand dollars. 448

(2) Upon the submission of reports of compliance, the 449
commission may issue a declaratory order stating that the 450
respondent has ceased to engage in particular unlawful 451
discriminatory practices. 452

(H) If the commission finds that no probable cause exists 453
for crediting charges of unlawful discriminatory practices or 454
if, upon all the evidence presented at a hearing under division 455
(B) of this section on a charge, the commission finds that a 456

respondent has not engaged in any unlawful discriminatory 457
practice against the complainant or others, it shall state its 458
findings of fact and shall issue and cause to be served on the 459
complainant an order dismissing the complaint as to the 460
respondent. A copy of the order shall be delivered in all cases 461
to the attorney general and any other public officers whom the 462
commission considers proper. 463

If, upon all the evidence presented at a hearing under 464
division (B) of this section on a charge, the commission finds 465
that a respondent has not engaged in any unlawful discriminatory 466
practice against the complainant or others, it may award to the 467
respondent reasonable attorney's fees to the extent provided in 468
5 U.S.C. 504 and accompanying regulations. 469

(I) Until the time period for appeal set forth in division 470
(H) of section 4112.06 of the Revised Code expires, the 471
commission, subject to the provisions of Chapter 119. of the 472
Revised Code, at any time, upon reasonable notice, and in the 473
manner it considers proper, may modify or set aside, in whole or 474
in part, any finding or order made by it under this section. 475

Section 2. That existing sections 4112.01 and 4112.05 of 476
the Revised Code are hereby repealed. 477

Section 3. This act upholds existing religious exemptions 478
currently in Ohio law. 479