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Bill Analysis
Legislative Service Commission

H.B. 300

125th General Assembly
(As Introduced)

Reps. Reidelbach, Brinkman, McGregor, Seitz, Clancy, Collier, Daniels, Aslanides, Grendell, Gilb, Taylor, Wolpert, Williams, Young, Schaffer, DeWine, Gibbs, Raussen, Wagner, Buehrer, Sykes, S. Patton

BILL SUMMARY

- Provides that no person has a cause of action or claim based on unlawful discriminatory practices relating to employment against a supervisor, manager, or other employee of an employer unless that supervisor, manager, or other employee is the employer; states that nothing in that provision abrogates statutory or common law imposing vicarious liability on an employer for the actions or omissions of its agents; and removes from specific inclusion in the definition of "employer" in the Civil Rights Law any person acting directly or indirectly in the interest of an employer.
- Declares that the intent of the General Assembly with respect to the preceding dot point is to supersede the effect of the Ohio Supreme Court's holding in *Genaro v. Central Transport, Inc.* (1999), 84 Ohio St.3d 293, that a supervisor or manager may be held jointly and/or severally liable with the employer for unlawful discriminatory conduct of the supervisor or manager.
- Bars a person from instituting a tort action based on the public policies embodied in the Civil Rights Law or in federal, state, or local fair employment laws and declares the General Assembly's intent 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.
- Expands the period of limitations for bringing a civil action for certain unlawful discriminatory practices based on age from 180 days to 300 days and provides a 300-day period of limitations for a civil action by a

person who is 40 years of age or older, who meets the established job requirements and employer-employee relationship laws, and who is discriminated against in any job opening or discharged without just cause by an employer.

- Subject to certain exceptions, specifies a 300-day period of limitations for any civil action commenced under the Civil Rights Law.
- Declares the intent of the General Assembly with respect to the two preceding dot points to establish a uniform 300-day statute of limitations for civil actions under the Civil Rights Law with respect to unlawful discriminatory practices related to employment, thereby superseding certain holdings of the Ohio Supreme Court such as *Cosgrove v. Williamsburg of Cincinnati Mgt. Co., Inc.* (1994), 70 Ohio St.3d 281, in which the Court held that R.C. 4112.99 is a remedial statute and is subject to the six-year statute of limitations for actions upon a liability created by statute other than a forfeiture or penalty.
- Bars a person who files a civil action under the Civil Rights Law that alleges unlawful discriminatory practices relating to employment, from filing a charge with the Ohio Civil Rights Commission with respect to the practices complained of.
- Bars an aggrieved individual who first files a charge with the Ohio Civil Rights Commission or the federal Equal Employment Opportunity Commission to enforce the individual's rights relative to unlawful discriminatory practices relating to employment, from instituting a civil action under the Ohio Civil Rights Law with respect to the practices complained of in the charge unless the civil action is filed within 90 days after filing the complaint with the Commission, and requires the Civil Rights Commission to give notice of this provision to an individual who files such a charge with the Commission.
- Imposes monetary limits, based on the number of employees of a defendant for a given period in the current or preceding calendar year, on the amount of compensatory damages 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 complainant in a civil action based on unlawful discriminatory practices relating to employment, and declares the General Assembly's intent to cap the damages based on the size of the

employer as they are under federal fair employment laws by virtue of the Civil Rights Act of 1991.

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CONTENT AND OPERATION

Civil Rights Law

The Civil Rights Law (R.C. Chapter 4112.) prohibits various acts or practices by certain persons or entities that are designated as *unlawful discriminatory practices*. 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 (R.C. 4112.99).

The Civil Rights Law is construed liberally for the accomplishment of its purposes, and any law inconsistent with any of its provisions does not apply. Generally, nothing in that Law is considered to repeal any provision of any law of Ohio relating to discrimination because of race, color, religion, sex, familial status, disability, national origin, age, or ancestry. (R.C. 4112.08.)

Unlawful discriminatory practices by an employer--existing law

The Civil Rights Law specifies the unlawful discriminatory practices relating to employment and for which an employer is liable.



