

As Introduced

**134th General Assembly
Regular Session
2021-2022**

S. B. No. 177

**Senator Maharath
Cosponsor: Senator Yuko**



A BILL

To amend sections 4112.01, 4112.052, 4112.07, and 4113.71 and to enact section 4112.025 of the Revised Code to enact the Ohio Pregnant Workers Fairness Act to generally require employers to make reasonable accommodations for employees who are pregnant or breastfeeding.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4112.01, 4112.052, 4112.07, and 4113.71 be amended and section 4112.025 of the Revised Code be enacted to read as follows:

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. 19

(2) "Employer" means the state, any political subdivision 20
of the state, or a person employing four or more persons within 21
the state, and any agent of the state, political subdivision, or 22
person. 23

(3) "Employee" means an individual employed by any 24
employer but does not include any individual employed in the 25
domestic service of any person. 26

(4) "Labor organization" includes any organization that 27
exists, in whole or in part, for the purpose of collective 28
bargaining or of dealing with employers concerning grievances, 29
terms or conditions of employment, or other mutual aid or 30
protection in relation to employment. 31

(5) "Employment agency" includes any person regularly 32
undertaking, with or without compensation, to procure 33
opportunities to work or to procure, recruit, refer, or place 34
employees. 35

(6) "Commission" means the Ohio civil rights commission 36
created by section 4112.03 of the Revised Code. 37

(7) "Discriminate" includes segregate or separate. 38

(8) "Unlawful discriminatory practice" means any act 39
prohibited by section 4112.02, 4112.021, ~~or~~ 4112.022, or 40
4112.025 of the Revised Code. 41

(9) "Place of public accommodation" means any inn, 42
restaurant, eating house, barbershop, public conveyance by air, 43
land, or water, theater, store, other place for the sale of 44
merchandise, or any other place of public accommodation or 45
amusement of which the accommodations, advantages, facilities, 46

or privileges are available to the public. 47

(10) "Housing accommodations" includes any building or 48
structure, or portion of a building or structure, that is used 49
or occupied or is intended, arranged, or designed to be used or 50
occupied as the home residence, dwelling, dwelling unit, or 51
sleeping place of one or more individuals, groups, or families 52
whether or not living independently of each other; and any 53
vacant land offered for sale or lease. "Housing accommodations" 54
also includes any housing accommodations held or offered for 55
sale or rent by a real estate broker, salesperson, or agent, by 56
any other person pursuant to authorization of the owner, by the 57
owner, or by the owner's legal representative. 58

(11) "Restrictive covenant" means any specification 59
limiting the transfer, rental, lease, or other use of any 60
housing accommodations because of race, color, religion, sex, 61
military status, familial status, national origin, disability, 62
or ancestry, or any limitation based upon affiliation with or 63
approval by any person, directly or indirectly, employing race, 64
color, religion, sex, military status, familial status, national 65
origin, disability, or ancestry as a condition of affiliation or 66
approval. 67

(12) "Burial lot" means any lot for the burial of deceased 68
persons within any public burial ground or cemetery, including, 69
but not limited to, cemeteries owned and operated by municipal 70
corporations, townships, or companies or associations 71
incorporated for cemetery purposes. 72

(13) "Disability" means a physical or mental impairment 73
that substantially limits one or more major life activities, 74
including the functions of caring for one's self, performing 75
manual tasks, walking, seeing, hearing, speaking, breathing, 76

learning, and working; a record of a physical or mental 77
impairment; or being regarded as having a physical or mental 78
impairment. 79

(14) Except as otherwise provided in section 4112.021 of 80
the Revised Code, "age" means an individual aged forty years or 81
older. 82

(15) "Familial status" means either of the following: 83

(a) One or more individuals who are under eighteen years 84
of age and who are domiciled with a parent or guardian having 85
legal custody of the individual or domiciled, with the written 86
permission of the parent or guardian having legal custody, with 87
a designee of the parent or guardian; 88

