

**OHIO**

**House**

**of**

**Representatives**

**JOURNAL**

TUESDAY, SEPTEMBER 15, 2009

EIGHTY-FOURTH DAY  
Hall of the House of Representatives, Columbus, Ohio  
**Tuesday, September 15, 2009, 11:00 o'clock a.m.**

The House met pursuant to adjournment.

Prayer was offered by Representative Brian Williams-41st district, followed by the Pledge of Allegiance to the Flag.

The journal of the previous legislative day was read and approved.

The following guests of the House of Representatives were recognized by Speaker Budish prior to the commencement of business:

Tamara Brennan received H. R. 113, presented by Representative Balderson-94th district.

The Strausburg-Franklin softball team received H. R. 131, presented by Representative Sayre-96th district.

Liz Ping and Brad Tucker, guests of Representative Pillich-28th district.

Denise Truesdale and students, guests of Representative Maag-35th district.

Students from the Kent State University Columbus Program on Intergovernmental Issues, guests of Representative Chandler-68th district.

Evan Iden, a guest of Representative Balderson-94th district.

On motion of Representative Szollosi, the House recessed.

The House met pursuant to recess.

**INTRODUCTION OF BILLS**

The following bills were introduced:

**H. B. No. 277**-Representatives Snitchler, Jordan.

Cosponsors: Representatives Balderson, Grossman, Morgan, Derickson, Mandel, Stebelton, Boose, Burke, Hall, Huffman, Adams, J., Blessing, Wagner, Ruhl.

To amend sections 5747.07 and 5747.15 and to enact section 5747.073 of the Revised Code to authorize a \$2,400 income tax withholding credit for an employer that hires and employs a previously unemployed individual.

**H. B. No. 278**-Representative Batchelder.

Cosponsors: Representatives Baker, Boose, Evans, Morgan, Dolan, Adams, R., Huffman, Grossman, Blessing, Combs, Jordan, Hall, Wachtmann, Uecker, Bulp, Maag, Hackett, Stautberg.

To amend section 3517.092 of the Revised Code to prohibit a county elected officer and the campaign committee of such an officer from accepting a political contribution from any employee of the county.

**H. B. No. 279**-Representative Foley.

To amend section 3301.56 of the Revised Code with respect to staff member to child ratios and maximum group sizes when Montessori preschools combine preschool-aged children and kindergartners.

**H. B. No. 280**-Representatives Stautberg, Driehaus.

To temporarily authorize a special election on December 8, 2009, exclusively for the purpose of allowing certain municipal corporation property tax levies to appear on the ballot, to repeal Section 1 of this act effective December 9, 2009, and to declare an emergency.

Said bills were considered the first time.

#### **REPORTS OF STANDING AND SELECT COMMITTEES AND BILLS FOR SECOND CONSIDERATION**

Representative Blessing reported for the Rules and Reference Committee recommending that the following House Bills, House Joint Resolution and Senate Bill be considered for the second time and referred to the following committees for consideration.

**H.B. No. 251 - Representative Book, et al**

TO MAKE CHANGES IN THE LAW GOVERNING COMMERCIAL DRIVERS' LICENSES, INCLUDING HAZARDOUS MATERIAL ENDORSEMENTS, DISQUALIFICATIONS, CONVICTION RECORDS, AND LICENSURE OF PRIVATE COMMERCIAL DRIVER'S LICENSE TEST ADMINISTRATORS.

To the committee on Civil and Commercial Law

**H.B. No. 252 - Representative J. Adams, et al**

RELATIVE TO REQUIRING PATERNAL CONSENT BEFORE AN ABORTION MAY BE PERFORMED.

To the committee on Health

**H.B. No. 253 - Representatives DeBose and Hite, et al**

REGARDING LEADERSHIP CHARACTER ETHICS IN PUBLIC SCHOOLS AND PUBLIC INSTITUTIONS OF HIGHER EDUCATION.

To the committee on Education

**H.B. No. 254 - Representative Balderson, et al**

TO ALLOW AN INDIVIDUAL TO CLAIM UNEMPLOYMENT BENEFITS FOR A DEPENDENT WHO IS A CHILD IN THE LEGAL

## CUSTODY OF THE INDIVIDUAL.

To the committee on Commerce and Labor

**H.B. No. 255 - Representative Balderson, et al**

TO ALLOW A \$400 INCOME TAX CREDIT FOR VOLUNTEER FIREFIGHTERS.

To the committee on Ways and Means

**H.B. No. 256 - Representative Gardner, et al**

TO CREATE THE SMALL BUSINESS HEALTH CARE AFFORDABILITY TASK FORCE.

To the committee on Insurance

**H.B. No. 257 - Representative Snitchler, et al**

TO REQUIRE A MANDATORY PRISON TERM FOR SEXUAL BATTERY, INCREASE THE PENALTY AND REQUIRE A MANDATORY PRISON TERM FOR SEXUAL IMPOSITION, AND REQUIRE A MANDATORY PRISON TERM OR JAIL TERM FOR UNLAWFUL SEXUAL CONDUCT WITH A MINOR, GROSS SEXUAL IMPOSITION, IMPORTUNING, AND ENDANGERING CHILDREN UNDER SPECIFIED CIRCUMSTANCES INVOLVING A MINOR OR STUDENT VICTIM AND A PERSON IN AUTHORITY WITH RESPECT TO THE VICTIM.

To the committee on Criminal Justice

**H.B. No. 258 - Representative Bubp, et al**

TO DESIGNATE FEBRUARY 28 AS "RARE DISEASE DAY."

