



H.B. 296

123rd General Assembly
(As Introduced)

Reps. R. Miller, Ford, Jones, Beatty, Sykes, Barrett, Logan, Opfer, Smith, Allen, Flannery, Sutton, Britton

BILL SUMMARY

- Prohibits any employee of an employer, employment agency, personnel placement service, labor organization, or joint labor-management committee controlling apprenticeship training programs from engaging in any unlawful discriminatory practices designated in the Civil Rights Law and relating to general employment situations.
- Prohibits any employee of a creditor or credit reporting agency from engaging in any unlawful discriminatory practices designated in the Civil Rights Law and relating generally to credit transactions.
- Prohibits an employee of an educational institution from engaging in any unlawful discriminatory practices against handicapped persons as designated in the Civil Rights Law.
- Declares the intent of the General Assembly to confirm the interpretation of the Ohio Supreme Court in the case of *Genaro v. Central Transport, Inc.* (1999), 84 Ohio St.3d 293, that the Ohio Civil Rights Law imposes joint and several liability on employees of an employer for violations of that Law.

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CONTENT AND OPERATION

Civil Rights Law

The Civil Rights Law (Chapter 4112.) prohibits various acts or practices by certain persons or entities that are designated as *unlawful discriminatory practices* (see **COMMENT 1**). The Ohio Civil Rights Commission enforces the Civil Rights Law, conducts investigations of alleged unlawful discriminatory practices, and makes appropriate determinations under that Law. Furthermore, any person who violates the Civil Rights Law is subject to a civil action for damages, injunctive relief, or any other appropriate relief (sec. 4112.99--not in the bill).

Unlawful discriminatory practices in general employment situations

Among the prohibited unlawful discriminatory practices in general are the following (see **COMMENT 2**):

(1) Under existing law, it is an unlawful discriminatory practice for any *employer*, because of the "race, color, religion, sex, national origin, handicap, age, or ancestry" of any person (hereafter "specified personal characteristics"), to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment. The bill likewise prohibits any *employee of an employer* from engaging in any of these designated unlawful discriminatory practices and, in effect, makes an employee individually liable or jointly liable with the employer for the unlawful discriminatory practice. (Sec. 4112.02(A).)

(2) Under existing law, it is an unlawful discriminatory practice for an *employment agency* or *personnel placement service*, because of specified personal characteristics, to (a) refuse or fail to accept, register, classify properly, or refer for employment, or otherwise discriminate against any person or (b) comply with a request from an employer for referral of applicants for employment if the request directly or indirectly indicates that the employer fails to comply with the Civil Rights Law. The bill also prohibits any *employee of such agency or service* from engaging in any of those designated unlawful discriminatory practices and, in effect, makes an employee individually liable or jointly liable with the employment

agency or personnel placement service for the unlawful discriminatory practice. (Sec. 4112.02(B).)

(3) Under existing law, it is an unlawful discriminatory practice for any *labor organization* to (a) limit or classify its membership on the basis of specified personal characteristics or (b) discriminate against, limit the employment opportunities of, or otherwise adversely affect the employment status, wages, hours, or employment conditions of any person as an employee because of specified personal characteristics. The bill similarly prohibits any *employee of such organization* from engaging in any of those unlawful discriminatory practices and, in effect, makes an employee of a labor organization individually liable or jointly liable with the labor organization for the unlawful discriminatory practice. (Sec. 4112.02(C).)

(4) Under existing law, it is an unlawful discriminatory practice for *any employer, labor organization, or joint labor-management committee controlling apprentice training programs* to discriminate against any person because of specified personal characteristics, other than age, in admission to, or employment in, any program established to provide apprentice training. The bill likewise prohibits any *employee of such employer, labor organization, or joint labor-management committee* from engaging in any of those unlawful discriminatory practices and, in effect, makes such an employee individually liable or jointly liable with the employer, labor organization, or joint labor-management committee for the unlawful discriminatory practice. (Sec. 4112.02(D).)

(5) Under existing law, it is an unlawful discriminatory practice, except if based on a bona fide occupational qualification certified in advance by the Civil Rights Commission, for any *employer, employment agency, personnel placement service, or labor organization*, prior to employment or admission to membership, to do any of the following (sec. 4112.02(E)):

(a) Elicit or attempt to elicit any information concerning the specified personal characteristics of an applicant for employment or membership;

(b) Make or keep a record of the specified personal characteristics of any applicant for employment or membership;

(c) Use any form of application for employment, or personnel or membership blank, seeking to elicit information regarding specified personal characteristics; but an employer holding a contract containing a nondiscrimination clause with the United States government or any United States governmental department or agency may require an employee or applicant for employment to furnish documentary proof of United States citizenship, may retain that proof in

the employer's personnel records, and may use photographic or fingerprint identification for security purposes;

(d) Print, 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 upon specified personal characteristics;

(e) Announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of the specified personal characteristics of that group;

(f) Utilize in the recruitment or hiring of 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 their specified personal characteristics.

