

As Introduced

131st General Assembly

Regular Session

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S. B. No. 70

**Senators Tavares, Thomas
Cosponsors: Senators Brown, Skindell**

A BILL

To amend sections 4112.02, 4112.05, 4112.08,
4112.14, 4112.15, and 4112.99 of the Revised
Code to prohibit employers, employment agencies,
personnel placement services, and labor
organizations from requiring an applicant or
employee to provide access to private electronic
accounts of the applicant or employee.

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

Section 1. That sections 4112.02, 4112.05, 4112.08,
4112.14, 4112.15, and 4112.99 of the Revised Code be amended to
read as follows:

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Sec. 4112.02. It shall be an unlawful discriminatory
practice:

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(A) For any employer, because of the race, color,
religion, sex, military status, national origin, disability,
age, or ancestry of any person, 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

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related to employment.	19
(B) For an employment agency or personnel placement service, because of race, color, religion, sex, military status, national origin, disability, age, or ancestry, to do any of the following:	20
(1) Refuse or fail to accept, register, classify properly, or refer for employment, or otherwise discriminate against any person;	24
(2) 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 provisions of sections 4112.01 to 4112.07 of the Revised Code.	27
(C) For any labor organization to do any of the following:	31
(1) Limit or classify its membership on the basis of race, color, religion, sex, military status, national origin, disability, age, or ancestry;	32
(2) 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 race, color, religion, sex, military status, national origin, disability, age, or ancestry.	35
(D) For any employer, labor organization, or joint labor-management committee controlling apprentice training programs to discriminate against any person because of race, color, religion, sex, military status, national origin, disability, or ancestry in admission to, or employment in, any program established to provide apprentice training.	40
(E) Except where based on a bona fide occupational	46

qualification certified in advance by the 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:	47
(1) Elicit or attempt to elicit any information concerning the race, color, religion, sex, military status, national origin, disability, age, or ancestry of an applicant for employment or membership;	51
(2) Make or keep a record of the race, color, religion, sex, military status, national origin, disability, age, or ancestry of any applicant for employment or membership;	55
(3) Use any form of application for employment, or personnel or membership blank, seeking to elicit information regarding race, color, religion, sex, military status, national origin, disability, age, or ancestry; but an employer holding a contract containing a nondiscrimination clause with the government of the United States, or any department or agency of that government, may require an employee or applicant for employment to furnish documentary proof of United States citizenship and may retain that proof in the employer's personnel records and may use photographic or fingerprint identification for security purposes;	58
(4) Print or 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 race, color, religion, sex, military status, national origin, disability, age, or ancestry;	69
(5) Announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership	74

opportunities of any group because of the race, color, religion, sex, military status, national origin, disability, age, or ancestry of that group;	76 77 78
(6) 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 race, color, religion, sex, military status, national origin, disability, age, or ancestry.	79 80 81 82 83 84
(F) For any person seeking employment to publish or cause to be published any advertisement that specifies or in any manner indicates that person's race, color, religion, sex, military status, national origin, disability, age, or ancestry, or expresses a limitation or preference as to the race, color, religion, sex, military status, national origin, disability, age, or ancestry of any prospective employer.	85 86 87 88 89 90 91
(G) 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 race, color, religion, sex, military status, national origin, disability, age, or ancestry, the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of public accommodation.	92 93 94 95 96 97 98
(H) For any person to do any of the following:	99
(1) Refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, military status, familial status,	100 101 102 103 104

ancestry, disability, or national origin;	105
(2) Represent to any person that housing accommodations are not available for inspection, sale, or rental, when in fact they are available, because of race, color, religion, sex, military status, familial status, ancestry, disability, or national origin;	106 107 108 109 110
(3) Discriminate against any person in the making or purchasing of loans or the provision of other financial assistance for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations, or any person in the making or purchasing of loans or the provision of other financial assistance that is secured by residential real estate, because of race, color, religion, sex, military status, familial status, ancestry, disability, or national origin or because of the racial composition of the neighborhood in which the housing accommodations are located, provided that the person, whether an individual, corporation, or association of any type, lends money as one of the principal aspects or incident to the person's principal business and not only as a part of the purchase price of an owner-occupied residence the person is selling nor merely casually or occasionally to a relative or friend;	111 112 113 114 115 116 117 118 119 120 121 122 123 124 125
(4) Discriminate against any person in the terms or conditions of selling, transferring, assigning, renting, leasing, or subleasing any housing accommodations or in furnishing facilities, services, or privileges in connection with the ownership, occupancy, or use of any housing accommodations, including the sale of fire, extended coverage, or homeowners insurance, because of race, color, religion, sex, military status, familial status, ancestry, disability, or national origin or because of the racial composition of the	126 127 128 129 130 131 132 133 134

neighborhood in which the housing accommodations are located;	135
(5) Discriminate against any person in the terms or conditions of any loan of money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations because of race, color, religion, sex, military status, familial status, ancestry, disability, or national origin or because of the racial composition of the neighborhood in which the housing accommodations are located;	136 137 138 139 140 141 142 143
(6) Refuse to consider without prejudice the combined income of both husband and wife for the purpose of extending mortgage credit to a married couple or either member of a married couple;	144 145 146 147
(7) Print, publish, or circulate any statement or advertisement, or make or cause to be made any statement or advertisement, relating to the sale, transfer, assignment, rental, lease, sublease, or acquisition of any housing accommodations, or relating to the loan of money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations, that indicates any preference, limitation, specification, or discrimination based upon race, color, religion, sex, military status, familial status, ancestry, disability, or national origin, or an intention to make any such preference, limitation, specification, or discrimination;	148 149 150 151 152 153 154 155 156 157 158 159
(8) Except as otherwise provided in division (H) (8) or (17) of this section, make any inquiry, elicit any information, make or keep any record, or use any form of application containing questions or entries concerning race, color, religion, sex, military status, familial status, ancestry,	160 161 162 163 164