To the committee on State Government

**H.B. No. 259 - Representative Batchelder, et al**

TO SPECIFY THE CLASSES OF INVESTMENTS IN WHICH THE ADMINISTRATOR OF WORKERS' COMPENSATION MAY INVEST THE FUNDS SPECIFIED IN THE WORKERS' COMPENSATION LAW AND TO REQUIRE THE ADMINISTRATOR TO HAVE CRIMINAL RECORDS CHECKS CONDUCTED FOR EMPLOYEES OF INVESTMENT CONSULTANTS WITH WHOM THE ADMINISTRATOR CONTRACTS TO FACILITATE THE INVESTMENT OF THOSE FUNDS.

To the committee on Insurance

**H.B. No. 260 - Representatives Stewart and Heard, et al**

TO REVISE THE ELECTION LAW.

To the committee on Elections and Ethics

**H.B. No. 261 - Representative DeBose**

TO PROHIBIT DRIVING A VEHICLE WHILE TEXT MESSAGING OR TYPING ON A MOBILE COMMUNICATION DEVICE AND TO ESTABLISH THE VIOLATION AS A SECONDARY TRAFFIC OFFENSE.

To the committee on Public Safety and Homeland Security

**H.B. No. 262 - Representative DeBose**

TO PROHIBIT DRIVING A VEHICLE WHILE TALKING, TEXT

MESSAGING, OR TYPING ON A MOBILE COMMUNICATION DEVICE AND TO ESTABLISH THE VIOLATION AS A SECONDARY TRAFFIC OFFENSE.

To the committee on Public Safety and Homeland Security

**H.B. No. 263 - Representative Koziura, et al**

TO AUTHORIZE THE PLAYING OF VIDEO LOTTERY TERMINALS AT D LIQUOR PERMIT PREMISES, TO REGULATE THE USE OF VIDEO LOTTERY TERMINALS, TO REQUIRE THE LICENSURE OF VIDEO LOTTERY TERMINAL MANUFACTURERS, DISTRIBUTORS, AND OPERATORS, AND TO EXEMPT VIDEO LOTTERY TERMINALS FROM CERTAIN STATE TAXES.

To the committee on State Government

**H.B. No. 264 - Representative Evans**

TO PROVIDE IMMUNITY FROM LIABILITY FOR ELIGIBLE LANDOWNERS WHO PROVIDE ACCESS TO ABANDONED MINE LANDS LOCATED ON THE LANDOWNER'S LAND FOR PURPOSES OF RECLAMATION.

To the committee on Civil and Commercial Law

**H.B. No. 265 - Representative Driehaus, et al**

TO IMPOSE THE SAME CRIMINAL PENALTIES FOR ASSAULTING A RESIDENT PARTICIPATING IN A UNIFORMED POLICE VOLUNTEER PROGRAM AS ARE IMPOSED FOR ASSAULTING A PEACE OFFICER.

To the committee on Criminal Justice

**H.B. No. 266 - Representative Koziura, et al**

TO GENERALLY PROHIBIT DRIVING A VEHICLE WHILE USING A HANDHELD OR MANUALLY OPERATED MOBILE COMMUNICATION DEVICE.

To the committee on Public Safety and Homeland Security

**H.B. No. 267 - Representative Luckie, et al**

TO CREATE THE OHIO OFFICIAL PRESCRIPTION PROGRAM.

To the committee on Health

**H.B. No. 268 - Representative Driehaus, et al**

TO TEMPORARILY REDUCE THE PER PUPIL BASE-COST PAYMENTS TO COMMUNITY SCHOOLS IN ACADEMIC WATCH OR ACADEMIC EMERGENCY, TO USE THE AGGREGATE OF THOSE REDUCTIONS TO MAKE SUPPLEMENTAL PAYMENTS FOR AUXILIARY SERVICES FOR CHARTERED NONPUBLIC SCHOOL STUDENTS AND FOR ADMINISTRATIVE COST REIMBURSEMENT TO CHARTERED NONPUBLIC SCHOOLS, AND TO MAKE AN APPROPRIATION.

To the committee on Education

**H.B. No. 269 - Representative Coley, et al**

TO AUTHORIZE COUNTY SHERIFFS TO ADVERTISE FORECLOSURE

SALES VIA A WEB SITE.

To the committee on Civil and Commercial Law

**H.B. No. 270 - Representatives Pillich and Garland, et al**

TO PROHIBIT DRIVING A VEHICLE WHILE TEXT MESSAGING OR TYPING ON A MOBILE COMMUNICATION DEVICE.

To the committee on Public Safety and Homeland Security

**H.B. No. 271 - Representatives Patten and Stewart, et al**

TO MODIFY COVERAGE OF THE PUBLIC EMPLOYEES' COLLECTIVE BARGAINING LAW WITH RESPECT TO TOWNSHIP FIRE DEPARTMENTS.

To the committee on Commerce and Labor

**H.B. No. 272 - Representative S. Williams, et al**

TO INCREASE THE ANNUAL FEE FOR THE C-1, C-2, AND C-2X LIQUOR PERMITS TO \$2,500.

To the committee on State Government

**H.B. No. 273 - Representative S. Williams, et al**

TO PROHIBIT THE TRANSFER OF OWNERSHIP OR THE TRANSFER OF LOCATION OF A C-1, C-2, OR C-2X LIQUOR PERMIT IN, OR TO A PREMISES LOCATED IN, A MUNICIPAL CORPORATION OR THE UNINCORPORATED AREA OF A TOWNSHIP IN WHICH THE NUMBER OF THAT CLASS OF PERMITS ACTUALLY ISSUED EXCEEDS THE NUMBER OF THAT CLASS OF PERMITS ALLOWED TO BE ISSUED UNDER POPULATION QUOTA RESTRICTIONS.

