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## **B-R-I-E-F-I-N-G**

April 29, 2009

***SUBJECT: The Ohio Civil Rights Commission's ("OCRC") Position on Housing Enforcement Amendments Contained in HB No. 1 (Budget Bill) and its Rationale for Not Including Additional Legislative Changes Through the Budget Language Process***

Statutory amendments to the Ohio Civil Rights Act, R.C. Chapter 4112, have been placed in HB No. 1 as requested by the OCRC. The rationale for the amendments is to render Ohio's fair housing law substantially equivalent to federal fair housing law following several Ohio court decisions construing housing issues inconsistent with legislative intent and federal law. Ohio's fair housing law was amended in 1992 (sponsored by Representative Vernon Sykes) for the express purpose of making Ohio's fair housing law substantially equivalent to federal fair housing law. Consequently, the amendments are not an expansion of fair housing rights. The amendments merely realign Ohio law to be substantially equivalent to federal fair housing law. This analysis has been thoroughly researched with the input and advice of the Ohio Attorney General.

The statutory amendments address the following issues:

### ***A. Standing of Fair Housing Groups***

The amendment defines an "aggrieved person" as including private fair housing enforcement organizations, other organizations who assist in fair housing enforcement, and anyone who claims an injury. This will provide standing to such organizations and individuals and overrule the Chance appellate decision which held that private fair housing groups are not aggrieved persons within the meaning of Ohio law and have no standing to bring enforcement actions for and on behalf of persons or communities.

***B. Issuance of Subpoenas***

The amendment provides every party to an administrative hearing before the OCRC with the right to have subpoenas issued.

***C. Right of Intervention***

This amendment to R.C. 4112.051 provides a complainant or aggrieved person with the right to intervene in a civil action in a court of law.

***D. Relief Available for Pattern & Practice Violations***

This amendment to R.C. 4112.052 provides for appropriate relief for dwellings deemed non-compliant with accessibility guidelines including authority to secure retrofitting relief.

***E. Right of Substantive Intervention***

This amendment to R.C. 4112.05 seeks to provide the right of intervention, discovery, cross-examination and oral arguments in administrative hearings before the OCRC's Administrative Law Judge.

***OCRC's Rationale for Not Supporting Additional Amendments***

HUD and others have also insisted on adding additional amendments to purportedly render Ohio's housing law substantially equivalent to federal fair housing law. The OCRC has not requested the amendments as part of a budget language package because the issues do not involve a material deficiency in Ohio law when compared to federal law. However, the OCRC does not oppose and will support amending Ohio's law if the amendments are more appropriately introduced as general legislation and not as part of a budget language package.

***HB No. 444 Does Not Create an Enforcement Obstacle in Fair Housing Enforcement***

HB No. 444 was enacted in January 2009. The bill substantively states that once design and construction plans for multi-family dwelling units are approved by local building officials, a "rebuttable presumption" is created that the plans comply with accessibility standards for the disabled. (See attached #1, text of HB No. 444.) A rebuttable presumption is defined as "(a) species of legal presumption which holds good until evidence contrary to it is introduced." Black's Law Dictionary 1139 (Fifth Edition, 1979) The OCRC and plaintiffs carry the burden of proof in establishing a prima facie case of accessibility discrimination against the disabled. It is the OCRC's position that the presumption contained in HB No. 444 vanishes upon the establishment of a prima facie case of discrimination. The OCRC intends to develop policy guidance explaining this position. The establishment of a rebuttable presumption in HB No. 444

does not create an enforcement obstacle to enjoyment of fair housing rights and is therefore not a substantial equivalency issue.

*The Ohio Supreme Court's Akron Metropolitan Housing Authority Decision Which Held That a Landlord Has No Duty to Eliminate Tenant-on-Tenant Harassment is Not a Substantial Equivalency Issue Because Federal Law is Scant in Mandating This Duty*

The Ohio Supreme Court in a case of first impression recently ruled that a landlord has no legal duty to eliminate tenant-on-tenant harassment. (See OCRC v. Akron Metropolitan Housing Authority (2008), 119 Ohio St. 3d 77, 892 N.E. 2d 415.) HUD and others have insisted that Ohio's law in this regard must now be changed to render it substantially equivalent to federal fair housing law. The OCRC has not sought the amendment because there is scant federal court precedent mandating a landlord's duty to eliminate tenant-on-tenant harassment. HUD has no administrative rule on the subject and its policy guidance supports the OCRC's position.