disability, or national origin in connection with the sale or lease of any housing accommodations or the loan of any money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations. Any person may make inquiries, and make and keep records, concerning race, color, religion, sex, military status, familial status, ancestry, disability, or national origin for the purpose of monitoring compliance with this chapter.	165 166 167 168 169 170 171 172 173
(9) Include in any transfer, rental, or lease of housing accommodations any restrictive covenant, or honor or exercise, or attempt to honor or exercise, any restrictive covenant;	174 175 176
(10) Induce or solicit, or attempt to induce or solicit, a housing accommodations listing, sale, or transaction by representing that a change has occurred or may occur with respect to the racial, religious, sexual, military status, familial status, or ethnic composition of the block, neighborhood, or other area in which the housing accommodations are located, or induce or solicit, or attempt to induce or solicit, a housing accommodations listing, sale, or transaction by representing that the presence or anticipated presence of persons of any race, color, religion, sex, military status, familial status, ancestry, disability, or national origin, in the block, neighborhood, or other area will or may have results including, but not limited to, the following:	177 178 179 180 181 182 183 184 185 186 187 188 189
(a) The lowering of property values;	190
(b) A change in the racial, religious, sexual, military status, familial status, or ethnic composition of the block, neighborhood, or other area;	191 192 193

(c) An increase in criminal or antisocial behavior in the block, neighborhood, or other area;	194 195
(d) A decline in the quality of the schools serving the block, neighborhood, or other area.	196 197
(11) Deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting housing accommodations, or discriminate against any person in the terms or conditions of that access, membership, or participation, on account of race, color, religion, sex, military status, familial status, national origin, disability, or ancestry;	198 199 200 201 202 203 204 205
(12) Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person's having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by division (H) of this section;	206 207 208 209 210
(13) Discourage or attempt to discourage the purchase by a prospective purchaser of housing accommodations, by representing that any block, neighborhood, or other area has undergone or might undergo a change with respect to its religious, racial, sexual, military status, familial status, or ethnic composition;	211 212 213 214 215
(14) 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, military status, familial status, age, ancestry, disability, or national origin of any prospective owner or user of the lot;	216 217 218 219 220
(15) Discriminate in the sale or rental of, or otherwise make unavailable or deny, housing accommodations to any buyer or	221 222

renter because of a disability of any of the following:	223
(a) The buyer or renter;	224
(b) A person residing in or intending to reside in the housing accommodations after they are sold, rented, or made available;	225 226 227
(c) Any individual associated with the person described in division (H) (15) (b) of this section.	228 229
(16) Discriminate in the terms, conditions, or privileges of the sale or rental of housing accommodations to any person or in the provision of services or facilities to any person in connection with the housing accommodations because of a disability of any of the following:	230 231 232 233 234
(a) That person;	235
(b) A person residing in or intending to reside in the housing accommodations after they are sold, rented, or made available;	236 237 238
(c) Any individual associated with the person described in division (H) (16) (b) of this section.	239 240
(17) Except as otherwise provided in division (H) (17) of this section, make an inquiry to determine whether an applicant for the sale or rental of housing accommodations, a person residing in or intending to reside in the housing accommodations after they are sold, rented, or made available, or any individual associated with that person has a disability, or make an inquiry to determine the nature or severity of a disability of the applicant or such a person or individual. The following inquiries may be made of all applicants for the sale or rental of housing accommodations, regardless of whether they have	241 242 243 244 245 246 247 248 249 250

disabilities:	251
(a) An inquiry into an applicant's ability to meet the requirements of ownership or tenancy;	252 253
(b) An inquiry to determine whether an applicant is qualified for housing accommodations available only to persons with disabilities or persons with a particular type of disability;	254 255 256 257
(c) An inquiry to determine whether an applicant is qualified for a priority available to persons with disabilities or persons with a particular type of disability;	258 259 260
(d) An inquiry to determine whether an applicant currently uses a controlled substance in violation of section 2925.11 of the Revised Code or a substantively comparable municipal ordinance;	261 262 263 264
(e) An inquiry to determine whether an applicant at any time has been convicted of or pleaded guilty to any offense, an element of which is the illegal sale, offer to sell, cultivation, manufacture, other production, shipment, transportation, delivery, or other distribution of a controlled substance.	265 266 267 268 269 270
(18) (a) Refuse to permit, at the expense of a person with a disability, reasonable modifications of existing housing accommodations that are occupied or to be occupied by the person with a disability, if the modifications may be necessary to afford the person with a disability full enjoyment of the housing accommodations. This division does not preclude a landlord of housing accommodations that are rented or to be rented to a disabled tenant from conditioning permission for a proposed modification upon the disabled tenant's doing one or	271 272 273 274 275 276 277 278 279