To the committee on State Government

**H.B. No. 274 - Representative Yates**

TO PROVIDE AN AFFIRMATIVE DEFENSE TO CERTAIN OFFENSES INVOLVING A HYPODERMIC OR SYRINGE THAT THE PERSON IS 18 YEARS OF AGE OR OLDER AND POSSESSES OR OTHERWISE OBTAINS THE HYPODERMIC OR SYRINGE FOR THE PURPOSE OF HAVING A CLEAN NEEDLE TO AVOID HIV EXPOSURE AND TO PERMIT AN AUTHORIZED PERSON TO SELL OR FURNISH A HYPODERMIC WITHOUT A PRESCRIPTION TO A PERSON WHO IS 18 YEARS OF AGE OR OLDER AND WHO WISHES TO OBTAIN IT FOR THAT PURPOSE.

To the committee on Criminal Justice

**H.B. No. 275 - Representative Huffman, et al**

TO REVISE THE METHOD FOR CALCULATING THE ANNUAL SCHOOL DISTRICT EQUITY RANKINGS FOR CLASSROOM FACILITIES ASSISTANCE AND TO DECLARE AN EMERGENCY.

To the committee on Education

**H.B. No. 276 - Representative Sayre, et al**

TO REVISE STATE REGULATION OF TELEPHONE COMPANIES, REMOVE TELEGRAPH COMPANIES FROM UTILITY REGULATION,

AND REVISE LAW CONCERNING CONFIDENTIAL INFORMATION OF PUBLIC UTILITIES.

To the committee on Public Utilities

**H.J.R. No. 3 - Representatives Maag and Sears, et al**

PROPOSING TO ENACT SECTION 43 OF ARTICLE II OF THE CONSTITUTION OF THE STATE OF OHIO TO PROHIBIT A LAW OR RULE FROM COMPELLING A PERSON, EMPLOYER, OR HEALTH CARE PROVIDER TO PARTICIPATE IN A HEALTH CARE SYSTEM.

To the committee on Insurance

**Sub. S.B. No. 89 - Senator Morano, et al**

REGARDING PRESCRIPTIVE AUTHORITY OF OUT-OF-STATE ADVANCED PRACTICE NURSES, COOPERATION AMONG HOSPITALS AND STATE INSTITUTIONS OF HIGHER EDUCATION WITH NURSING EDUCATION PROGRAMS, AND ALLOCATIONS FROM THE NURSE EDUCATION ASSISTANCE FUND.

To the committee on Health

T. TODD BOOK  
TIMOTHY J. DEGEETER  
LOUIS W. BLESSING

BARBARA BOYD  
MATT LUNDY  
WILLIAM G. BATCHELDER

Representative Szollosi moved that the House and Constitutional Rules requiring bills to be considered by each house on three different days be suspended as to the second consideration of the House Bills, House Joint Resolution, and Senate Bill contained in the report of the committee on Rules and Reference.

The motion was agreed to without objection.

The report was agreed to.

Said House Bills, House Joint Resolution, and Senate Bill were considered the second time and referred as recommended.

**MOTIONS AND RESOLUTIONS**

Representative Blessing reported for the Rules and Reference Committee recommending that the following House Concurrent Resolutions be introduced and referred to the following committees for consideration:

**H.C.R. No. 28 - Representative Daniels**

TO URGE THE PRESIDENT OF THE UNITED STATES TO DIRECT THE UNITED STATES DEPARTMENT OF ENERGY TO ENSURE THE CONTINUATION OF THE URANIUM ENRICHMENT WORK BEING DEVELOPED BY THE USEC, INC., AT ITS PIKETON, OHIO PLANT BY GRANTING USEC'S APPLICATION FOR A FEDERAL LOAN GUARANTEE.

To the committee on Alternative Energy

Add the name: Book

**H.C.R. No. 29 - Representatives Letson, Ujvagi, Yuko, Boyd, Derickson**

TO URGE THE GOVERNMENT OF TURKEY TO RESPECT THE RIGHTS AND RELIGIOUS FREEDOMS OF THE ECUMENICAL PATRIARCHATE.

To the committee on State Government

**H.C.R. No. 30 - Representative Yates**

TO URGE THE CONGRESS OF THE UNITED STATES TO END THE LONGSTANDING BAN ON FEDERAL FUNDING FOR SYRINGE EXCHANGE PROGRAMS.

To the committee on Health

/s/ TODD BOOK

Todd Book, Chair

Representative Szollosi moved that the Rules and Reference Committee Report on resolutions be agreed to and that the resolutions contained therein be introduced and referred as recommended.

The motion was agreed to.

Said resolutions were introduced and referred as recommended.

Representative Blessing reported for the Rules and Reference Committee recommending that the following House Resolutions be read by title only and approved:

**H.R. No. 131 - Representative Sayre**

Honoring the Strasburg-Franklin High School softball team on winning the 2009 Division IV State Championship.

**H.R. No. 132 - Representatives Brown, Gardner, Sears, Szollosi & Ujvagi**

Honoring Kurt Erichsen as the recipient of the 2009 John Bosley Award.

**H.R. No. 133 - Representative Hottinger**

Honoring Nick Hubbell as the 2009 United States National Stock Rally Soap Box Derby Champion.

Add the name: Book

**H.R. No. 134 - Representative Martin**

Honoring Tony Ortiz as the 2009 League of United Latin American Citizens' Man of the Year.

**H.R. No. 136 - Representatives Zehringer, Adams, R.**

Honoring Kevin Leland on winning the 2009 OHSAA Division I State Championship in the pole vault.

**H.R. No. 137 - Representative Zehringer**

Honoring Christine Borchers on winning the 2009 Division III State Championship in the shot put.

**H.R. No. 138 - Representative Zehringer**

Honoring the Versailles High School boys 4x400-meter relay team on winning the 2009 Division III State Championship.

**H.R. No. 139 - Representative Burke**

In memory of Gunnery Sergeant David S. Spicer.