General discriminatory practices

Under the Civil Rights Law, it is an unlawful discriminatory practice for any "employer" (see *Definition*," below), because of the "race, color, religion, sex, national origin, disability, 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 (R.C. 4112.02(A)).

It is also an unlawful discriminatory practice for *any employer*, among others, to do any of the following (R.C. 4112.02(D) and (E)):

(1) Discriminate against any person because of any specified personal characteristic, other than age, in admission to, or employment in, any program established to provide apprentice training;

(2) Except if based on a bona fide occupational qualification certified in advance by the Civil Rights Commission, prior to employment:

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

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

(c) Use any form of application for employment seeking to elicit information regarding any specified personal characteristic; 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 indicating any preference, limitation, specification, or discrimination, based upon any of the specified personal characteristics;

(e) Announce or follow a policy of denying or limiting, through a quota system or otherwise, employment opportunities of any group because of any specified personal characteristic 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 any of their specified personal characteristics.

Age discrimination

The Civil Rights Law further prohibits any *employer* from discriminating in any job opening against any applicant, or discharging without just cause any employee, who is 40 years of age or older and who is physically able to perform the duties and otherwise meets the established requirements of the job and laws pertaining to the relationship between employer and employee (R.C. 4112.14(A)). (See **COMMENT 1**.)

Definition

As used in the Civil Rights Law, "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* (R.C. 4112.01(A)(2)). (See **COMMENT 2**.)

Unlawful discriminatory practices by an employer--operation of the bill

The bill removes from specific inclusion in the definition of "employer," as used in the Civil Rights Law, *any person acting directly or indirectly in the interest of an employer*. Under the bill, "employer" includes the state, any political subdivision of the state, and any person employing four or more persons within the state. (R.C. 4112.01(A)(2).)

The bill specifically provides that no person has a cause of action or claim based on unlawful discriminatory practices relating to employment against a *supervisor, manager, or other employee* of an employer unless that supervisor, manager, or other employee is the employer. The bill states that nothing in this provision abrogates statutory or common law imposing vicarious liability on an employer for the actions or omissions of its agents. (R.C. 4112.08(B).)

Intent

The bill declares the General Assembly's intent in amending R.C. 4112.01 and enacting R.C. 4112.08(B), as described above: (1) to supersede the effect of the holding of the Ohio Supreme Court in *Genaro v. Central Transport, Inc.* (1999), 84 Ohio St.3d 293, and (2) that individual supervisors, managers, or employees *not* be held liable under the Civil Rights Law for unlawful discriminatory practices relating to employment. (See **COMMENT 3**.) The bill states that the General Assembly does not intend the act to abrogate the imposition at common law of vicarious liability on employers for the unlawful discriminatory practices of their employees or agents. (Section 3, 1st par.)

Public policy tort action

The bill specifies that causes of action based on the public policies embodied in the Civil Rights Law 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 the Civil Rights Law or in federal, state, or local fair employment laws (R.C. 4112.08(C)).

The bill declares the General Assembly's intent in enacting R.C. 4112.08(C), above, 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 the Civil Rights Law, or any federal, state, or local fair employment law. (Section 3, 4th par.) (See **COMMENT 4.**)

Statute of limitations--existing law

Under existing law, an aggrieved individual may enforce the individual's rights relative to discrimination *on the basis of "age"* (defined as, generally, at least 40 years old) as provided for in R.C. 4112.02 (see **COMMENT 5** and **6**) by instituting a civil action, within *180 days* after the alleged unlawful discriminatory practice occurred, in any court with jurisdiction for any legal or equitable relief that will effectuate the individual's rights. A person who files such a civil action is barred, with respect to the practices complained of, from instituting a civil action as described in the following paragraph and from filing a charge with the Ohio Civil Rights Commission. (R.C. 4112.02(N) and 4112.01(A)(14).)

Any person aged 40 or older who is discriminated against in any job opening or discharged without just cause by an employer in violation of the prohibition described above in "**Age discrimination**" may institute a civil action against the employer in a court of competent jurisdiction. A person instituting such a civil action is barred, with respect to the practices complained of, from instituting a civil action as described in the preceding paragraph or from filing a charge with the Ohio Civil Rights Commission. (R.C. 4112.14(B).)