more of the following:	280
(i) Providing a reasonable description of the proposed modification and reasonable assurances that the proposed modification will be made in a workerlike manner and that any required building permits will be obtained prior to the commencement of the proposed modification;	281 282 283 284 285
(ii) Agreeing to restore at the end of the tenancy the interior of the housing accommodations to the condition they were in prior to the proposed modification, but subject to reasonable wear and tear during the period of occupancy, if it is reasonable for the landlord to condition permission for the proposed modification upon the agreement;	286 287 288 289 290 291
(iii) Paying into an interest-bearing escrow account that is in the landlord's name, over a reasonable period of time, a reasonable amount of money not to exceed the projected costs at the end of the tenancy of the restoration of the interior of the housing accommodations to the condition they were in prior to the proposed modification, but subject to reasonable wear and tear during the period of occupancy, if the landlord finds the account reasonably necessary to ensure the availability of funds for the restoration work. The interest earned in connection with an escrow account described in this division shall accrue to the benefit of the disabled tenant who makes payments into the account.	292 293 294 295 296 297 298 299 300 301 302 303
(b) A landlord shall not condition permission for a proposed modification upon a disabled tenant's payment of a security deposit that exceeds the customarily required security deposit of all tenants of the particular housing accommodations.	304 305 306 307
(19) Refuse to make reasonable accommodations in rules,	308

policies, practices, or services when necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling unit, including associated public and common use areas;	309 310 311
(20) Fail to comply with the standards and rules adopted under division (A) of section 3781.111 of the Revised Code;	312 313
(21) Discriminate against any person in the selling, brokering, or appraising of real property because of race, color, religion, sex, military status, familial status, ancestry, disability, or national origin;	314 315 316 317
(22) Fail to design and construct covered multifamily dwellings for first occupancy on or after June 30, 1992, in accordance with the following conditions:	318 319 320
(a) The dwellings shall have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site.	321 322 323 324
(b) With respect to dwellings that have a building entrance on an accessible route, all of the following apply:	325 326
(i) The public use areas and common use areas of the dwellings shall be readily accessible to and usable by persons with a disability.	327 328 329
(ii) All the doors designed to allow passage into and within all premises shall be sufficiently wide to allow passage by persons with a disability who are in wheelchairs.	330 331 332
(iii) All premises within covered multifamily dwelling units shall contain an accessible route into and through the dwelling; all light switches, electrical outlets, thermostats, and other environmental controls within such units shall be in	333 334 335 336

accessible locations; the bathroom walls within such units shall 337
contain reinforcements to allow later installation of grab bars; 338
and the kitchens and bathrooms within such units shall be 339
designed and constructed in a manner that enables an individual 340
in a wheelchair to maneuver about such rooms. 341

For purposes of division (H)(22) of this section, "covered 342
multifamily dwellings" means buildings consisting of four or 343
more units if such buildings have one or more elevators and 344
ground floor units in other buildings consisting of four or more 345
units. 346

(I) For any person to discriminate in any manner against 347
any other person because that person has opposed any unlawful 348
discriminatory practice defined in this section or because that 349
person has made a charge, testified, assisted, or participated 350
in any manner in any investigation, proceeding, or hearing under 351
sections 4112.01 to 4112.07 of the Revised Code. 352

(J) For any person to aid, abet, incite, compel, or coerce 353
the doing of any act declared by this section to be an unlawful 354
discriminatory practice, to obstruct or prevent any person from 355
complying with this chapter or any order issued under it, or to 356
attempt directly or indirectly to commit any act declared by 357
this section to be an unlawful discriminatory practice. 358

(K)(1) For any employer, employment agency, personnel 359
placement service, or labor organization to recklessly do any of 360
the following: 361

(a) Ask or require an applicant or employee to disclose 362
usernames or passwords associated with a private electronic 363
account of the applicant or employee; 364

(b) Ask or require an applicant or employee to provide the 365

<u>employer, employment agency, personnel placement service, or labor organization with access to a private electronic account of the applicant or employee;</u>	366
<u>(c) Discharge, discipline, threaten to discharge or discipline, or otherwise penalize an employee if the employee refuses to disclose usernames or passwords associated with a private electronic account of the employee, or if the employee refuses to provide the employer, employment agency, personnel placement service, or labor organization with access to a private electronic account of the employee;</u>	369
<u>(d) Fail or refuse to hire an applicant for employment because the applicant refuses to disclose usernames or passwords associated with a private electronic account of the applicant, or because the applicant refuses to provide the employer, employment agency, personnel placement service, or labor organization with access to a private electronic account of the employee.</u>	376
<u>(2) Division (K)(1) of this section shall not be construed to prohibit an employer, employment agency, personnel placement service, or labor organization from doing either of the following:</u>	383
<u>(a) Monitoring the electronic accounts of employees or applicants on the electronic mail or internet system of the employer, employment agency, personnel placement service, or labor organization;</u>	387
<u>(b) Complying with a duty to screen employees or applicants prior to hiring or to monitor or retain employee communications that is established under state or federal law or by a self-regulatory organization, as that term is defined in</u>	391
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<u>section 3 of the "Securities Exchange Act of 1934," 48 Stat.</u>	395
<u>881, 15 U.S.C. 78c, as amended.</u>	396
<u>(3) For purposes of division (K) of this section:</u>	397
<u>(a) "Private electronic account" means a collection of</u>	398
<u>electronically stored private information regarding an</u>	399
<u>individual, including such collections stored on social media</u>	400
<u>internet web sites, in electronic mail, and on electronic</u>	401
<u>devices.</u>	402
<u>(b) "Social media internet web site" means an internet web</u>	403
<u>site that allows individuals to do all of the following:</u>	404
<u>(i) Construct a public or semipublic profile within a</u>	405
<u>bounded system created by the service;</u>	406
<u>(ii) Create a list of other users with whom the individual</u>	407
<u>shares a connection within the system;</u>	408
<u>(iii) View and navigate the list of users with whom the</u>	409
<u>individual shares a connection and those lists of users made by</u>	410
<u>others within the system.</u>	411
<u>(L)(1) Nothing in division (H) of this section shall bar</u>	412
<u>any religious or denominational institution or organization, or</u>	413
<u>any nonprofit charitable or educational organization that is</u>	414
<u>operated, supervised, or controlled by or in connection with a</u>	415
<u>religious organization, from limiting the sale, rental, or</u>	416
<u>occupancy of housing accommodations that it owns or operates for</u>	417
<u>other than a commercial purpose to persons of the same religion,</u>	418
<u>or from giving preference in the sale, rental, or occupancy of</u>	419
<u>such housing accommodations to persons of the same religion,</u>	420
<u>unless membership in the religion is restricted on account of</u>	421
<u>race, color, or national origin.</u>	422