**H.R. No. 140 - Representative Zehringer**

Honoring the Versailles High School girls 4x800-meter relay team on winning the 2009 Division III State Championship.

**H.R. No. 141 - Representative Martin**

Honoring Nandini Srinivasan as the 2009 Buckeye Girls State governor.

**H.R. No. 142 - Representative Mallory**

Honoring Kim Fender as the 2009 Ohio Librarian of the Year.

**H.R. No. 143 - Representative Fende**

Honoring Bethel Lutheran Church on the Fiftieth Anniversary of its sanctuary.

**H.R. No. 144 - Representative Goodwin**

Honoring Roger Gardner as the 2009 Marine of the Year.

**H.R. No. 145 - Representative Ruhl**

Honoring Aislinn McLaughlin as a 2009 U.S. Girls Wrestling Association Ohio State Champion.

**H.R. No. 146 - Representative Ruhl**

Honoring Kelly Barnhill as a 2009 Division II State Track and Field Champion.

**H.R. No. 147 - Representative Ruhl**

Honoring Knox Community Hospital on receiving a 2009 Aster Award.

**H.R. No. 148 - Representative Ruhl**

Honoring Silas Jolliff on winning the 2009 Division III State Championship in the 400-meter dash.

**H.R. No. 149 - Representative Ruhl**

Honoring Nathan Rader as a 2009 National SkillsUSA silver medalist.

**H.R. No. 150 - Representative Ruhl**

Honoring the Kenyon College Alumni Bulletin on being named the Robert Sibley Magazine of the Year for 2009.

/s/ TODD BOOK  
Todd Book, Chair

Representative Szollosi moved that the Rules and Reference Committee Report on resolutions be agreed to and that the resolutions contained therein be approved.

The motion was agreed to.

Representative Goyal moved that majority party members asking leave to be absent or absent the week of Tuesday, September 15, 2009, be excused, so long as a written request is on file in the majority leadership offices.

The motion was agreed to.

Representative Adams, J. moved that minority party members asking leave to be absent or absent the week of Tuesday, September 15, 2009, be excused, so long as a written request is on file in the minority leadership offices.

The motion was agreed to.

Representative Gardner moved that House Rule 114 be suspended and that the following resolution be brought up for immediate adoption and read by title only:

**H. R. No. 135-Representative Gardner.**

Cosponsors: Representatives Batchelder, Blessing, Adams, J., Jordan, Adams, R., Amstutz, Bacon, Baker, Balderson, Blair, Boose, Bubp, Burke, Coley, Combs, Daniels, Derickson, Dolan, Evans, Goodwin, Grossman, Hackett, Hall, Hite, Hottinger, Huffman, Lehner, Maag, Mandel, Martin, McClain, McGregor, Mecklenborg, Morgan, Oelslager, Ruhl, Sears, Snitchler, Stautberg, Stebelton, Uecker, Wachtmann, Wagner, Zehringer.

To amend House Rule 68 to require conference reports to lie over two calendar days unless the requirement is suspended by two-thirds of the members present.

The question being, "Shall the motion be agreed to?"

The yeas and nays were taken and resulted - yeas 44, nays 50, as follows:

Those who voted in the affirmative were: Representatives

Adams J.	Adams R.	Amstutz	Bacon
Baker	Balderson	Batchelder	Blair
Blessing	Bubp	Burke	Coley
Combs	Daniels	Derickson	Dolan
Evans	Gardner	Goodwin	Grossman
Hackett	Hall	Hite	Hottinger
Huffman	Jordan	Lehner	Maag
Mandel	Martin	McClain	McGregor
Mecklenborg	Morgan	Oelslager	Ruhl
Sears	Snitchler	Stautberg	Stebelton
Uecker	Wachtmann	Wagner	Zehringer-44.

Those who voted in the negative were: Representatives

Belcher	Bolon	Book	Boyd
Brown	Carney	Celeste	Chandler
DeGeeter	Dodd	Domenick	Driehaus
Dyer	Foley	Garland	Garrison

Gerberry	Goyal	Hagan	Harris
Harwood	Heard	Koziura	Letson
Luckie	Lundy	Mallory	Moran
Murray	Newcomb	Okey	Otterman
Phillips	Pillich	Pryor	Sayre
Schneider	Skindell	Slesnick	Stewart
Sykes	Szollosi	Ujvagi	Weddington
Williams B.	Williams S.	Winburn	Yates
Yuko			Budish-50.

The motion was not agreed to.

Pursuant to House Rule 114, Speaker Budish referred House Resolution 135 to the committee on Rules and Reference.

Representative Szollosi moved that the following resolution be brought up for immediate adoption, read by title only, and spread upon the pages of the journal.

The motion was agreed to.

The question being on the adoption of the resolution, reading as follows:

**H. R. No. 151**-Speaker Budish.

Relative to the election of the assistant minority whip for the 128th General Assembly of Ohio.

WHEREAS, Kris Jordan of the 2nd House District has resigned as assistant minority whip of the House of Representatives of the 128th General Assembly effective September 14, 2009, thus creating a vacancy in the position of assistant minority whip of the House of Representatives; and

WHEREAS, the members of the House of Representatives of the 128th General Assembly of Ohio have been advised that the caucus of Republican members have chosen Cheryl Grossman of House District # 23 as assistant minority whip; therefore be it

RESOLVED, By the members of the House of Representatives of the 128th General Assembly that Cheryl Grossman be, and upon adoption of this resolution is, hereby elected to the office of assistant minority whip.

The motion was agreed to without objection.

The question being, "Shall the resolution be adopted?"

