



H.B. 189

127th General Assembly
(As Introduced)

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BILL SUMMARY

- Prohibits discrimination based on military status with respect to the Ohio Civil Rights Act and various other anti-discrimination laws regarding employment and work related issues, housing and real estate acquisition, health care, and insurance.
- Requires the Attorney General to appoint a staff member of the Consumer Protection Division to expedite certain cases or issues raised by a person, or the person's immediate family, who is deployed on active duty.

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CONTENT AND OPERATION

Current law generally protects an individual from discrimination based on a factor such as the individual's race, color, religion, sex, age, national origin, ancestry, or disability.¹ The bill amends the laws with respect to unlawful discriminatory practices and other unlawful discrimination to add military status to the factors that cannot be used to discriminate.² The bill also amends certain other laws to add military status to the factors that cannot be used to discriminate

¹ Current law lists of discriminatory factors vary, depending on the law. For example some laws include age as a prohibited factor; some do not.

² "Military status" is defined by the bill to mean a person's status in "service in the uniformed services" (R.C. 4112.01).

"Service in the uniformed services" means the performance of duty, on a voluntary or involuntary basis, in a uniformed service, under competent authority, and includes active duty, active duty for training, initial active duty for training, inactive duty for training, full-time National Guard Duty, and performance of duty or training by a member of the Ohio Organized Militia. "Service in the uniformed services" includes the period of time for which a person is absent from a position of public employment for the purpose of an examination to determine the fitness of a person to perform any duty described above (R.C. 5903.01, not in bill).

"Uniformed service" means the armed forces, the Ohio Organized Militia when engaged in active duty for training, inactive duty training, or full-time national guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President of the United States in time of war or emergency (R.C. 5903.01).

"Ohio Organized Militia" means members of the Ohio Air National Guard, Ohio Army National Guard, Ohio Naval Militia, and Ohio Military Reserve who are Ohio citizens 17 to 66 years of age and who are not permanently handicapped (R.C. 5923.01, not in the bill).

regarding employment and work-related situations, housing and real estate acquisition, and insurance and health care.

In explaining the bill's provisions, this analysis does not recite the existing list of prohibited discriminatory factors in each law to which military status is being added; those existing factors are unaffected by the bill and should be understood as being present along with the added factor of military status.

Civil Rights Commission Laws

The Ohio Civil Rights Commission is required to prevent any person from engaging in unlawful discriminatory practices. These practices cover a wide range of areas in which discrimination may occur, including public places of accommodation, housing, real estate, employment, and credit practices. In addition to informal means of preventing unlawful discriminatory practices, which include conference, conciliation, and persuasion, the Commission may take formal action based on the filing, by any person, of a charge that another person is engaging in or has engaged in an unlawful discriminatory practice. The formal process can include investigation, hearing, and eventually issuance of various orders, including cease and desist orders and orders to pay actual damages and reasonable attorney fees. Commission orders may be reviewed as well as enforced by a court.

In addition to its duties to stop unlawful discriminatory practices, the Commission has other duties, including surveying the existence and effect of discrimination on civil rights in Ohio, preparing educational plans designed to eliminate prejudice, receiving reports regarding affirmative housing accommodation programs, studying problems of discrimination, and issuing publications and research and investigation results aimed at reducing or eliminating discrimination.³

The following are situations relating to the Commission and its duties in which the bill adds military status to the prohibited discriminatory factors.

Unlawful discriminatory practice

(R.C. 4112.01, 4112.02, and 4112.021)

Employment. Under the bill, it is an unlawful discriminatory practice:

³ See R.C. Chapter 4112. regarding Ohio's civil rights laws, some of which are included in the bill.