- (2) Nothing in division (H) of this section shall bar any bona fide private or fraternal organization that, incidental to its primary purpose, owns or operates lodgings for other than a commercial purpose, from limiting the rental or occupancy of the lodgings to its members or from giving preference to its members. 423
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- (3) Nothing in division (H) of this section limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy housing accommodations. Nothing in that division prohibits the owners or managers of housing accommodations from implementing reasonable occupancy standards based on the number and size of sleeping areas or bedrooms and the overall size of a dwelling unit, provided that the standards are not implemented to circumvent the purposes of this chapter and are formulated, implemented, and interpreted in a manner consistent with this chapter and any applicable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy housing accommodations. 429
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- (4) Nothing in division (H) of this section requires that housing accommodations be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. 442
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- (5) Nothing in division (H) of this section pertaining to discrimination on the basis of familial status shall be construed to apply to any of the following: 447
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- (a) Housing accommodations provided under any state or federal program that have been determined under the "Fair Housing Amendments Act of 1988," 102 Stat. 1623, 42 U.S.C.A. 450
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3607, as amended, to be specifically designed and operated to assist elderly persons;	453 454
(b) Housing accommodations intended for and solely occupied by persons who are sixty-two years of age or older;	455 456
(c) Housing accommodations intended and operated for occupancy by at least one person who is fifty-five years of age or older per unit, as determined under the "Fair Housing Amendments Act of 1988," 102 Stat. 1623, 42 U.S.C.A. 3607, as amended.	457 458 459 460 461
<u>(L)—(M)</u> Nothing in divisions (A) to (E) of this section shall be construed to require a person with a disability to be employed or trained under circumstances that would significantly increase the occupational hazards affecting either the person with a disability, other employees, the general public, or the facilities in which the work is to be performed, or to require the employment or training of a person with a disability in a job that requires the person with a disability routinely to undertake any task, the performance of which is substantially and inherently impaired by the person's disability.	462 463 464 465 466 467 468 469 470 471
<u>(M)—(N)</u> Nothing in divisions (H) (1) to (18) of this section shall be construed to require any person selling or renting property to modify the property in any way or to exercise a higher degree of care for a person with a disability, to relieve any person with a disability of any obligation generally imposed on all persons regardless of disability in a written lease, rental agreement, or contract of purchase or sale, or to forbid distinctions based on the inability to fulfill the terms and conditions, including financial obligations, of the lease, agreement, or contract.	472 473 474 475 476 477 478 479 480 481

(N)—(O) An aggrieved individual may enforce the individual's rights relative to discrimination on the basis of age as provided for in this section by instituting a civil action, within one hundred eighty 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.	482 483 484 485 486 487 488
A person who files a civil action under this division is barred, with respect to the practices complained of, from instituting a civil action under section 4112.14 of the Revised Code and from filing a charge with the commission under section 4112.05 of the Revised Code.	489 490 491 492 493
(O)—(P) With regard to age, it shall not be an unlawful discriminatory practice and it shall not constitute a violation of division (A) of section 4112.14 of the Revised Code for any employer, employment agency, joint labor-management committee controlling apprenticeship training programs, or labor organization to do any of the following:	494 495 496 497 498 499
(1) 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;	500 501 502 503
(2) Observe the terms of a bona fide seniority system or any bona fide employee benefit plan, including, but not limited to, a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of this section. However, no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual, because of the individual's age except as provided	504 505 506 507 508 509 510 511

for in the "Age Discrimination in Employment Act Amendment of 512
1978," 92 Stat. 189, 29 U.S.C.A. 623, as amended by the "Age 513
Discrimination in Employment Act Amendments of 1986," 100 Stat. 514
3342, 29 U.S.C.A. 623, as amended. 515