The yeas and nays were taken and resulted - yeas 94, nays 0, as follows:

Those who voted in the affirmative were: Representatives

Adams J.	Adams R.	Amstutz	Bacon
Baker	Balderson	Batchelder	Belcher
Blair	Blessing	Bolon	Book

Boyd	Brown	Bubp	Burke
Carney	Celeste	Chandler	Coley
Combs	Daniels	DeGeeter	Derickson
Dodd	Dolan	Domenick	Driehaus
Dyer	Evans	Foley	Gardner
Garland	Garrison	Gerberry	Goodwin
Goyal	Grossman	Hackett	Hagan
Hall	Harris	Harwood	Heard
Hite	Hottinger	Huffman	Jordan
Koziura	Lehner	Letson	Luckie
Lundy	Maag	Mallory	Mandel
Martin	McClain	McGregor	Mecklenborg
Moran	Morgan	Murray	Newcomb
Oelslager	Okey	Otterman	Phillips
Pillich	Pryor	Ruhl	Sayre
Schneider	Sears	Skindell	Slesnick
Snitchler	Stauberg	Stebelon	Stewart
Sykes	Szollosi	Uecker	Ujvagi
Wachtmann	Wagner	Weddington	Williams B.
Williams S.	Winburn	Yates	Yuko
Zehringer			Budish-94.

The resolution was adopted.

State of Ohio

County of Franklin

I, Cheryl L. Grossman, do solemnly swear to support the Constitution of the United States and the Constitution of the State of Ohio, and faithfully to discharge and perform all duties incumbent upon me as the assistant minority whip of the Ohio House of Representatives, according to the best of my ability and understanding; and this I do as I shall answer unto God.

/s/ CHERYL L. GROSSMAN

Cheryl L. Grossman

Sworn to and subscribed before me this 15th day of September, 2009.

/s/ ARMOND BUDISH

Armond Budish

Speaker

Ohio House of Representatives

### **BILLS FOR THIRD CONSIDERATION**

**Sub. H. B. No. 176**-Representatives Stewart, McGregor.

Cosponsors: Representatives Skindell, Celeste, Letson, Garland, Blair, Foley, Yuko, Heard, Williams, S., Harris, Harwood, Carney, Chandler, Boyd, Hagan, Ujvagi, Koziura, Winburn, Luckie, Williams, B., Mallory, Sykes, Yates, Brown, Driehaus, Gerberry, Lundy.

To amend sections 9.03, 124.93, 125.111, 340.12, 511.03, 717.01, 1501.012, 1751.18, 2927.03, 3113.36, 3301.53, 3304.14, 3304.50, 3313.481, 3314.06, 3332.09, 3721.13, 3905.55, 4111.17, 4112.01, 4112.02, 4112.021, 4112.04, 4112.05, 4112.08, 4117.19, 4735.16, 4735.55, 4757.07, 4758.16, 4765.18, 5104.09, 5107.26, 5111.31, 5119.61, 5123.351, 5126.07, 5515.08, and 5709.832 of the Revised Code to prohibit discrimination on the basis of sexual orientation or gender identity, was taken up for consideration the third time.

The question being, "Shall the bill pass?"

Representative Heard moved to amend as follows:

In line 2104, after "the" insert "primary and secondary"

In line 2211, after "conciliation," insert "mediation."

In line 2456, after the period insert "This chapter does not limit actions, procedures, and remedies afforded under federal law."

The question being, "Shall the motion to amend be agreed to?"

The yeas and nays were taken and resulted - yeas 52, nays 43, as follows:

Those who voted in the affirmative were: Representatives

Belcher	Bolon	Book	Boyd
Brown	Carney	Celeste	Chandler
DeBose	DeGeeter	Dodd	Domenick
Driehaus	Dyer	Foley	Garland
Garrison	Gerberry	Goyal	Hagan
Harris	Harwood	Heard	Hite
Koziura	Letson	Luckie	Lundy
Mallory	Moran	Murray	Newcomb
Okey	Otterman	Phillips	Pillich
Pryor	Sayre	Schneider	Skindell
Slesnick	Stewart	Sykes	Szollosi
Ujvagi	Weddington	Williams B.	Williams S.
Winburn	Yates	Yuko	Budish-52.

Those who voted in the negative were: Representatives

Adams J.	Adams R.	Amstutz	Bacon
Baker	Balderson	Batchelder	Blair
Blessing	Bubp	Burke	Coley
Combs	Daniels	Derickson	Dolan
Evans	Gardner	Goodwin	Grossman
Hackett	Hall	Hottinger	Huffman
Jordan	Lehner	Maag	Mandel
Martin	McClain	McGregor	Mecklenborg
Morgan	Oelslager	Ruhl	Sears
Snitchler	Stautberg	Stebelton	Uecker
Wachtmann	Wagner		Zehringer-43.

The motion was agreed to and the bill so amended.

The question being, "Shall the bill as amended pass?"

Representative Stebelton moved to amend as follows:

In line 15, after "4112.05," insert "4112.051,"

In line 18, after "5709.832" insert "be amended and sections 4112.053, 4112.054, and 4112.16"; delete "amended" and insert "enacted"

In line 1153, after the comma insert " and"

In line 1154, strike through everything after "state"

In line 1155, strike through "interest of an employer"

In line 1158, after the underlined comma insert " and"

In line 1159, delete everything after " state"

In line 1160, delete everything before the period

Between lines 1277 and 1278, insert:

" (25) "Unlawful discriminatory practice relating to employment" means any unlawful discriminatory practice that is prohibited by division (A), (B), (C), (D), (E), or (F) of section 4112.02 of the Revised Code."