- For any employer, because of military status, to discharge without just cause, refuse to hire, or otherwise discriminate against a person regarding employment;
- For any employment agency or personnel placement service, because of military status, to (1) refuse or fail to accept, register, classify properly, or refer for employment, or otherwise discriminate against any person, or (2) comply with requests from employers asking for employee applicants in violation of the Ohio Civil Rights Act;
- For any labor organization to limit or classify its membership on the basis of military status;
- For any labor organization to discriminate against, limit the employment opportunities of, or otherwise adversely affect the employment status, wages, hours, and conditions of any person based on military status;
- For any employer, labor organization, or joint labor-management committee controlling apprentice training programs to discriminate against a person because of military status in admission to, or employment in, any apprentice training program;
- Except when approved by the Commission in advance for a bona fide occupational qualification, for any employer, employment agency, personnel placement service, or labor organization, prior to employment or admission to: (1) elicit or attempt to elicit the military status of an applicant for employment or membership, (2) make or keep a record of the military status of an applicant for employment or membership, (3) use an employment, personnel, or membership form seeking to elicit information regarding military status, (4) print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification, or discrimination based on military status, (5) announce or follow a policy of denying or limiting employment or membership opportunities for any group because of military status, or (6) use to recruit or hire persons any employment agency, personnel placement service, training school or center, labor organization, or any other employee-referring source known to discriminate against persons because of military status;
- For any person seeking employment to publish or cause to be published any advertisement that specifies or in any manner indicates that person's military status or expresses a limitation or preference as to the military status of any prospective employer.

Public accommodations. The bill provides that it is an unlawful discriminatory practice:

- For any proprietor or employee, keeper, or manager of a place of public accommodation to deny any person, except for reasons applicable alike to all persons regardless of military status, the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of accommodation.

Housing accommodations and real estate. Under the bill, it is an unlawful discriminatory practice for any person to do the following:

- Refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of military status;
- Represent to any person that housing accommodations are not available for inspection, sale, or rental, when in fact they are available, because of military status;
- Discriminate against any person in the making or purchasing of loans or the provision of other financial assistance for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations, or any person in the making or purchasing of loans or the provision of other financial assistance that is secured by residential real estate, because of military status;⁴
- Discriminate against any person in the terms or conditions of selling, transferring, assigning, renting, leasing, or subleasing any housing accommodations or in furnishing facilities, services, or privileges in connection with the ownership, occupancy, or use of any housing accommodations, including the sale of fire, extended coverage, or homeowners insurance, because of military status;
- Discriminate against any person in the terms or conditions of any loan, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations because of military status;

⁴ This provision applies to business situations, and does not apply to owner-occupied residence sales where the lending is part of the purchase price, or casual or occasional sales to a relative or friend.

- Print, publish, or circulate any statement or advertisement, or make or cause to be made any statement or advertisement, relating to the sale, transfer, assignment, rental, lease, sublease, or acquisition of any housing accommodations, or relating to the loan of money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations, that indicates any preference, limitation, specification, or discrimination based on military status, or an intention to make any such preference, limitation, specification, or discrimination;
- Make any inquiry, elicit any information, make or keep any record, or use any form of application containing questions or entries concerning military status in connection with the sale or lease of any housing accommodations or the loan of any money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations;⁵
- Include in any transfer, rental, or lease of housing accommodations any restrictive covenant, or honor or exercise, or attempt to honor or exercise, any restrictive covenant limiting the transfer, rental, lease, or other use of any housing accommodations because of military status, or including any limitation based upon affiliation with or approval by any person, directly or indirectly, employing military status;
- Induce or solicit, or attempt to induce or solicit, a housing accommodations listing, sale, or transaction by representing that a change has occurred or may occur with respect to the military status composition of the block, neighborhood, or other area in which the housing accommodations are located, or induce or solicit, or attempt to induce or solicit, a housing accommodations listing, sale, or transaction by representing that the presence or anticipated presence of persons of any military status in the block, neighborhood, or other area will or may have results including the following: (1) the lowering of property values, (2) a change in the military status composition of the block, neighborhood, or other area, (3) an increase in criminal or antisocial behavior in the block, neighborhood, or other area, or (4) a decline in the quality of the schools serving the block, neighborhood, or other area;

⁵ Any person may make inquiries, and make and keep records, concerning military status for the purpose of monitoring compliance with the Ohio Civil Rights Act.

- Deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting housing accommodations, or discriminate against any person in the terms or conditions of that access, membership, or participation, on account of military status;
- Discourage or attempt to discourage the purchase by a prospective purchaser of housing accommodations, by representing that any block, neighborhood, or other area has undergone or might undergo a change with respect to its military status composition;
- Refuse to sell, transfer, assign, rent, lease, sublease, or finance, or otherwise deny or withhold, a burial lot from any person because of the military status of any prospective owner or user of the lot;
- Discriminate against any person in the selling, brokering, or appraising of real property because of military status.