(b) Any person who is pregnant or in the process of 89
securing legal custody of any individual who is under eighteen 90
years of age. 91

(16) (a) Except as provided in division (A) (16) (b) of this 92
section, "physical or mental impairment" includes any of the 93
following: 94

(i) Any physiological disorder or condition, cosmetic 95
disfigurement, or anatomical loss affecting one or more of the 96
following body systems: neurological; musculoskeletal; special 97
sense organs; respiratory, including speech organs; 98
cardiovascular; reproductive; digestive; genito-urinary; hemic 99
and lymphatic; skin; and endocrine; 100

(ii) Any mental or psychological disorder, including, but 101
not limited to, intellectual disability, organic brain syndrome, 102
emotional or mental illness, and specific learning disabilities; 103

(iii) Diseases and conditions, including, but not limited 104

to, orthopedic, visual, speech, and hearing impairments, 105
cerebral palsy, autism, epilepsy, muscular dystrophy, multiple 106
sclerosis, cancer, heart disease, diabetes, human 107
immunodeficiency virus infection, intellectual disability, 108
emotional illness, drug addiction, and alcoholism. 109

(b) "Physical or mental impairment" does not include any 110
of the following: 111

(i) Homosexuality and bisexuality; 112

(ii) Transvestism, transsexualism, pedophilia, 113
exhibitionism, voyeurism, gender identity disorders not 114
resulting from physical impairments, or other sexual behavior 115
disorders; 116

(iii) Compulsive gambling, kleptomania, or pyromania; 117

(iv) Psychoactive substance use disorders resulting from 118
the current illegal use of a controlled substance or the current 119
use of alcoholic beverages. 120

(17) "Dwelling unit" means a single unit of residence for 121
a family of one or more persons. 122

(18) "Common use areas" means rooms, spaces, or elements 123
inside or outside a building that are made available for the use 124
of residents of the building or their guests, and includes, but 125
is not limited to, hallways, lounges, lobbies, laundry rooms, 126
refuse rooms, mail rooms, recreational areas, and passageways 127
among and between buildings. 128

(19) "Public use areas" means interior or exterior rooms 129
or spaces of a privately or publicly owned building that are 130
made available to the general public. 131

(20) "Controlled substance" has the same meaning as in 132

section 3719.01 of the Revised Code.	133
(21) "Disabled tenant" means a tenant or prospective tenant who is a person with a disability.	134 135
(22) "Military status" means a person's status in "service in the uniformed services" as defined in section 5923.05 of the Revised Code.	136 137 138
(23) "Aggrieved person" includes both of the following:	139
(a) Any person who claims to have been injured by any unlawful discriminatory practice described in division (H) of section 4112.02 of the Revised Code;	140 141 142
(b) Any person who believes that the person will be injured by any unlawful discriminatory practice described in division (H) of section 4112.02 of the Revised Code that is about to occur.	143 144 145 146
(24) "Unlawful discriminatory practice relating to employment" means both of the following:	147 148
(a) An unlawful discriminatory practice that is prohibited by division (A), (B), (C), (D), (E), or (F) of section 4112.02 or by <u>section 4112.025</u> of the Revised Code;	149 150 151
(b) An unlawful discriminatory practice that is prohibited by division (I) or (J) of section 4112.02 of the Revised Code that is related to employment.	152 153 154
(25) "Notice of right to sue" means a notice sent by the commission to a person who files a charge under section 4112.051 of the Revised Code that states that the person who filed the charge may bring a civil action related to the charge pursuant to section 4112.052 or 4112.14 of the Revised Code, in accordance with section 4112.052 of the Revised Code.	155 156 157 158 159 160

(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.

