



*BEFORE THE HOUSE CIVIL JUSTICE COMMITTEE
PROPONENT TESTIMONY ON HOUSE BILL 352*

Chairman Hambley, Vice Chair Patton, Ranking Member Brown, and members of the House Civil Justice Committee, thank you for the opportunity to provide testimony in support of House Bill 352 (HB 352). My name is Jan Hensel and I am a partner with the law firm Dinsmore & Shohl.

Founded in Cincinnati, Ohio in 1908, Dinsmore & Shohl is an AmLaw 200 law firm with more than 650 attorneys in 25 cities offering legal services to individuals and business clients ranging from start-ups to Fortune500 companies. My practice specializes in representing employers in Ohio on issues arising under the Ohio Civil Rights Act, the Fair Labor Standards Act, the Age Discrimination in Employment Act, and Title VII.

Additionally, I serve as the Chair of the Ohio Chamber of Commerce's Employment Law Committee which gives me the opportunity to lead the development of the Ohio Chamber's labor and employment public policy priorities.

At the top of the Ohio Chamber's public policy priorities is reforming Ohio's confusing workplace discrimination laws including simplifying our age discrimination statutes, so I am testifying in support of HB 352. My testimony will focus on the current status of Ohio's age discrimination law and the procedural changes made to the age discrimination law by HB 352.

The statutory scheme for age discrimination claims in Ohio is a mess. The Ohio Civil Rights Act prohibits discrimination in employment on the basis of race, color, religion, sex, military status, national origin, disability, age or ancestry. Claims alleging discrimination based upon any of these protected classes – with the exception of age – have the same statutory enforcement scheme. An employee claiming discrimination on any basis other than age can file a charge of discrimination with the Ohio Civil Rights Commission under R.C. 4112.05, may proceed straight to Court under R.C. 4112.99, or both. There is no election requirement. There is no exhaustion requirement. The remedies available for all types of discrimination – with the exception of age – are the same.

Age discrimination, however, is different. Under R.C. 4112.02(L), an aggrieved individual may file suit in court within 180 days of the alleged unlawful act. Compensatory and punitive damages are recoverable. There is a right to a jury trial. An individual who proceeds under this section may not file a charge of discrimination with the Ohio Civil Rights Commission under R.C. 4112.05 or an action under R.C. 4112.14.

Under 4112.14, an individual “who is discriminated against in any job opening or discharged without just cause” may file a civil action. R.C. 4112.14 allows only equitable relief of back pay, reinstatement, costs and attorneys’ fees. There is no right to a jury trial. The limitations period is six years. Claims under this statute are barred when the discharge has been arbitrated and has been found to be for just cause. An individual who institutes a civil action under this section is barred from instituting a civil action under R.C. 4112.02(L) or from filing a charge under R.C. 4112.05.

There is one circumstance where an employee can file an action under R.C. 4112.14 and subsequently file a charge with the OCRC. Because the federal Age Discrimination in Employment Act requires the commencement of a state proceeding before filing an ADEA action, a plaintiff who has filed a claim under R.C. 4112.14 is not barred from thereafter filing a charge with the OCRC simply to satisfy the ADEA prerequisite. The inverse is not true; R.C. 4112.08 bars an individual who has filed a charge under Section 4112.05 from instituting a civil action under either R.C. 4112.14 or division (L) of Section 4112.02.

HB 352 improves Ohio’s business climate by addressing the confusion caused by Ohio’s current process of bringing age discrimination claims. Under the legislation, filing a workplace age discrimination claim that seeks more than injunctive relief will happen exclusively under RC 4112.14 or 4112.02(A), and the choice will remain with the plaintiff as to which statute they want to use to pursue their claim. Likewise, each of the two statutes explicitly prohibits employers from discriminating in the hiring or firing of employees over the age of forty and makes specific remedies available. If the plaintiff only pursues injunctive relief they will file their claim under RC 4112.052.

In HB 352, age discrimination claims are subject to the same 2-year statute of limitation and administrative exhaustion requirements at the Ohio Civil Rights Commission that all other workplace discrimination claims have under the legislation. By conforming the procedures and statute of limitations to file age discrimination claims with all other discrimination claims, HB 352 creates a simpler and more uniform process for both employers and employees.

This new process will lead to fairer outcomes for all parties involved, and employees will not risk inadvertently waiving their right to administrative remedies.

In closing, HB 352 modifies Ohio’s current age discrimination statutes by streamlining the methods to file a claim while preserving an employee’s choice to pick the remedies they wish to pursue. I urge your favorable consideration of HB 352 because the reforms included in the bill will improve Ohio’s business climate through better alignment of our workplace discrimination laws with federal law and the laws of other states, while still protecting the interests of employees to seek justice when they face discrimination at work.

Thank you for the opportunity to testify today and I can answer any questions from the committee.