In line 1719, strike through everything after "(N)"

Strike through lines 1720 through 1729

In line 1730, strike through "(O)"

In line 1731, strike through everything after "practice"

In line 1732, strike through everything before "for"

In line 1769, strike through "(P)" and insert " (O)"

Strike through line 1770

In line 1799, strike through the first and second "(Q)" and insert " (P)" in both places

In line 1808, strike through "(Q)" and insert " (P)"

In line 1856, strike through "(Q)" and insert " (P)"

In line 1862, delete " (R)" and insert " (O)"

In line 1873, delete " (R)" and insert " (O)"

In line 1879, delete " (S)" and insert " (R)"

In line 1889, delete " (T)" and insert " (S)"

In line 1891, delete " (U)" and insert " (T)"

In line 1902, delete " (V)" and insert " (U)"

In line 1906, delete " (W)" and insert " (V)"

In line 1912, delete " (X)" and insert " (W)"

In line 2215, after the period insert "In the case of a charge relating to an unlawful discriminatory practice relating to employment, the charge shall be in writing and under oath and shall be filed with the commission within three hundred days after the unlawful discriminatory practice was committed."

In line 2216, strike through "(A),"

In line 2217, strike through "(B), (C), (D), (E), (F),"

In line 2236, after "(4)" insert " , (5), or (6)"

In line 2294, after "(4)" insert "With respect to a charge filed under division (B)(1) of this section that alleges an unlawful discriminatory practice relating to employment, the complainant may instruct the commission to cease its preliminary investigation at any time. Upon receiving that instruction, the commission shall issue and cause to be served upon the complainant and the respondent named in the charge both of the following notices:

(a) A notice stating that the commission is ceasing the commission's preliminary investigation and that the person who filed the charge is prohibited from refiling that charge with the commission.

(b) A notice that dismisses the charge filed and states that the person who filed the charge may bring a civil action against the respondent named in the charge pursuant to section 4112.053 of the Revised Code.

(5) With respect to a charge filed under division (B)(1) of this section that alleges an unlawful discriminatory practice relating to employment, if the commission determines after conducting a preliminary investigation that it is not probable that an unlawful discriminatory practice relating to employment has been or is being engaged in, the commission shall include in the notice the commission issues under division (B)(6) of this section a statement that that person who filed the charge may bring a civil action pursuant to section 4112.053 of the Revised Code against the person named in the charge regarding the unlawful discriminatory practice relating to employment that that person allegedly committed.

With respect to a charge filed under division (B)(1) of this section that alleges an unlawful discriminatory practice relating to employment, if the commission determines after conducting a preliminary investigation that it is probable that an unlawful discriminatory practice relating to employment has been or is being engaged in, the commission shall, prior to commencing the informal methods of conference, conciliation, and persuasion under division (B)(6) of this section, notify the complainant of the commission's determination and that in lieu of continuing the administrative proceedings under this section, the complainant may bring a civil action pursuant to section 4112.053 of the Revised Code against the person named in the charge regarding the unlawful

discriminatory practice relating to employment that that person allegedly committed.

If the commission receives a copy of a document filed with a court commencing a civil action against the person named in the charge for allegedly committing an unlawful discriminatory practice relating to employment, the commission shall discontinue any administrative proceedings specified in this section that were occurring at the time the commission received a copy of the document."

In line 2306, strike through "(5)" and insert " (7)"

In line 2342, strike through "(6)" and insert " (8)"

In line 2345, strike through "(7)" and insert " (9)"

Between lines 2444 and 2445, insert:

**"Sec. 4112.051.** (A)(1) Aggrieved persons may enforce the rights granted by division (H) of section 4112.02 of the Revised Code by filing a civil action in the court of common pleas of the county in which the alleged unlawful discriminatory practice occurred within one year after it allegedly occurred. Upon application by an aggrieved person, upon a proper showing, and under circumstances that it considers just, a court of common pleas may appoint an attorney for the aggrieved person and authorize the commencement of a civil action under this division without the payment of costs.

Each party to a civil action under this division has the right to a jury trial of the action. To assert the right, a party shall demand a jury trial in the manner prescribed in the Rules of Civil Procedure. If a party demands a jury trial in that manner, the civil action shall be tried to a jury.

(2)(a) If a complaint is issued by the commission under division (B) ~~(5)~~ (7) of section 4112.05 of the Revised Code for one or more alleged unlawful discriminatory practices described in division (H) of section 4112.02 of the Revised Code, the complainant, any aggrieved person on whose behalf the complaint is issued, or the respondent may elect, following receipt of the relevant notice described in division (B) ~~(5)~~ (7) of section 4112.05 of the Revised Code, to proceed with the administrative hearing process under that section or to have the alleged unlawful discriminatory practices covered by the complaint addressed in a civil action commenced in accordance with divisions (A)(1) and (2)(b) of this section. An election to have the alleged unlawful discriminatory practices so addressed shall be made in a writing that is sent by certified mail, return receipt requested, to the commission, to the civil rights section of the office of the attorney general, and to the other parties to the pending administrative process within thirty days after the electing complainant, aggrieved person, or respondent received the relevant notice described in division (B) ~~(5)~~ (7) of section 4112.05 of the Revised Code.

(b) Upon receipt of a timely mailed election to have the alleged unlawful discriminatory practices addressed in a civil action, the commission shall

authorize the office of the attorney general to commence and maintain the civil action in the court of common pleas of the county in which the alleged unlawful discriminatory practices occurred. Notwithstanding the period of limitations specified in division (A)(1) of this section, the office of the attorney general shall commence the civil action within thirty days after the receipt of the commission's authorization to commence the civil action.

(c) Upon commencement of the civil action in accordance with division (A)(2)(b) of this section, the commission shall prepare an order dismissing the complaint in the pending administrative matter and serve a copy of the order upon the complainant, each aggrieved person on whose behalf the complaint was issued, and the respondent.

(d) If an election to have the alleged unlawful discriminatory practices addressed in a civil action is not filed in accordance with division (A)(2)(a) of this section, the commission shall continue with the administrative hearing process described in section 4112.05 of the Revised Code.