The bill prohibits any *employee of such employer, agency, service, or organization*, as described above in paragraph (5), from engaging in any of those designated unlawful discriminatory practices and, in effect, makes such an employee individually liable or jointly liable with the employer, employment agency, personnel placement service, or labor organization for the unlawful discriminatory practice (sec. 4112.02(E)).

Unlawful discriminatory practices in credit transactions

Unlawful discriminatory practices by creditor

Existing law. The Civil Rights Law makes it an unlawful discriminatory practice for any *creditor* to do any of the following (sec. 4112.021(B)(1)) (see COMMENT 2 and 3):

(1) 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 specified personal characteristics, including marital status, except that this provision does not apply with respect to age in any real estate transaction between a financial institution, a dealer in intangibles, or an insurance company and its customers;

(2) Use or make any inquiry as to specified personal characteristics, including marital status, for the purpose of limiting or specifying those persons to whom credit will be granted, except: (a) an inquiry of marital status does not constitute discrimination if the inquiry is made for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit, and

(b) with respect to any inquiry, elicitation of information, record, or form of application required of a creditor by any instrumentality or agency of the United States, or required of a creditor by any agency or instrumentality to enforce the federal Civil Rights Act.

(3) Refuse to consider the sources of income of an applicant for credit, or disregard or ignore the income of an applicant on the basis of specified personal characteristics, including marital status;

(4) Refuse to grant credit to an individual in any name that individual customarily uses, if it has been determined in the normal course of business that the creditor will grant credit to the individual;

(5) Impose any special requirements or conditions, including a requirement for co-obligors or reapplication, upon any applicant or class of applicants on the basis of specified personal characteristics, including marital status, in circumstances in which similar requirements or conditions are not imposed on other applicants similarly situated, unless the special requirements or conditions that are imposed with respect to age are the result of a real estate transaction exempted under the law or are the result of programs that grant preferences to certain age groups administered by instrumentalities or agencies of the United States, a state, or a political subdivision of a state;

(6) Fail or refuse to provide an applicant for credit a written statement of the specific reasons for rejection of the application if requested in writing by the applicant within 60 days of the rejection. The creditor must provide the written statement of the specific reason for rejection within 30 days after receipt of such request. A statement that the applicant was rejected solely on the basis of information received from a credit reporting agency or because the applicant failed to meet the standards required by the creditor's credit scoring system, uniformly applied, constitutes a specific reason for rejection.

(7) Fail or refuse after June 30, 1976, to print on or firmly attach to each application for credit, in a type size no smaller than that used throughout most of the application form, the following notice: "The Ohio laws against discrimination require that all creditors make credit equally available to all credit worthy customers, and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights Commission administers compliance with this law." This notice is not required to be included in applications that have a multi-state distribution if the notice is mailed to the applicant with the notice of acceptance or rejection of the application.

(8) Fail or refuse on the basis of specified personal characteristics, including marital status, to maintain, upon the request of the individual, a separate account for each individual to whom credit is extended;

(9) Fail or refuse on the basis of specified personal characteristics, including marital status, to maintain records on any account established after November 1, 1976, and 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. This provision does not apply to individuals who are contractually liable only if the primary party defaults on the account.

These provisions in existing law do *not* prohibit a *creditor* from: (a) requesting the signature of both spouses to create a valid lien, pass clear title, or waive inchoate rights to property or (b) reviewing an application for credit on the basis of established criteria used in the normal course of business for the determination of the credit worthiness of the individual applicant for credit, including the credit history of the applicant (sec. 4112.021(C) and (E)).

Operation of the bill. The bill prohibits any *employee of a creditor* from engaging in any of the designated unlawful discriminatory practices as described above in "**Existing law**" and, in effect, makes an employee of a creditor individually liable or jointly liable with the creditor for the unlawful discriminatory practice. The bill also applies to an *employee* of a creditor the exceptions described in paragraph (2) and the last paragraph above in "**Existing law**" that are applicable to a creditor with respect to the designated act or practice. (Sec. 4112.021(B)(1), (C), and (E).)

Unlawful discriminatory practices by credit reporting agency

Existing law. Under existing law, it is an unlawful discriminatory practice for any *credit reporting agency* to do any of the following (sec. 4112.021(B)(2)) (see **COMMENT 2** and **3**):

(1) Fail or refuse on the basis of specified personal characteristics, including marital status, to maintain, upon the request of the individual, a separate file on each individual about whom information is assembled or evaluated;

(2) Fail or refuse on the basis of specified personal characteristics, including marital status, to clearly note, maintain, and report any information furnished it under the provision of law described above in paragraph (9) in "**Unlawful discriminatory practices of creditor.**"

Operation of the bill. The bill prohibits any *employee of a credit reporting agency* from engaging in any of the designated unlawful discriminatory practices as described above in "**Existing law**" and, in effect, makes such an employee individually liable or jointly liable with the credit reporting agency for the unlawful discriminatory practice (sec. 4112.021(B)(2)).