Sec. 4112.025. (A) As used in this section: 180

(1) "Reasonable accommodation" means a request for a change or modification in work duties. 181
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(2) "Undue hardship" means any requirement that would require an employer to take an action with significant difficulty or expense when considered in light of factors, including all of the following: 183
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(a) The nature and cost of the accommodation needed under this section; 187
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(b) The overall financial resources of the facility 189

<u>involved in providing the reasonable accommodation;</u>	190
<u>(c) The number of persons employed at the facility;</u>	191
<u>(d) The effect on expenses and resources or the impact</u> <u>otherwise of the accommodation on the operation of the facility;</u>	192 193
<u>(e) The overall financial resources of the employer and</u> <u>the overall size of the business of the employer with respect to</u> <u>the number of its employees;</u>	194 195 196
<u>(f) The type of operation of the employer, including the</u> <u>composition, structure, and functions of the workforce of the</u> <u>employer;</u>	197 198 199
<u>(g) The geographic separateness, administrative, or fiscal</u> <u>relationship of the facility in question to the employer.</u>	200 201
<u>(3) "Pregnancy" has the same meaning as described in</u> <u>division (B) of section 4112.01 of the Revised Code, except that</u> <u>it also includes lactation or the need to express breast milk</u> <u>for a nursing infant.</u>	202 203 204 205
<u>(B) It shall be an unlawful discriminatory practice for</u> <u>any employer to do any of the following:</u>	206 207
<u>(1) Fail or refuse to make a reasonable accommodation to</u> <u>the known conditions related to an employee's pregnancy, unless</u> <u>the employer can demonstrate that such an accommodation would</u> <u>impose an undue hardship on the operation of the employer's</u> <u>business;</u>	208 209 210 211 212
<u>(2) Deny employment opportunities to an employee, on the</u> <u>basis of pregnancy, if the denial is based on the employer's</u> <u>need to make a reasonable accommodation to the known conditions</u> <u>related to the employee's pregnancy;</u>	213 214 215 216

(3) Require an employee to take leave under any law 217
providing for leave from employment or under the employer's 218
leave policy if the employer can make another reasonable 219
accommodation to the known conditions related to the employee's 220
pregnancy; 221

(4) Take adverse action against an employee in the terms, 222
conditions, or privileges of employment for requesting or using 223
a reasonable accommodation to the known conditions related to 224
the employee's pregnancy. 225

(C) No employer shall be required by this section to do 226
either of the following: 227

(1) Create additional employment that the employer would 228
not otherwise have created, unless the employer does so or would 229
do so to make reasonable accommodations for other employees; 230

(2) Discharge any employee, transfer any employee with 231
more seniority, or promote any employee who is not qualified to 232
perform the duties of the position, unless the employer does so 233
or would do so to make reasonable accommodations for other 234
employees. 235

(D) An employer shall engage in a timely, good faith, and 236
interactive process with an employee to determine an effective 237
reasonable accommodation to the known conditions related to the 238
employee's pregnancy. 239

(E) Nothing in this section pertaining to refusing to make 240
a reasonable accommodation to the known conditions related to an 241
employee's pregnancy shall be construed to preempt, limit, 242
diminish, or otherwise affect any other provision of law 243
relating to discrimination on the basis of sex, or in any way 244
diminish or invalidate the remedies, rights, and procedures that 245

provide greater or equal protection for employees affected by 246
pregnancy under any other provision of law. 247

Sec. 4112.052. (A) Subject to division (B) of this 248
section, and except as provided in division (D)(2) of section 249
4112.14 of the Revised Code, a person alleging an unlawful 250
discriminatory practice relating to employment ~~in violation of~~ 251
~~section 4112.02 of the Revised Code~~ may bring a civil action in 252
a court of competent jurisdiction. 253

(B)(1) Except as otherwise provided in division (B)(2) of 254
this section, a person may file a civil action under this 255
section alleging an unlawful discriminatory practice relating to 256
employment or a violation of division (A) of section 4112.14 of 257
the Revised Code only if the person satisfies both of the 258
following conditions: 259