Creditor practices. The bill provides that it is an unlawful discriminatory practice for any creditor to do any of the following:

- Discriminate against any applicant for credit in the granting, withholding, extending, or renewing of credit, or in the fixing of the rates, terms, or conditions of any form of credit, on the basis of military status;
- Use or make any inquiry as to military status for the purpose of limiting or specifying those persons to whom credit will be granted, except with respect to any inquiry, elicitation of information, record, or form of application required of a particular creditor by any instrumentality or agency of the federal government;
- Refuse to consider the sources of income of an applicant for credit, or disregard or ignore the income of an applicant, in whole or in part, on the basis of military status;
- Impose any special requirements or conditions, including, but not limited to, a requirement for co-obligors or reapplication, upon any applicant or class of applicants on the basis of military status in circumstances where similar requirements or conditions are not imposed on other applicants similarly situated;

- Fail or refuse on the basis of military status to maintain, upon the request of the individual, a separate account for each individual to whom credit is extended;
- Fail or refuse on the basis of military status to maintain records on any account established after November 1, 1976, to furnish information on the accounts to credit reporting agencies in a manner that clearly designates the contractual liability for repayment as indicated on the application for the account, and, if more than one individual is contractually liable for repayment, to maintain records and furnish information in the name of each individual.⁶

Credit reporting agency practices. Under the bill, it is an unlawful discriminatory practice for any credit reporting agency to do any of the following:

- Fail or refuse on the basis of military status to maintain, upon the request of the individual, a separate file on each individual about whom information is assembled or evaluated;
- Fail or refuse on the basis of military status to clearly note, maintain, and report any information furnished it from a creditor regarding repayment liability.

Civil Rights Commission duties under the bill

(R.C. 4112.04 and 4112.05)

Discrimination surveys. The Commission must make periodic surveys of the existence and effect of discrimination because of military status on the enjoyment of civil rights by persons in Ohio.

Comprehensive educational program. The Commission must prepare a comprehensive educational program, in cooperation with the Department of Education, for Ohio residents and the students in Ohio public schools that is designed to eliminate prejudice on the basis of military status in Ohio and to emphasize the origin of prejudice against military status, its harmful effects, and its incompatibility with American principles of equality and fair play;

⁶ This provision is not applicable to individuals who are contractually liable only if the primary party defaults.

Affirmative action employment and housing accommodation program reports. The Commission must also receive progress reports from state agencies, instrumentalities, institutions, boards, commissions, and other entities or any political subdivisions and their agencies, instrumentalities, institutions, boards, commissions, and other entities regarding affirmative action programs for the employment of persons against whom discrimination has occurred because of military status, or regarding any affirmative housing accommodations programs developed to eliminate or reduce an imbalance of persons of military status. All state and local governmental entities that have undertaken affirmative action programs pursuant to a conciliation agreement with the Commission, an executive order of the Governor, any federal statute or rule, or an executive order of the President of the United States must file progress reports with the Commission annually on or before the first day of November. The Commission must analyze and evaluate the progress reports and report its findings annually to the General Assembly on or before the thirtieth day of January of the year immediately following the receipt of the reports.

Study of discrimination problems. The Commission may study the problems of discrimination in all fields of human relationships when based on military status, or may empower local or statewide advisory agencies and conciliation councils it creates to do so.

Publications, investigations, and research about discrimination. The Commission may issue any publications and the results of investigations and research that in its judgment will tend to promote good will and minimize or eliminate discrimination because of military status.

Commission hearings. When the Commission conducts a hearing on alleged unlawful discriminatory practice, the Commission, its members, or the hearing examiner are not bound by the Rules of Evidence, but in ascertaining the practices followed by the respondent, must take into account all reliable, probative, and substantial statistical or other evidence produced at the hearing that may tend to prove the existence of a predetermined pattern of employment or membership, provided that nothing in the Ohio Civil Rights Act governing Commission hearings authorizes or requires any person to observe the proportion that persons of military status bear to the total population or in accordance with any criterion other than the individual qualifications of the applicant.