(3) Retire an employee who has attained sixty-five years 516
of age who, for the two-year period immediately before 517
retirement, is employed in a bona fide executive or a high 518
policymaking position, if the employee is entitled to an 519
immediate nonforfeitable annual retirement benefit from a 520
pension, profit-sharing, savings, or deferred compensation plan, 521
or any combination of those plans, of the employer of the 522
employee, which equals, in the aggregate, at least forty-four 523
thousand dollars, in accordance with the conditions of the "Age 524
Discrimination in Employment Act Amendment of 1978," 92 Stat. 525
189, 29 U.S.C.A. 631, as amended by the "Age Discrimination in 526
Employment Act Amendments of 1986," 100 Stat. 3342, 29 U.S.C.A. 527
631, as amended; 528

(4) Observe the terms of any bona fide apprenticeship 529
program if the program is registered with the Ohio 530
apprenticeship council pursuant to sections 4139.01 to 4139.06 531
of the Revised Code and is approved by the federal committee on 532
apprenticeship of the United States department of labor. 533

(P)—(Q) Nothing in this chapter prohibiting age 534
discrimination and nothing in division (A) of section 4112.14 of 535
the Revised Code shall be construed to prohibit the following: 536

(1) The designation of uniform age the attainment of which 537
is necessary for public employees to receive pension or other 538
retirement benefits pursuant to Chapter 145., 742., 3307., 539
3309., or 5505. of the Revised Code; 540

(2) The mandatory retirement of uniformed patrol officers of the state highway patrol as provided in section 5505.16 of the Revised Code;	541 542 543
(3) The maximum age requirements for appointment as a patrol officer in the state highway patrol established by section 5503.01 of the Revised Code;	544 545 546
(4) The maximum age requirements established for original appointment to a police department or fire department in sections 124.41 and 124.42 of the Revised Code;	547 548 549
(5) 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;	550 551 552 553
(6) 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;	554 555 556 557
(7) Until January 1, 1994, the mandatory retirement of any employee who has attained seventy years of age and who is serving under a contract of unlimited tenure, or similar arrangement providing for unlimited tenure, at an institution of higher education as defined in the "Education Amendments of 1980," 94 Stat. 1503, 20 U.S.C.A. 1141(a).	558 559 560 561 562 563
<u>(Q)(R)</u> (1) (a) Except as provided in division <u>(Q)(R)</u> (1) (b) of this section, for purposes of divisions (A) to (E) of this section, a disability does not include any physiological disorder or condition, mental or psychological disorder, or disease or condition caused by an illegal use of any controlled substance by an employee, applicant, or other person, if an	564 565 566 567 568 569

employer, employment agency, personnel placement service, labor organization, or joint labor-management committee acts on the basis of that illegal use. 570
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(b) Division ~~(Q)(R)~~(1)(a) of this section does not apply to an employee, applicant, or other person who satisfies any of the following: 573
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(i) The employee, applicant, or other person has successfully completed a supervised drug rehabilitation program and no longer is engaging in the illegal use of any controlled substance, or the employee, applicant, or other person otherwise successfully has been rehabilitated and no longer is engaging in that illegal use. 576
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(ii) The employee, applicant, or other person is participating in a supervised drug rehabilitation program and no longer is engaging in the illegal use of any controlled substance. 582
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(iii) The employee, applicant, or other person is erroneously regarded as engaging in the illegal use of any controlled substance, but the employee, applicant, or other person is not engaging in that illegal use. 586
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(2) Divisions (A) to (E) of this section do not prohibit an employer, employment agency, personnel placement service, labor organization, or joint labor-management committee from doing any of the following: 590
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(a) Adopting or administering reasonable policies or procedures, including, but not limited to, testing for the illegal use of any controlled substance, that are designed to ensure that an individual described in division ~~(Q)(R)~~(1)(b)(i) or (ii) of this section no longer is engaging in the illegal use 594
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of any controlled substance;	599
(b) Prohibiting the illegal use of controlled substances and the use of alcohol at the workplace by all employees;	600 601
(c) Requiring that employees not be under the influence of alcohol or not be engaged in the illegal use of any controlled substance at the workplace;	602 603 604
(d) Requiring that employees behave in conformance with the requirements established under "The Drug-Free Workplace Act of 1988," 102 Stat. 4304, 41 U.S.C.A. 701, as amended;	605 606 607
(e) Holding an employee who engages in the illegal use of any controlled substance or who is an alcoholic to the same qualification standards for employment or job performance, and the same behavior, to which the employer, employment agency, personnel placement service, labor organization, or joint labor- management committee holds other employees, even if any unsatisfactory performance or behavior is related to an employee's illegal use of a controlled substance or alcoholism;	608 609 610 611 612 613 614 615
(f) Exercising other authority recognized in the "Americans with Disabilities Act of 1990," 104 Stat. 327, 42 U.S.C.A. 12101, as amended, including, but not limited to, requiring employees to comply with any applicable federal standards.	616 617 618 619 620
(3) For purposes of this chapter, a test to determine the illegal use of any controlled substance does not include a medical examination.	621 622 623
(4) Division (Q) <u>(R)</u> of this section does not encourage, prohibit, or authorize, and shall not be construed as encouraging, prohibiting, or authorizing, the conduct of testing for the illegal use of any controlled substance by employees,	624 625 626 627