Any person who violates the Civil Rights Law is subject to a civil action for damages, injunctive relief, or any other appropriate relief (R.C. 4112.99).

Statute of limitations--operation of the bill

The bill modifies existing law by providing a 300-day period of limitations for commencing the above described civil actions as follows:

(1) It extends the period of limitations for instituting a civil action based on unlawful discrimination *on the basis of age* as described above in the first paragraph in "**Statute of limitations--existing law**" to *300 days after the alleged unlawful discrimination occurred* (R.C. 4112.02(N) and 4112.99).

(2) It provides that any person aged 40 or older who is discriminated against in any job opening or discharged without just cause by an employer as described above in the second paragraph in "**Statute of limitations--existing law**" may institute a civil action against the employer *within 300 days after the alleged discrimination occurred* (R.C. 4112.14(B) and 4112.99).

(3) It provides that, with certain exceptions, a civil action commenced under the Civil Rights Law must be brought *within 300 days after the alleged unlawful discrimination occurred*. The exceptions are: a civil action for an alleged unlawful discriminatory practice of a creditor, which under continuing law must be brought within 180 days after that discriminatory practice occurred, and a civil action for an alleged discriminatory practice with respect to housing accommodations, which under continuing law must be brought within one year after that discriminatory practice occurred. (R.C. 4112.021(D) and 4112.051(A)--not in the bill, and R.C. 4112.99.)

Intent

The bill states that the General Assembly declares its intent in amending R.C. 4112.02, 4112.14, and 4112.99 pursuant to this act to establish a uniform 300-day statute of limitations for civil actions provided for in the Civil Rights Law alleging unlawful discriminatory practices relating to employment, thereby superseding certain holdings of the Ohio Supreme Court such as *Cosgrove v. Williamsburg of Cincinnati Mgt. Co.* (1994), 70 Ohio St.3d 281. (See **COMMENT 7**.) This limitation period is modeled after federal fair employment laws, including Title VII of the Civil Rights Act, 42 USC 2000e-5(e)(1), the Americans with Disabilities Act, 42 USC 12117(a), and the Age Discrimination in Employment Act, 29 USC 626(d). (Section 3, 2nd par.)

Electing administrative enforcement or civil action

The bill provides that a person who files a civil action under the Civil Rights Law alleging unlawful discriminatory practices relating to employment is barred, with respect to the practices complained of, from filing a charge with the Ohio Civil Rights Commission under R.C. 4112.05. An aggrieved individual who first files a charge with the Ohio Civil Rights Commission under R.C. 4112.05 or with the federal Equal Employment Opportunity Commission to enforce the individual's rights relative to unlawful discriminatory practices relating to employment, is barred from instituting a civil action under the Ohio Civil Rights

Law with respect to the practices complained of in the charge filed with the Commission unless that individual commences a civil action with respect to the practices complained of within 90 days after filing the complaint with the Commission. Upon timely commencement of a civil action, the Commission must prepare an order to dismiss any administrative action based on the charge filed by the individual and must notify all parties of the order to dismiss. (R.C. 4112.053.)

The bill requires the Ohio Civil Rights Commission to notify an individual who files a charge with the Commission to enforce the individual's rights relative to unlawful discriminatory practices relating to employment, that in accordance with R.C. 4112.053, as described in the preceding paragraph, the individual is barred from instituting a civil action under the Civil Rights Law with respect to the practices complained of in the charge filed with the Commission unless that individual commences a civil action with respect to the practices complained of within 90 days after filing the complaint with the Commission (R.C. 4112.04(A)(11)).

Intent

The bill states that the General Assembly declares its intent in enacting R.C. 4112.053 pursuant to this act that persons alleging unlawful discriminatory practices relating to employment elect between either pursuing administrative rights and remedies through the Ohio Civil Rights Commission or commencing available civil actions, such as under R.C. 4112.02(N), 4112.14(B), and 4112.99 (see "**Statute of limitations--operation of the bill,**" above). An early election will reduce the cost and confusion associated with the same claim being pursued and defended in two forums. (Section 3, 5th par.)