Ohio Civil Rights Act affect on other laws

(R.C. 4112.08)

The bill provides that nothing contained in the Ohio Civil Rights Act may be construed to repeal any of the provisions of any Ohio law relating to

discrimination based on military status, except that any person filing such a charge of discrimination under the Ohio Civil Rights Act based on military status is barred from instituting a civil action in any court with jurisdiction for any legal or equitable relief that will effectuate the individual's rights.

Employment and work-related discrimination⁷

The following are situations that are employment and work-related in which the bill adds military status to the factors that cannot be used to discriminate or that can be used to include an individual in a protected or covered class for participation in a special program, or for special benefit or protection.

Health insuring corporation contracts with physicians

(R.C. 124.93)

The bill prohibits health insuring corporations that enter into or renew a contract with the Department of Administrative Services (DAS) to provide health care for state employees from refusing to contract with a physician to provide that health care based on the physician's military status.

Hiring and treatment of employees under state or political subdivision purchase contracts

(R.C. 125.111)

Every contract, for or on behalf of the state or its political subdivisions for any purchase must contain provisions under which the contractor agrees: (1) that when hiring employees to perform work under the contract or any subcontract, the contractor or subcontractor must not discriminate against any citizen of Ohio because of military status if the person is qualified and available to do the work under the contract, and (2) that a contractor, subcontractor, or person acting on their behalf must not discriminate against, intimidate, or retaliate against any employee hired to perform work under the contract based on military status.

⁷ The bill codifies the Sixth Circuit decision in *Fisher v. Peters*, 249 F.3d 433 (2001), which requires persons whose civilian job is inherently military to use military, rather than civilian, channels when pursuing employment discrimination claims (R.C. 4112.023 added by the bill).

Hiring and treatment of employees under public building or works contracts

(R.C. 153.59)

Every state, township, county, or municipal contract to construct, alter, or repair any public building or public work must contain provisions by which the contractor agrees: (1) that when hiring employees to perform work under the contract or any subcontract, the contractor, subcontractor, or a person acting on their behalf must not discriminate against any citizen of Ohio based on military status if the person is qualified and available to perform the work under the contract or subcontract to which the employment relates, and (2) that a contractor, subcontractor, or person acting on their behalf must not discriminate against, or intimidate, any employee hired to perform work under the contract based on the employee's military status.

Affirmative action programs regarding public building and works contracts; equal consideration of minority business enterprises

(R.C. 153.59)

DAS must ensure that no capital money appropriated by the General Assembly for any purpose can be expended unless the project for which the money is appropriated provides for an affirmative action program for the employment and effective utilization of disadvantaged persons whose disadvantage may arise from military status. DAS must also ensure, when awarding contracts for capital improvement projects, that equal consideration be given to contractors, subcontractors, or joint venturers who qualify as a minority business enterprise. Under the bill, a minority business enterprise may be one that is owned or controlled by one or more persons who are Ohio residents and who are disadvantaged because of military status.

Hiring hall agreements

(R.C. 153.591)

Any provision of a hiring hall contract or agreement that obligates a contractor to hire, if available, only employees referred to the contractor by a labor organization are void as against public policy and unenforceable with respect to employment under any public works contract unless at the date of execution of the contract or agreement, or within 30 days, the labor organization has in effect procedures for referring qualified employees regardless of military status.

Public employee union anti-discrimination pledge

(R.C. 4117.19)

As part of its annual report filed with the State Employment Relations Board, each employee organization certified or recognized to represent public employees must include a pledge, in a form prescribed by the Board, that the organization complies with the laws of the state and accepts members without regard to military status.

Housing and real estate acquisition discrimination

The following are situations relating to housing and real estate acquisition in which the bill adds military status to the factors that cannot be used to discriminate or that can be used to include an individual in a protected or covered class for participation in a special program, or for special benefit or protection.

Affirmative marketing plans as condition to issuance of housing general obligations

(R.C. 176.04)

No municipal corporation, county, or township is permitted to issue general obligations to provide or assist in providing housing unless it has, among other requirements, submitted to the housing advisory board serving it, a plan for affirmative marketing to persons who are members of groups that may be disadvantaged because of military status.