(a) The person has first filed a charge with the Ohio 260
civil rights commission under section 4112.051 of the Revised 261
Code with respect to the practice complained of in the complaint 262
for the civil action within the time period required under that 263
section. 264

(b) One of the following occurs: 265

(i) The person receives a notice of right to sue from the 266
Ohio civil rights commission pursuant to section 4112.051 of the 267
Revised Code. 268

(ii) The person has requested a notice of right to sue 269
from the Ohio civil rights commission, and the commission fails 270
to issue the notice of right to sue within forty-five days after 271
the date the commission is permitted to grant the request under 272
division (N) of section 4112.051 of the Revised Code. 273

(iii) The Ohio civil rights commission, after a 274

preliminary investigation conducted pursuant to a charge filed 275
under section 4112.051 of the Revised Code, determines that it 276
is probable that an unlawful discriminatory practice relating to 277
employment has occurred or is occurring and the complainant, 278
after being informed by the commission of the right to file a 279
civil action under this chapter, elects to file a civil action 280
and notifies the commission of that fact. 281

(2) A person may file a civil action under this section 282
alleging an unlawful discriminatory practice relating to 283
employment or a violation of division (A) of section 4112.14 of 284
the Revised Code without satisfying the conditions of division 285
(B) (1) of this section if either of the following apply: 286

(a) The person seeks only injunctive relief. 287

(b) All of the following occur: 288

(i) The person has filed a charge with the Ohio civil 289
rights commission under section 4112.051 of the Revised Code 290
with respect to the practice complained of in the complaint for 291
the civil action within the time period required under that 292
section. 293

(ii) The person has filed a charge with the equal 294
employment opportunity commission or its successor organization 295
with respect to the practice complained of in the complaint for 296
the civil action within the time period required under federal 297
law. 298

(iii) The person has received a notice from the equal 299
employment opportunity commission or its successor organization 300
that states that the person may bring a civil action against the 301
employer and the notice was sent in connection with the charge 302
filed with the equal employment opportunity commission or its 303

successor organization.	304
(3) With respect to an action described in division (B) (2)	305
(a) of this section, the person may amend the complaint to	306
include damages, but the amendment will relate back to the	307
original filing date of the complaint in the action only after	308
one of the following occurs:	309
(a) The person receives a notice of right to sue from the	310
Ohio civil rights commission pursuant to section 4112.051 of the	311
Revised Code.	312
(b) The person has requested a notice of right to sue from	313
the Ohio civil rights commission, and the commission fails to	314
issue the notice of right to sue within forty-five days after	315
the date the commission is permitted to grant the request under	316
division (N) of section 4112.051 of the Revised Code.	317
(c) The Ohio civil rights commission, after a preliminary	318
investigation conducted pursuant to a charge filed under section	319
4112.051 of the Revised Code, determines that it is probable	320
that an unlawful discriminatory practice relating to employment	321
has occurred or is occurring and the complainant, after being	322
informed by the commission of the right to file a civil action	323
under this chapter, elects to file a civil action and notifies	324
the commission of that fact.	325
(4) With respect to an unlawful discriminatory practice	326
relating to employment described in division (A) (24) (b) of	327
section 4112.01 of the Revised Code, a charge filed with the	328
Ohio civil rights commission or the equal employment opportunity	329
commission satisfies division (B) (1) (a) or divisions (B) (2) (b)	330
(i) and (ii) of this section if both of the following apply:	331
(a) The charge is related to the conduct alleged in the	332

complaint for the civil action; 333

(b) The charge is filed against the person who committed 334
the unlawful discriminatory practice, the employer of the person 335
who committed the unlawful discriminatory practice, or both the 336
person who committed the unlawful discriminatory practice and 337
the person's employer. 338

(C) (1) Except as provided in division (C) (2) of this 339
section, a civil action brought under this section shall be 340
filed within two years after the alleged unlawful discriminatory 341
practice was committed. 342

(2) The time period to file a civil action shall be tolled 343
for one of the following periods, as applicable: 344