Unlawful discriminatory practices by educational institution

Existing law

Under the existing Civil Rights Law, it is an unlawful discriminatory practice for an *educational institution* to discriminate against any individual on account of any handicap: (a) in admission or assignment to any academic program, course of study, internship, or class offered by the institution, (b) in permitting participation in any activity sponsored by the institution or that takes place on property owned, operated, or controlled by the institution, (c) in the awarding of any form of financial aid or other benefits available to students, (d) in admission or assignment to housing or other facilities owned, operated, or controlled by the institution, or (e) in awarding of grades or granting of certificates, diplomas, or degrees offered by the institution. (Sec. 4112.022(A) to (E).) (See **COMMENT 2** and 4.)

The Civil Rights Law does *not* prohibit any educational institution from establishing bona fide requirements or standards for admission or assignment to academic programs, courses, internships, or classes; for permitting participation in activities; for awarding of financial aid or other benefits; or for the granting of grades, certificates, diplomas, or degrees, which requirements or standards may include reasonable qualifications for demonstrating necessary skill, aptitude, physical capability, intelligence, and previous education. The law does not require any educational institution to construct, reconstruct, improve, enlarge, or alter any building, facility, or property owned, operated, or controlled by the institution, in any manner, for the purpose of making the building, facility, or property accessible to the handicapped, but this provision does not exempt an educational institution from compliance with standards adopted under the regulations to facilitate access and use of buildings by handicapped persons or for special parking locations for the handicapped to be marked. (Sec. 4112.022 and sec. 3781.111--not in the bill.)

Operation of the bill

The bill prohibits any *employee of an educational institution* from engaging in any of the designated unlawful discriminatory practices as described above in "**Existing law**," and, in effect, makes an employee of an educational institution

individually liable or jointly liable with the educational institution for the unlawful discriminatory practice (sec. 4112.022).

Statement of General Assembly's intent

The bill declares that it is the intent of the General Assembly through the amendments made by the bill to the Civil Rights Law to confirm the interpretation of the Ohio Supreme Court in the case of *Genaro v. Central Transport, Inc.* (1999), 84 Ohio St.3d 293, that the Ohio Civil Rights Law imposes joint and several liability on employees of an employer for violations of that Law. (Section 3.) (See COMMENT 5.)

COMMENT

1. An "unlawful discriminatory practice" means an act prohibited by section 4112.02, 4112.021, or 4112.022 of the Revised Code (sec. 4112.01(A)(8)--not in the bill). The bill covers all of these sections.

2. The Civil Rights Law contains definitions of terms in the following provisions relevant to the bill:

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, manager, broker, salesman, appraiser, agent, employee, lending institution, and the state and all political subdivisions, authorities, agencies, boards, and commissions of the state.

(2) "Employer" includes the state, any political subdivision of the state, any person employing four or more persons within the state, and any person acting directly or indirectly in the interest of an employer.

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

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

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

....

(7) "Discriminate" includes segregate or separate.

....

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

....

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

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

(ii) Any mental or psychological disorder, including, but not limited to, mental retardation,

organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(iii) Diseases and conditions, including, but not limited to, orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, mental retardation, emotional illness, drug addiction, and alcoholism.

(b) "Physical or mental impairment" does not include any of the following:

(i) Homosexuality and bisexuality;

(ii) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(iii) Compulsive gambling, kleptomania, or pyromania;

(iv) Psychoactive substance use disorders resulting from current illegal use of a controlled substance.

....

(B) For the purposes of divisions (A) to (F) [the bill amends divisions (A) to (E)] of section 4112.02 of the Revised Code, the terms "because of sex" and "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, any illness arising out of and occurring during the course of a pregnancy, childbirth, or related medical conditions. Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in division (B) of section

4111.17 of the Revised Code [statutory exceptions from wage discrimination] shall be interpreted to permit otherwise. This division shall not be construed to require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term or except where medical complications have arisen from the abortion, provided that nothing in this division precludes an employer from providing abortion benefits or otherwise affects bargaining agreements in regard to abortion.

3. For purposes of the prohibited unlawful discriminatory practices by a creditor or a credit reporting agency, the Civil Rights Law also contains the following definitions of terms (sec. 4112.021(A):

(1) "Credit" means the right granted by a creditor to a person to defer payment of a debt, or to incur debt and defer its payment, or purchase property or services and defer payment therefor;

(2) "Creditor" means any person who regularly extends, renews, or continues credit, any person who regularly arranges for the extension, renewal, or continuation of credit, or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit, whether or not any interest or finance charge is required;

(3) "Credit reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates credit information for the purpose of furnishing credit reports to creditors;

(4) "Age" means any age of eighteen years or older.