Reporting of mortgage loan information

(R.C. 176.06)

Each municipal corporation, county, and township must compile and make available to the public for inspection or copying for a period of five years the number and total dollar amount of mortgage loans that were originated, for which completed applications were received and applicants rejected, and that were purchased by that municipal corporation, county, or township during each fiscal year. The information must be itemized to clearly and conspicuously disclose, among other things, the number and dollar amount of mortgage loans involving mortgagors and mortgage applicants grouped according to military status.

Denial of municipal housing to elderly or low- to moderate-income persons

(R.C. 717.01)

A municipal corporation may construct or rehabilitate, equip, maintain, operate, and lease facilities for housing elderly and low- or moderate-income persons. No municipal corporation, with respect to those housing accommodations, may deny them to or withhold them from an elderly or low- or moderate-income person based on military status. If such a denial or withholding occurs, the elderly or low- or moderate-income person may file a charge with the Civil Rights Commission.

Crime of interference with fair housing rights

(R.C. 2927.03)

No person is permitted by force or threat of force to willfully injure, intimidate, or interfere with, or attempt to injure, intimidate, or interfere with (1) any person obtaining or providing housing because of military status, (2) any person participating in the process of obtaining or providing housing who is not engaging in discrimination based on military status, or (3) any person aiding or encouraging others to participate in the process of obtaining or providing housing who is not engaging in discrimination based on military status or who is participating in the exercise of free speech or peaceful assembly regarding denial of the opportunity to participate in the process of obtaining or providing housing.

Display of notice about illegal discrimination regarding real estate transactions

(R.C. 4735.16)

Every real estate broker's office must prominently display in the same immediate area as licenses are displayed a statement that it is illegal to discriminate against any person because of military status in the sale or rental of housing or residential lots, in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokering services.

Real estate transaction agency agreements

(R.C. 4735.55)

Each written real estate transaction agency agreement must contain, among other things, a statement that it is illegal under federal and state law to refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations,

refuse to negotiate for the sale or rental of housing accommodations, or deny or otherwise make unavailable housing accommodations because of military status, or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services.

Insurance and health care

The following are situations relating to insurance and health care in which the bill adds military status to the factors that cannot be used to discriminate.

Health insurance and care

(R.C. 1751.18)

Unless otherwise required by state or federal law, a health insuring corporation, or health care facility or provider through which a health insuring corporation has made arrangements to provide health care services, may not discriminate against any individual regarding enrollment, disenrollment, or the quality of health care services rendered based on the individual's military status.

Insurance agent consumer fee

(R.C. 3905.55)

An insurance agent may charge a consumer fee if, among other requirements, the agent, in charging the fee, does not discriminate based on military status.

Expedition of consumer protection and other cases or issues

(R.C. 1349.04)

The bill requires the Attorney General to appoint a member of the staff of the Consumer Protection Division to expedite cases or issues raised by a person, or the immediate family of the person, who is deployed on active duty, which cases or issues relate to Ohio laws regulating consumer protection.⁸ The expedition of cases and issues also applies to laws addressing the following:

⁸ "Active duty" has the same meaning as that term is used for purposes of interactive video conference facilities.

"Immediate family" means a person's spouse residing in the person's household; brothers and sisters of the whole or half blood; children, including adopted children and stepchildren; parents; and grandparents.

- DAS authority to contract for state agencies regarding telephone, telecommunication, and computer services;
- A prohibition against a county recorder charging fees for the recording of a military power of attorney;
- Interest and finance charges regarding a person or spouse deployed on active duty;
- Termination of motor vehicle leases and cellular phone contracts where a person or spouse is deployed on active duty;
- Military leave of absence from state and private institutions of higher education and career colleges and universities;
- Authority of courts where ability to pay agreed rent is materially affected by deployment on active duty;
- Free public schooling when a parent is on active duty;
- Provisions of life insurance contracts when a Reservist is on active duty;
- Prohibiting gas and electric service shut off for the residential premises of a residential customer on active duty.

HISTORY

ACTION	DATE
Introduced	04-26-07

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