(a) If a charge that is based, in whole or in part, on the 345
same allegations and practices was filed under section 4112.051 346
of the Revised Code less than sixty days before the time period 347
specified under that section expires, the time period to file a 348
civil action is tolled for the period beginning on the date the 349
charge was filed and ending on the date that is sixty days after 350
the charge is no longer pending with the commission. 351

(b) If a charge that is based, in whole or in part, on the 352
same allegations and practices was filed under section 4112.051 353
of the Revised Code sixty or more days before the time period 354
specified under that section expires, the time period to file a 355
civil action is tolled for the period beginning on the date the 356
charge was filed and ending on the date the charge is no longer 357
pending with the commission. 358

(D) A civil action based on 42 U.S.C. 1981a, 42 U.S.C. 359
1983, and 42 U.S.C. 1985 shall be brought within two years after 360
the cause of action accrues. The period of limitations set forth 361

in this division does not apply to causes of action based on 42 362
U.S.C. 1981 as amended by the "Civil Rights Act of 1991," Pub. 363
L. No. 102-166. 364

(E) The Ohio civil rights commission may intervene in a 365
civil action if the commission determines that the case is of 366
public importance. 367

Sec. 4112.07. Every person subject to division (A), (B), 368
(C), (D), or (E) of section 4112.02 or to section 4112.025 of 369
the Revised Code shall post in a conspicuous place or places on 370
his the person's premises a notice to be prepared or approved by 371
the commission that shall set forth excerpts of this chapter and 372
other relevant information that the commission deems necessary 373
to explain this chapter. 374

Sec. 4113.71. (A) As used in this section: 375

(1) "Employee" means an individual currently or formerly 376
employed by an employer. 377

(2) "Employer" means the state, any political subdivision 378
of the state, any person employing one or more individuals in 379
this state, and any person directly or indirectly acting in the 380
interest of the state, political subdivision, or such person. 381

(3) "Political subdivision" and "state" have the same 382
meanings as in section 2744.01 of the Revised Code. 383

(B) An employer who is requested by an employee or a 384
prospective employer of an employee to disclose to a prospective 385
employer of that employee information pertaining to the job 386
performance of that employee for the employer and who discloses 387
the requested information to the prospective employer is not 388
liable in damages in a civil action to that employee, the 389
prospective employer, or any other person for any harm sustained 390

as a proximate result of making the disclosure or of any 391
information disclosed, unless the plaintiff in a civil action 392
establishes, either or both of the following: 393

(1) By a preponderance of the evidence that the employer 394
disclosed particular information with the knowledge that it was 395
false, with the deliberate intent to mislead the prospective 396
employer or another person, in bad faith, or with malicious 397
purpose; 398

(2) By a preponderance of the evidence that the disclosure 399
of particular information by the employer constitutes an 400
unlawful discriminatory practice described in section 4112.02, 401
4112.021, ~~or~~ 4112.022, or 4112.025 of the Revised Code. 402

(C) If the court finds that the verdict of the jury was in 403
favor of the defendant, the court shall determine whether the 404
lawsuit brought under division (B) of this section constituted 405
frivolous conduct as defined in division (A) of section 2323.51 406
of the Revised Code, ~~if.~~ If the court finds by a preponderance 407
of the evidence that the lawsuit constituted frivolous conduct, 408
it may order the plaintiff to pay reasonable attorney's fees and 409
court costs of the defendant. 410

(D) (1) This section does not create a new cause of action 411
or substantive legal right against an employer. 412

(2) This section does not affect any immunities from civil 413
liability or defenses established by another section of the 414
Revised Code or available at common law to which an employer may 415
be entitled under circumstances not covered by this section. 416

Section 2. That existing sections 4112.01, 4112.052, 417
4112.07, and 4113.71 of the Revised Code are hereby repealed. 418

Section 3. This act shall be referred to as the Ohio 419

Pregnant Workers Fairness Act.

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