(B) If the court or the jury in a civil action under this section finds that a violation of division (H) of section 4112.02 of the Revised Code is about to occur, the court may order any affirmative action it considers appropriate, including a permanent or ~~temporary~~ temporary injunction or temporary restraining order.

(C) Any sale, encumbrance, or rental consummated prior to the issuance of any court order under the authority of this section and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of a charge under division (H) of section 4112.02 of the Revised Code or a civil action under this section is not affected by the court order.

(D) If the court or the jury in a civil action under this section finds that a violation of division (H) of section 4112.02 of the Revised Code has occurred, the court shall award to the plaintiff or to the complainant or aggrieved person on whose behalf the office of the attorney general commenced or maintained the civil action, whichever is applicable, actual damages, reasonable attorney's fees, court costs incurred in the prosecution of the action, expert witness fees, and other litigation expenses, and may grant other relief that it considers appropriate, including a permanent or temporary injunction, a temporary restraining order, or other order and punitive damages.

(E) Any civil action brought under this section shall be heard and determined as expeditiously as possible.

(F) The court in a civil action under this section shall notify the commission of any finding pertaining to discriminatory housing practices within fifteen days after the entry of the finding.

**Sec. 4112.053.** (A) A person may file a civil action under this chapter alleging an unlawful discriminatory practice relating to employment only if the person satisfies both of the following conditions:

(1) The person has first filed a charge with the commission under section 4112.05 of the Revised Code with respect to the practice complained of in the complaint for the civil action.

(2) The person brings the civil action within ninety days after the commission provides the relevant notice to that person pursuant to division (B)(4)(b) or (B)(5) of section 4112.05 of the Revised Code.

(B) A person who files a civil action under this chapter alleging an unlawful discriminatory practice relating to employment shall provide a copy to the commission of each document the person files with a court for the proceeding. The copy sent to the commission shall have a postmark dated not later than five days after the document was filed with the court.

(C) Upon receipt of a copy of the first document filed with a court commencing a civil action under division (A) of this section, the commission shall prepare an order to dismiss any administrative action based on the charge filed by the person and shall notify all parties of the order to dismiss.

**Sec. 4112.054.** (A) An employer may raise an affirmative defense to liability resulting from a charge of an unlawful discriminatory practice relating to employment filed pursuant to section 4112.05 of the Revised Code or a civil action filed with a court for an unlawful discriminatory practice relating to employment pursuant to section 4112.053 of the Revised Code, if the employer satisfies both of the following requirements:

(1) The employer exercised reasonable care to prevent and correct promptly any harassing behavior.

(2) The employee alleging the unlawful discriminatory practice relating to employment unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

(B) In order to satisfy the condition specified in division (A)(1) of this section, an employer shall have promulgated an antiharassment policy that includes a complaint procedure.

(C) For purposes of division (A)(2) of this section, proof that an employee failed to fulfill the employee's obligation of reasonable care to avoid harm is not limited to the employee's employer demonstrating an unreasonable failure of the employee to use a complaint procedure provided by the employer.

(D) An employer shall prove the elements specified under divisions (A)(1) and (2) of this section by a preponderance of the evidence."

In line 2452, strike through "any person filing a charge"

Strike through lines 2453 through 2456 and insert "in the case of each of the following:

(A) No person has a cause of action or claim based on an unlawful discriminatory practice relating to employment against a supervisor, manager, or

other employee of an employer unless that supervisor, manager, or other employee is the employer. Nothing in this division abrogates statutory or common law imposing vicarious liability on an employer for the actions or omissions of its agents.

(B) Causes of action based on the public policies embodied in this chapter for unlawful discriminatory practices relating to employment are limited exclusively to applicable actions, procedures, and remedies, if any, afforded by applicable federal, state, or local fair employment laws, and a person is barred from instituting a tort action based on the public policies embodied in this chapter or in federal, state, or local fair employment laws.

Sec. 4112.16. The sum of the amount of compensatory damages awarded for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and other nonpecuniary losses, and the amount of punitive damages awarded to each complaining party in a civil action based on an unlawful discriminatory practice relating to employment shall not exceed the following amounts:

(A) In the case of a defendant who employs one hundred employees or less in each of twenty or more calendar weeks in the current or preceding calendar year, fifty thousand dollars;

(B) In the case of a defendant who employs one hundred one to two hundred employees in each of twenty or more calendar weeks in the current or preceding calendar year, one hundred thousand dollars;

(C) In the case of a defendant who employs two hundred one to five hundred one employees in each of twenty or more calendar weeks in the current or preceding calendar year, two hundred thousand dollars;

(D) In the case of a defendant who employs more than five hundred one employees in each of twenty or more calendar weeks in the current or preceding calendar year, three hundred thousand dollars."

In line 3207, after "4112.05," insert "4112.051,"

After line 3210, insert:

"**Section 3.** That section 4112.14 of the Revised Code is hereby repealed.

**Section 4.** The General Assembly, in amending section 4112.01 and in enacting division (A) of section 4112.08 of the Revised Code pursuant to this act, hereby declares its intent to supersede the effect of the holding of the Ohio Supreme Court in *Genaro v. Central Transport, Inc.* (1999), 84 Ohio St. 3d 293. The General Assembly further declares its intent that individual supervisors, managers, or employees not be held liable under Chapter 4112. of the Revised Code for unlawful discriminatory practices relating to employment. The General Assembly does not intend this act to abrogate the imposition at common law of vicarious liability on employers for the unlawful discriminatory practices of their employees or agents.

The General Assembly declares its intent in enacting section 4112.16 of the Revised Code pursuant to this act that the amount of compensatory and punitive damages awarded in civil actions alleging unlawful discriminatory practices relating to employment be capped based on the size of the employer, as they are under federal fair employment laws by virtue of the Civil Rights Act of 1991, 42 USC 1981a(b)(3).