4. For purposes of the prohibited unlawful discriminatory practices by an educational institution, "educational institution" means a state university or college, state-assisted institution of higher education, nonprofit educational institution described in the Educational Corporations Law, or institution registered under the Proprietary Schools Law.

5. The specific issue before the Supreme Court in *Genaro v. Central Transport, Inc.*, *supra*, was whether supervisors and managers may be held personally liable for unlawful discriminatory acts committed by them in violation of Chapter 4112. of the Revised Code. The Supreme Court, by a majority of four Justices, held that a supervisor or manager may be held jointly and/or severally liable with the supervisor's or manager's employer for discriminatory conduct of the supervisor or manager in violation of Chapter 4112. of the Revised Code. The Court, in the opinion written by Justice Douglas, stated the rationale for its decision as follows:

R.C. 4112.02 provides that "it shall be an unlawful discriminatory practice: (A) for any employer, because of the race, color, religion, sex, national origin, handicap, age, or ancestry of any person, * * * to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment." R.C. 4112.01(A)(2) defines "employer" as "any person employing four or more persons within the state, and any person acting directly or indirectly in the interest of an employer." (Emphasis added.) Further, the term "person" is defined very broadly by R.C. 4112.01(A)(1) as including "one or more individuals, * * * any owner, lessor, assignor, * * * agent, [and] employee." It is clear that the R.C. 4112.01(A)(2) definition of "employer," by its very terms, encompasses individual supervisors and managers whose conduct violates the provisions of R.C. Chapter 4112.

Moreover, R.C. 4112.08 mandates that "this chapter [4112] shall be construed liberally for the accomplishment of its purposes * * * ." This court has noted in numerous cases the existence of a strong public policy against discrimination. A majority of this court have, time and time again, found that there is no place in this state for any sort of discrimination no matter its size, shape, or form or in what clothes it might masquerade. This, of course, includes discrimination in the workplace. For instance in *Helmick v. Cincinnati Word Processing, Inc.* (1989), 45 Ohio St.3d 131, 133 . . . we stated that "there

appears to be little question that R.C. Chapter 4112. is comprehensive legislation designed to provide a wide variety of remedies for employment discrimination in its various forms." See, also, *Kerans v. Porter Paint Co.* (1991), 61 Ohio St.3d 486 . . . and *Collins v. Rizkana* (1995), 73 Ohio St.3d 65 . . . indicating that Ohio's statutory framework and case law reflect Ohio's strong public policy against workplace discrimination. By holding supervisors and managers individually liable for their discriminatory actions, the antidiscrimination purposes of R.C. Chapter 4112. are facilitated, thereby furthering the public policy goals of this state regarding workplace discrimination.

Further, while this court has not previously spoken on this issue, three decisions from courts of appeals of this state have held that liability may be imposed against supervisors and managers in their individual capacity for conduct in violation of R.C. Chapter 4112. See *Davis v. Black* (1991), 70 Ohio App. 3d 359, 370 . . . ("Clearly, the supervisor for whom an employer may be vicariously liable under the doctrine of respondeat superior is also an employer within this definition [R.C. 4112.01(A)(2)]."); *Seiber v. Wilder*, 1994 Ohio App. LEXIS 4609 (Oct. 12, 1994), Greene App. No. 94CA32, unreported, 1994 WL 558969 (individual supervisor defendants were not entitled to summary judgment because "the definition of 'employer' in R.C. 4112.01(A)(2) has been construed to include supervisors," citing *Davis*, 70 Ohio App. 3d at 370 . . .); and *Cisneros v. Birck*, 1995 Ohio App. LEXIS 1555 (Apr. 11, 1995), Franklin App. No. 94APE08-1255, unreported, 1995 WL 222156 (individual liability could exist against defendant in his individual capacity, where defendant, who was essentially a one-man corporation, was also considered an employer under R.C. 4112.01[A][2] by acting directly or indirectly in the interest of his own corporation).

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The dissenting opinion written by Chief Justice Moyer declared that R.C. 4112.02 clearly imposes liability upon employers for discriminatory practices in the workplace but conspicuously fails to include a provision imposing liability upon employees who participate in discriminatory practices. The dissent stated as follows:

However, when the language of a statute is clear and unambiguous, it is the duty of the court to apply the statute as written, making neither additions to the statute nor deletions therefrom. . . . Applying this principle of statutory interpretation to R.C. Chapter 4112. causes me to conclude that this court should not expand the liability imposed under R.C. 4112.02 to individual employees. Had the General Assembly wished to extend individual liability to managerial personnel it could have easily included the word "employee" in R.C. 4112.02(A). (Citations omitted.)

84 Ohio St.3d 293, 301

HISTORY

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