applicants, or other persons, or the making of employment decisions based on the results of that type of testing.	628 629
 <u>(R)—(S)</u> This section does not apply to a religious corporation, association, educational institution, or society with respect to the employment of an individual of a particular religion to perform work connected with the carrying on by that religious corporation, association, educational institution, or society of its activities.	630 631 632 633 634 635
 The unlawful discriminatory practices defined in this section do not make it unlawful for a person or an appointing authority administering an examination under section 124.23 of the Revised Code to obtain information about an applicant's military status for the purpose of determining if the applicant is eligible for the additional credit that is available under that section.	636 637 638 639 640 641 642
 Sec. 4112.05. (A) The commission, as provided in this section, shall prevent any person from engaging in unlawful discriminatory practices, provided that, before instituting the formal hearing authorized by division (B) of this section, it shall attempt, by informal methods of conference, conciliation, and persuasion, to induce compliance with this chapter.	643 644 645 646 647 648
 (B) (1) Any person may file a charge with the commission alleging that another person has engaged or is engaging in an unlawful discriminatory practice. In the case of a charge alleging an unlawful discriminatory practice described in division (A), (B), (C), (D), (E), (F), (G), (I), <u>or (J), or (K)</u> of section 4112.02 or in section 4112.021 or 4112.022 of the Revised Code, the charge shall be in writing and under oath and shall be filed with the commission within six months after the alleged unlawful discriminatory practice was committed. In the	649 650 651 652 653 654 655 656 657

case of a charge alleging an unlawful discriminatory practice 658
described in division (H) of section 4112.02 of the Revised 659
Code, the charge shall be in writing and under oath and shall be 660
filed with the commission within one year after the alleged 661
unlawful discriminatory practice was committed. 662

(2) Upon receiving a charge, the commission may initiate a 663
preliminary investigation to determine whether it is probable 664
that an unlawful discriminatory practice has been or is being 665
engaged in. The commission also may conduct, upon its own 666
initiative and independent of the filing of any charges, a 667
preliminary investigation relating to any of the unlawful 668
discriminatory practices described in division (A), (B), (C), 669
(D), (E), (F), (I), ~~(J)~~, or (K) of section 4112.02 or in 670
section 4112.021 or 4112.022 of the Revised Code. Prior to a 671
notification of a complainant under division (B)(4) of this 672
section or prior to the commencement of informal methods of 673
conference, conciliation, and persuasion under that division, 674
the members of the commission and the officers and employees of 675
the commission shall not make public in any manner and shall 676
retain as confidential all information that was obtained as a 677
result of or that otherwise pertains to a preliminary 678
investigation other than one described in division (B)(3) of 679
this section. 680

(3)(a) Unless it is impracticable to do so and subject to 681
its authority under division (B)(3)(d) of this section, the 682
commission shall complete a preliminary investigation of a 683
charge filed pursuant to division (B)(1) of this section that 684
alleges an unlawful discriminatory practice described in 685
division (H) of section 4112.02 of the Revised Code, and shall 686
take one of the following actions, within one hundred days after 687
the filing of the charge: 688

(i) Notify the complainant and the respondent that it is not probable that an unlawful discriminatory practice described in division (H) of section 4112.02 of the Revised Code has been or is being engaged in and that the commission will not issue a complaint in the matter;	689 690 691 692 693
(ii) Initiate a complaint and schedule it for informal methods of conference, conciliation, and persuasion;	694 695
(iii) Initiate a complaint and refer it to the attorney general with a recommendation to seek a temporary or permanent injunction or a temporary restraining order. If this action is taken, the attorney general shall apply, as expeditiously as possible after receipt of the complaint, to the court of common pleas of the county in which the unlawful discriminatory practice allegedly occurred for the appropriate injunction or order, and the court shall hear and determine the application as expeditiously as possible.	696 697 698 699 700 701 702 703 704
(b) If it is not practicable to comply with the requirements of division (B) (3) (a) of this section within the one-hundred-day period described in that division, the commission shall notify the complainant and the respondent in writing of the reasons for the noncompliance.	705 706 707 708 709
(c) Prior to the issuance of a complaint under division (B) (3) (a) (ii) or (iii) of this section or prior to a notification of the complainant and the respondent under division (B) (3) (a) (i) of this section, the members of the commission and the officers and employees of the commission shall not make public in any manner and shall retain as confidential all information that was obtained as a result of or that otherwise pertains to a preliminary investigation of a charge filed pursuant to division (B) (1) of this section that	710 711 712 713 714 715 716 717 718