Caps on damages

The bill provides that 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 unlawful discriminatory practices relating to employment cannot exceed the following amounts (R.C. 4112.16):

(1) \$50,000, in the case of a defendant with fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year;

(2) \$100,000, in the case of a defendant with more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year;

(3) \$200,000, in the case of a defendant with more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year;

(4) \$300,000, in the case of a defendant with more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year.

Intent

The bill states that the General Assembly declares its intent in enacting R.C. 4112.16 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). (Section 3, 3rd par.)

COMMENT

1. With regard to *age*, it is not an unlawful discriminatory practice, and it does not constitute a violation of R.C. 4112.14(A) for any *employer*, among others, to do any of the following (R.C. 4112.02(O)):

(a) Establish bona fide employment qualifications reasonably related to the particular business or occupation that may include standards for skill, aptitude, physical capability, intelligence, education, maturation, and experience;

(b) Observe the terms of a bona fide seniority system or any bona fide employee benefit plan, including a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of the prohibitions against unlawful discriminatory practices; but no such employee benefit plan can excuse the failure to hire any individual, and no such seniority system or employee benefit plan can require or permit the involuntary retirement of any individual, because of the individual's age, except as provided for in specified federal law on age discrimination in employment;

(c) Retire an employee who has attained 65 years of age who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if the employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans, of the employer of the employee, which equals, in the aggregate, at least \$44,000, in accordance with the conditions in specified federal law on age discrimination in employment;

(d) Observe the terms of any bona fide apprenticeship program if the program is registered with the Ohio Apprenticeship Council and is approved by the Federal Committee on Apprenticeship of the United States Department of Labor.

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

....

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

....

(7) "Discriminate" includes segregate or separate.

....

(13) "Disability" 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.

(14) Except as otherwise provided in section 4112.021 of the Revised Code, "age" means at least forty years old.

.....

(B) For the purposes of divisions (A) to (F) 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 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. 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 R.C. Chapter 4112. 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 R.C. Chapter 4112. The Court, in an opinion written by Justice Douglas, stated the rationale for its decision as follows:

R.C. 4112.02 provides that "[i]t shall be an unlawful discriminatory practice: (A) [f]or 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. (At p. 296.)

To explain its holding, the Court contrasts the definition of "employer" in R.C. 4112.01(A)(2) from the definition of "employer" in the federal anti-discrimination laws. The difference according to the Court is that, under Title VII, "employer" is defined as "a person engaged in an industry affecting commerce who has *fifteen or more employees . . . and any agent of such a person.*" (42 U.S.C.A. 2000e(b); emphasis added by the Court.) The Court reasoned that the Ohio statute's specific reference to fewer employees (four instead of 15) and inclusion of "any person acting directly or indirectly in the interest of an employer" (instead of the agency terminology in Title VII) creates a much broader scope than the federal statute and a clear intent to hold individual supervisors and managers personally liable for their own discriminatory conduct in the workplace environment.

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 states as follows:

The majority asserts that the public policy against discrimination supports its argument that R.C. Chapter 4112 should be construed to impose liability on supervisors and managers. 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.)

Petitioners argue that supervisors and managers should be considered employers under the definition of "employer" contained in R.C. 4112.01(A)(2). That section reads as follows:

"(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.*" (Emphasis added.)

Petitioner's argument that managerial personnel should be considered "employers" under this section fails for several reasons. First, petitioners contend that the phrase "and any person acting directly or indirectly in the interest of an employer" should be read to include managerial personnel in the definition of "employer." However, this phrase was more likely included in R.C. 4112.01 in order to impose vicarious liability on employers for discriminatory acts of their employees. This court has previously stated that federal case law interpreting Title VII is generally applicable to interpretations of R.C. Chapter 4112. *Plumbers & Steamfitters Joint Apprenticeship Comm. v. Ohio Civ. Rights Comm.* (1981), 66 Ohio St.2d 192. . . . Title VII is the federal antidiscrimination statute. Title VII defines "employer" as "a person engaged in an industry affecting commerce who has fifteen or more employees * * * *and any agent of such a person.*" (Emphasis added.) Section 2000e(b), Title 42, U.S. Code.