The General Assembly declares its intent in enacting division (B) of section 4112.08 of the Revised Code pursuant to this act that a person cannot maintain a public policy tort action under the Ohio Supreme Court's holding in *Greeley v. Miami Valley Maintenance Contrs., Inc.* (1990), 49 Ohio St. 3d 228, based on the policies embodied in Chapter 4112. of the Revised Code, or any federal, state, or local fair employment law. The General Assembly further declares its intent to apply the Ohio Supreme Court's decision in *Leininger v. Pioneer Natl. Latex*, 115 Ohio St. 3d 311, 2007-Ohio-4921, to all employment cases whereby a common law wrongful discharge claim based on Ohio's public policy against all forms of discrimination does not exist, because the remedies in Chapter 4112. of the Revised Code provide complete relief for a statutory claim of discrimination.

The General Assembly declares its intent in enacting section 4112.053 of the Revised Code pursuant to this act that persons alleging unlawful discriminatory practices relating to employment must first pursue administrative rights and remedies through the Ohio Civil Rights Commission before commencing available civil actions. An early election will reduce the cost and confusion associated with the same claim being pursued and defended in two forums."

In line 5 of the title, after "4112.05," insert "4112.051,"

In line 8 of the title, after "5709.832" insert ", to enact sections 4112.053, 4112.054, and 4112.16, and to repeal section 4112.14"

In line 11 of the title, after "identity" insert "and to modify Ohio civil rights laws related to employment"

Pursuant to House Rule 91, the amendment was ruled out of order.

The question recurring, "Shall the bill as amended pass?"

The yeas and nays were taken and resulted - yeas 56, nays 39, as follows:

Those who voted in the affirmative were: Representatives

- |          |          |          |          |
|----------|----------|----------|----------|
| Belcher  | Blair    | Bolon    | Book     |
| Boyd     | Brown    | Carney   | Celeste  |
| Chandler | DeBose   | DeGeeter | Dodd     |
| Dolan    | Domenick | Driehaus | Dyer     |
| Foley    | Garland  | Garrison | Gerberry |
| Goyal    | Hagan    | Harris   | Harwood  |
| Heard    | Hite     | Koziura  | Lehner   |
| Letson   | Luckie   | Lundy    | Mallory  |

McGregor	Moran	Murray	Newcomb
Okey	Otterman	Phillips	Pillich
Pryor	Sayre	Schneider	Skindell
Slesnick	Stewart	Sykes	Szollosi
Ujvagi	Weddington	Williams B.	Williams S.
Winburn	Yates	Yuko	Budish-56.

Those who voted in the negative were: Representatives

Adams J.	Adams R.	Amstutz	Bacon
Baker	Balderson	Batchelder	Blessing
Bubp	Burke	Coley	Combs
Daniels	Derickson	Evans	Gardner
Goodwin	Grossman	Hackett	Hall
Hottinger	Huffman	Jordan	Maag
Mandel	Martin	McClain	Mecklenborg
Morgan	Oelslager	Ruhl	Sears
Snitchler	Stautberg	Stebelton	Uecker
Wachtmann	Wagner		Zehringer-39.

The bill passed.

Representative Stewart moved to amend the title as follows:

Add the names: "Bolon, Dyer, Garrison, Murray, Otterman, Pillich, Slesnick, Szollosi, Weddington."

The motion was agreed to and the title so amended.

The title as amended was agreed to.

**Am. H. B. No. 71**-Representatives Hagan, Batchelder.

Cosponsors: Representatives Foley, Harris, Ujvagi, Luckie, Book, Harwood, Winburn, Domenick, Letson, Yuko, Patten, Combs, Koziura, Huffman, Stewart, Murray, Brown.

To enact section 4923.30 of the Revised Code to establish requirements for contract carriers that transport railroad employees, was taken up for consideration the third time.

The question being, "Shall the bill pass?"

The yeas and nays were taken and resulted - yeas 55, nays 40, as follows:

Those who voted in the affirmative were: Representatives

Batchelder	Belcher	Bolon	Book
Boyd	Brown	Carney	Celeste
Chandler	Combs	DeBose	DeGeeter
Dodd	Domenick	Driehaus	Dyer
Foley	Garland	Garrison	Gerberry
Goyal	Hagan	Harris	Harwood
Heard	Huffman	Koziura	Letson
Luckie	Lundy	Mallory	Moran

Murray	Newcomb	Oelslager	Okey
Otterman	Phillips	Pillich	Pryor
Sayre	Schneider	Skindell	Slesnick
Stewart	Sykes	Szollosi	Ujvagi
Weddington	Williams B.	Williams S.	Winburn
Yates	Yuko		Budish-55.

Those who voted in the negative were: Representatives

Adams J.	Adams R.	Amstutz	Bacon
Baker	Balderson	Blair	Blessing
Bubp	Burke	Coley	Daniels
Derickson	Dolan	Evans	Gardner
Goodwin	Grossman	Hackett	Hall
Hite	Hottinger	Jordan	Lehner
Maag	Mandel	Martin	McClain
McGregor	Mecklenborg	Morgan	Ruhl
Sears	Snitchler	Stautberg	Stebelton
Uecker	Wachtmann	Wagner	Zehringer-40.

The bill passed.

Representative Hagan moved to amend the title as follows:

Add the names: "Bolon, Boyd, Chandler, DeBose, Garland, Garrison, Gerberry, Mallory, Oelslager, Szollosi, Williams, S., Yates."

The motion was agreed to and the title so amended.

The title as amended was agreed to.

On motion of Representative Szollosi, the House adjourned until Thursday, September 17, 2009 at 10:00 o'clock a.m.

Attest:

THOMAS L. SHERMAN,  
Clerk.