alleges an unlawful discriminatory practice described in
division (H) of section 4112.05 of the Revised Code. 719
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(d) Notwithstanding the types of action described in
divisions (B) (3) (a) (ii) and (iii) of this section, prior to the
issuance of a complaint or the referral of a complaint to the
attorney general and prior to endeavoring to eliminate an
unlawful discriminatory practice described in division (H) of
section 4112.02 of the Revised Code by informal methods of
conference, conciliation, and persuasion, the commission may
seek a temporary or permanent injunction or a temporary
restraining order in the court of common pleas of the county in
which the unlawful discriminatory practice allegedly occurred. 721
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(4) If the commission determines after a preliminary
investigation other than one described in division (B) (3) of
this section that it is not probable that an unlawful
discriminatory practice has been or is being engaged in, it
shall notify any complainant under division (B) (1) of this
section that it has so determined and that it will not issue a
complaint in the matter. If the commission determines after a
preliminary investigation other than the one described in
division (B) (3) of this section that it is probable that an
unlawful discriminatory practice has been or is being engaged
in, it shall endeavor to eliminate the practice by informal
methods of conference, conciliation, and persuasion. 731
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(5) Nothing said or done during informal methods of
conference, conciliation, and persuasion under this section
shall be disclosed by any member of the commission or its staff
or be used as evidence in any subsequent hearing or other
proceeding. If, after a preliminary investigation and the use of
informal methods of conference, conciliation, and persuasion 743
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under this section, the commission is satisfied that any 749
unlawful discriminatory practice will be eliminated, it may 750
treat the charge involved as being conciliated and enter that 751
disposition on the records of the commission. If the commission 752
fails to effect the elimination of an unlawful discriminatory 753
practice by informal methods of conference, conciliation, and 754
persuasion under this section and to obtain voluntary compliance 755
with this chapter, the commission shall issue and cause to be 756
served upon any person, including the respondent against whom a 757
complainant has filed a charge pursuant to division (B)(1) of 758
this section, a complaint stating the charges involved and 759
containing a notice of an opportunity for a hearing before the 760
commission, a member of the commission, or a hearing examiner at 761
a place that is stated in the notice and that is located within 762
the county in which the alleged unlawful discriminatory practice 763
has occurred or is occurring or in which the respondent resides 764
or transacts business. The hearing shall be held not less than 765
thirty days after the service of the complaint upon the 766
complainant, the aggrieved persons other than the complainant on 767
whose behalf the complaint is issued, and the respondent, unless 768
the complainant, an aggrieved person, or the respondent elects 769
to proceed under division (A)(2) of section 4112.051 of the 770
Revised Code when that division is applicable. If a complaint 771
pertains to an alleged unlawful discriminatory practice 772
described in division (H) of section 4112.02 of the Revised 773
Code, the complaint shall notify the complainant, an aggrieved 774
person, and the respondent of the right of the complainant, an 775
aggrieved person, or the respondent to elect to proceed with the 776
administrative hearing process under this section or to proceed 777
under division (A)(2) of section 4112.051 of the Revised Code. 778

(6) The attorney general shall represent the commission at 779

any hearing held pursuant to division (B) (5) of this section and 780
shall present the evidence in support of the complaint. 781

(7) Any complaint issued pursuant to division (B) (5) of 782
this section after the filing of a charge under division (B) (1) 783
of this section shall be so issued within one year after the 784
complainant filed the charge with respect to an alleged unlawful 785
discriminatory practice. 786

(C) Any complaint issued pursuant to division (B) of this 787
section may be amended by the commission, a member of the 788
commission, or the hearing examiner conducting a hearing under 789
division (B) of this section, at any time prior to or during the 790
hearing. The respondent has the right to file an answer or an 791
amended answer to the original and amended complaints and to 792
appear at the hearing in person, by attorney, or otherwise to 793
examine and cross-examine witnesses. 794

(D) The complainant shall be a party to a hearing under 795
division (B) of this section, and any person who is an 796
indispensable party to a complete determination or settlement of 797
a question involved in the hearing shall be joined. Any 798
aggrieved person who has or claims an interest in the subject of 799
the hearing and in obtaining or preventing relief against the 800
unlawful discriminatory practices complained of shall be 801
permitted to appear only for the presentation of oral or written 802
arguments, to present evidence, perform direct and cross- 803
examination, and be represented by counsel. The commission shall 804
adopt rules, in accordance with Chapter 119. of the Revised Code 805
governing the authority granted under this division. 806

(E) In any hearing under division (B) of this section, the 807
commission, a member of the commission, or the hearing examiner 808
shall not be bound by the Rules of Evidence but, in ascertaining 809

the practices followed by the respondent, shall take into 810
account all reliable, probative, and substantial statistical or 811
other evidence produced at the hearing that may tend to prove 812
the existence of a predetermined pattern of employment or 813
membership, provided that nothing contained in this section 814
shall be construed to authorize or require any person to observe 815
the proportion that persons of any race, color, religion, sex, 816
military status, familial status, national origin, disability, 817
age, or ancestry bear to the total population or in accordance 818
with any criterion other than the individual qualifications of 819
the applicant. 820

(F) The testimony taken at a hearing under division (B) of 821
this section shall be under oath and shall be reduced to writing 822
and filed with the commission. Thereafter, in its discretion, 823
the commission, upon the service of a notice upon the 824
complainant and the respondent that indicates an opportunity to 825
be present, may take further testimony or hear argument. 826

(G) (1) If, upon all reliable, probative, and substantial 827
evidence presented at a hearing under division (B) of this 828
section, the commission determines that the respondent has 829
engaged in, or is engaging in, any unlawful discriminatory 830
practice, whether against the complainant or others, the 831
commission shall state its findings of fact and conclusions of 832
law and shall issue and, subject to the provisions of Chapter 833
119. of the Revised Code, cause to be served on the respondent 834
an order requiring the respondent to cease and desist from the 835
unlawful discriminatory practice, requiring the respondent to 836
take any further affirmative or other action that will 837
effectuate the purposes of this chapter, including, but not 838
limited to, hiring, reinstatement, or upgrading of employees 839
with or without back pay, or admission or restoration to union 840

membership, and requiring the respondent to report to the commission the manner of compliance. If the commission directs payment of back pay, it shall make allowance for interim earnings. If the commission finds a violation of division (K) of section 4112.02 of the Revised Code, it additionally shall require the respondent to pay the fine required under division (B) of section 4112.99 of the Revised Code. If it finds a violation of division (H) of section 4112.02 of the Revised Code, the commission additionally shall require the respondent to pay actual damages and reasonable attorney's fees, and may award to the complainant punitive damages as follows:

(a) If division (G)(1)(b) or (c) of this section does not apply, punitive damages in an amount not to exceed ten thousand dollars;

(b) If division (G)(1)(c) of this section does not apply and if the respondent has been determined by a final order of the commission or by a final judgment of a court to have committed one violation of division (H) of section 4112.02 of the Revised Code during the five-year period immediately preceding the date on which a complaint was issued pursuant to division (B) of this section, punitive damages in an amount not to exceed twenty-five thousand dollars;

(c) If the respondent has been determined by a final order of the commission or by a final judgment of a court to have committed two or more violations of division (H) of section 4112.02 of the Revised Code during the seven-year period immediately preceding the date on which a complaint was issued pursuant to division (B) of this section, punitive damages in an amount not to exceed fifty thousand dollars.

(2) Upon the submission of reports of compliance, the

commission may issue a declaratory order stating that the 871
respondent has ceased to engage in particular unlawful 872
discriminatory practices. 873

(H) If the commission finds that no probable cause exists 874
for crediting charges of unlawful discriminatory practices or 875
if, upon all the evidence presented at a hearing under division 876
(B) of this section on a charge, the commission finds that a 877
respondent has not engaged in any unlawful discriminatory 878
practice against the complainant or others, it shall state its 879
findings of fact and shall issue and cause to be served on the 880
complainant an order dismissing the complaint as to the 881
respondent. A copy of the order shall be delivered in all cases 882
to the attorney general and any other public officers whom the 883
commission considers proper. 884

(I) Until the time period for appeal set forth in division 885
(H) of section 4112.06 of the Revised Code expires, the 886
commission, subject to the provisions of Chapter 119. of the 887
Revised Code, at any time, upon reasonable notice, and in the 888
manner it considers proper, may modify or set aside, in whole or 889
in part, any finding or order made by it under this section. 890

Sec. 4112.08. This chapter shall be construed liberally 891
for the accomplishment of its purposes, and any law inconsistent 892
with any provision of this chapter shall not apply. Nothing 893
contained in this chapter shall be considered to repeal any of 894
the provisions of any law of this state relating to 895
discrimination because of race, color, religion, sex, military 896
status, familial status, disability, national origin, age, or 897
ancestry, except that any person filing a charge under division 898
(B) (1) of section 4112.05 of the Revised Code, with respect to 899
the unlawful discriminatory practices complained of, is barred 900

from instituting a civil action under section 4112.14 or
division ~~(N)~~(O) of section 4112.02 of the Revised Code. 901
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Sec. 4112.14. (A) No employer shall discriminate in any 903
job opening against any applicant or discharge without just 904
cause any employee aged forty or older who is physically able to 905
perform the duties and otherwise meets the established 906
requirements of the job and laws pertaining to the relationship 907
between employer and employee. 908

(B) Any person aged forty or older who is discriminated 909
against in any job opening or discharged without just cause by 910
an employer in violation of division (A) of this section may 911
institute a civil action against the employer in a court of 912
competent jurisdiction. If the court finds that an employer has 913
discriminated on the basis of age, the court shall order an 914
appropriate remedy which shall include reimbursement to the 915
applicant or employee for the costs, including reasonable 916
attorney's fees, of the action, or to reinstate the employee in 917
the employee's former position with compensation for lost wages 918
and any lost fringe benefits from the date of the illegal 919
discharge and to reimburse the employee for the costs, including 920
reasonable attorney's fees, of the action. The remedies 921
available under this section are coexistent with remedies 922
available pursuant to sections 4112.01 to 4112.11 of the Revised 923
Code; except that any person instituting a civil action under 924
this section is, with respect to the practices complained of, 925
thereby barred from instituting a civil action under division 926
~~(N)~~(O) of section 4112.02 of the Revised Code or from filing a 927
charge with the Ohio civil rights commission under section 928
4112.05 of the Revised Code. 929

(C) The cause of action described in division (B) of this 930

section and any remedies available pursuant to sections 4112.01
to 4112.11 of the Revised Code shall not be available in the
case of discharges where the employee has available to the
employee the opportunity to arbitrate the discharge or where a
discharge has been arbitrated and has been found to be for just
cause.

Sec. 4112.15. There is hereby created in the state
treasury the civil rights commission general reimbursement fund,
which shall be used to pay operating costs of the commission.
All amounts received by the commission, and all amounts awarded
by a court to the commission, for attorney's fees, court costs,
expert witness fees, and other litigation expenses shall be paid
into the state treasury to the credit of the fund. All amounts
received by the commission for copies of commission documents
and for other goods and services furnished by the commission
shall be paid into the state treasury to the credit of the fund.
All fines collected pursuant to division (B) of section 4112.99
of the Revised Code shall be paid into the state treasury to the
credit of the fund.

Sec. 4112.99. (A) Whoever violates this chapter is subject
to a civil action for damages, injunctive relief, or any other
appropriate relief.

(B) In addition to any damages and relief that may be
available in division (A) of this section, whoever violates
division (K) of section 4112.02 of the Revised Code shall be
subject to a fine in the amount of up to one thousand dollars
for the first violation of that division, and up to two thousand
dollars for each subsequent violation.

Section 2. That existing sections 4112.02, 4112.05,
4112.08, 4112.14, 4112.15, and 4112.99 of the Revised Code are

hereby repealed.

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