Numerous federal courts have held that the agency clause of Title VII does not impose liability on individual employees, but instead imposes vicarious liability on employers for the discriminatory acts of their employees. See *Miller v. Maxwell's Internatl.,*

Inc. (C.A.9, 1993), 991 F.2d 583; *Gary v. Long* (C.A.D.C.1995), 59 F.3d 1391; *Wathen v. Gen. Elec. Co.* (C.A.6, 1997), 115 F.3d 400. While R.C. Chapter 4112 and Title VII contain slightly different language, the language of both statutes indicates an intent to hold employers vicariously liable for the discriminatory acts of their employees. (At pp. 300-301.)

4. In *Greeley v. Miami Valley Maintenance Contrs., Inc.*, *supra*, the Ohio Supreme Court in paragraph 3 of its syllabus held the following:

In Ohio, a cause of action for wrongful discharge in violation of public policy may be brought in tort.

5. In addition to the unlawful discriminatory practices described above in "Unlawful discriminatory practices by an employer--existing law," R.C. 4112.02 also provides other types of unlawful discriminatory practices based on specified personal characteristics, *including age*, as follows (R.C. 4112.02(B), (C), (F), (G), and (H)(14)):

(a) For an *employment agency or personnel placement service*, because of any specified personal characteristic, to do any of the following: (i) refuse or fail to accept, register, classify properly, or refer for employment, or otherwise discriminate against any person, (ii) 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 R.C. 4112.01 to 4112.07;

(b) For any *labor organization* to do any of the following: (i) limit or classify its membership on the basis of specified personal characteristics, (ii) 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 any specified personal characteristic;

(c) For *any person seeking employment* to publish or cause to be published any advertisement that specifies or in any manner indicates any of that person's specified personal characteristics or expresses a limitation or preference as to any specified personal characteristic of any prospective employer;

(d) For any *proprietor or any employee, keeper, or manager of a place of public accommodation* to deny to any person, except for reasons applicable alike to all persons regardless of any specified personal characteristic, the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of public accommodation;

(e) For *any person* to refuse to sell, transfer, assign, rent, lease, sublease, or finance, or otherwise deny or withhold, a burial lot from any person because of the race, color, sex, familial status, *age*, ancestry, disability, or national origin of any prospective owner or user of the lot.

6. Nothing in the Civil Rights Law prohibiting age discrimination and nothing in R.C. 4112.14(A) (see "*Age discrimination*," above) can be construed to prohibit the following: (a) the designation of uniform age the attainment of which is necessary for public employees to receive pension or other retirement benefits pursuant to specified statutes, (b) the mandatory retirement of uniformed patrol officers of the State Highway Patrol, (c) the maximum age requirements for appointment as a patrol officer in the State Highway Patrol, (d) the maximum age requirements established for original appointment to a police department or fire department, (e) any maximum age not in conflict with federal law that may be established by a municipal charter, municipal ordinance, or resolution of a board of township trustees for original appointment as a police officer or firefighter, or (f) any mandatory retirement provision not in conflict with federal law of a municipal charter, municipal ordinance, or resolution of a board of township trustees pertaining to police officers and firefighters. (R.C. 4112.02(P).)

7. The syllabus of the Ohio Supreme Court in *Cosgrove v. Williamsburg of Cincinnati Mgt. Co., Inc.* (1994), 70 Ohio St.3d 281, reads as follows:

R.C. 4112.99 is a remedial statute, and is thus subject to R.C. 2305.07's six-year statute of limitations.

The Court in *Cosgrove* noted that R.C. 4112.99 is not a penalty statute regardless of how it is labeled and numbered in the Revised Code. R.C. 4112.99 creates civil liability for persons committing discriminatory acts and provides a remedy rather than instituting a penalty. According to the Court, in the absence of a limitations period in R.C. 4112.99, R.C. 2305.07, which provides a six-year period of limitations for an action upon a liability created by statute other than a forfeiture or penalty, applies.

Justice Resnick, in her concurring opinion, stated as follows:

. . . I wish to stress that how victims of different discriminatory practices are treated regarding time limitations on the independent civil remedies afforded them under R.C. Chapter 4112. is a political issue best resolved by the General Assembly. (At p. 285.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-14-03	p. 1109

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