The OCRC, like HUD, imposes liability on actors, agents, or owners of multi-family dwellings for their own acts of harassment in violation of Ohio law. The amendment sought by HUD does not involve the acts of landlords or their agents. The question before the General Assembly in the budget language process is whether under federal law landlords have a legal duty to eliminate tenant-on-tenant harassment when they or their agents are not personally involved in the harassing conduct.

*Statute of Limitations for Design & Construction Cases*

This is an issue first raised by HUD by letter dated April 23, 2009, wherein HUD asserts that the statute of limitations period should not commence until a covered building is brought into compliance with law as opposed to when the last occupancy permit is issued while acknowledging that at least one federal circuit court rejects its interpretation. The OCRC has not requested an amendment on this issue because there is scant and unsettled federal law on the subject. A substantial equivalency analysis cannot be reasonably applied to this issue.

*Summary*

Based on the foregoing, the OCRC urges passage of the budget amendments contained in HB No. 1 to restore Ohio's fair housing rights on par with federal fair housing law. The OCRC will support additional amendments involving HB No. 444, the AMHA decision, and a statute of limitations for construction and design cases if the amendments are not submitted as part of a budget language package.



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**HB 444**

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**(127th General Assembly)  
(Amended Substitute House Bill Number 444)**

**AN ACT**

To amend sections 3781.111, 4517.21, 4740.01, 4740.02, 4740.04, and 4740.10 and to enact section 4740.16 of the Revised Code to make changes to the construction industry licensing laws, to discipline unlicensed contractors, eliminate unlicensed contractor activity, to provide that an insurer or subrogee may sell through a licensed motor vehicle auction owner a motor vehicle that comes into its possession through the operation of an insurance contract, to create a rebuttable presumption for purposes of enforcement of the Ohio Civil Rights Commission that items submitted for plan approval under the Board Building Standards rules are in compliance with the Board's rules relating to accessibility; and to require the Board to provide statewide training on accessibility rules.

*Be it enacted by the General Assembly of the State of Ohio:*

**SECTION 1.** That sections 3781.111, 4517.21, 4740.01, 4740.02, 4740.04, and 4740.10 be amended and section 4740.16 of the Revised Code be enacted to read as follows:

**Sec. 3781.111.** (A) In addition to the powers conferred by any other section of the Revised Code, the board of building standards shall adopt standards and rules to facilitate the reasonable access and use by all persons with a disability of all buildings and the facilities of buildings for which plans are submitted for approval under section 3791.04 of the Revised Code. No standard or rule shall be applied to any building the plans or drawings, specifications, and date of which have been approved prior to the time that the standard or rule takes effect.

(B)(1) Except as otherwise provided in this section, the standards and rules adopted by the board pursuant to this section shall be in accordance with the "Americans with Disabilities Act of 1990," 104 Stat. 327, 42 U.S.C.A. 12101, as amended, and the "Fair Housing Amendments Act of 1988," 102 Stat. 1619, 42 U.S.C.A. 3601, as amended.

(2) For purposes of enforcement by the Ohio civil rights commission only, approval of a plan as required under section 3791.04 of the Revised Code creates a rebuttable presumption that the plans, drawings, specifications, or data submitted are in compliance with the rules adopted by the board pursuant to this section as they relate to accessibility.

(C) All signs posted to designate special parking locations for persons with a disability and persons with disabilities that limit or impair the ability to walk in accordance with division (E) of section 4511.69 of the Revised Code and the standards and rules adopted pursuant to this section shall be mounted on a fixed or movable post or otherwise affixed in a vertical position at a height so that the sign is clearly visible to the driver of a vehicle when parked in such a location. If a new sign or a replacement sign designating a special parking location is posted on or after the effective date of this amendment October 14, 1999, there also shall be affixed upon the surface of that sign or affixed next to the designating sign a notice that states the fine applicable for the offense of parking a motor vehicle in the special designated parking location if the motor vehicle is not legally entitled to be parked in that location.

(D) As used in this section, "disability" has the same meaning as in section 4112.01 of the Revised Code. As used in division (C) of this section, "persons with disabilities that limit or impair the ability to walk" has the same meaning as in division (A)(1) of section 4503.44 of the Revised Code.

(E) No owner of a building or facility where special parking locations for persons with a disability must be designated in accordance with the standards and rules adopted pursuant to this section shall fail to properly mark the special parking locations as required by those standards and rules or fail to maintain the markings of the special parking locations, including the erection and maintenance of the fixed or movable signs.

(F) The board annually shall provide statewide training on the rules adopted by the board pursuant to this section as they relate to accessibility for nonresidential building department personnel certified by the board who approve, review plans, and inspect nonresidential construction.

**Sec. 4517.21.** (A) No motor vehicle auction owner licensed under Chapter 4517. of the Revised Code shall: