



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 352*
133rd General Assembly

Bill Analysis

[Click here for H.B. 352's Fiscal Note](#)

Version: As Reported by Senate Judiciary

Primary Sponsors: Reps. Cross and Lang

Paul Luzzi, Attorney

SUMMARY

Changes to employment discrimination laws

- Excludes, for purposes of being an employer under the Ohio Civil Rights Law, any person acting directly or indirectly in an employer's interest and adds an employer's agent.
- Creates a separate procedure for charges filed with the Ohio Civil Rights Commission (OCRC) that allege an unlawful discriminatory practice relating to employment.
- Requires, except in specified circumstances, claimants to obtain a notice of right to sue from the OCRC before filing a lawsuit that alleges an unlawful discriminatory practice relating to employment.
- Shortens the time in which lawsuits related to employment discrimination can be brought under Ohio law to two years from six years generally.
- Codifies the requirements that lawsuits related to employment discrimination brought under federal law be brought within two years.
- Prescribes, for employers, an affirmative defense to vicarious liability resulting from alleged sexual harassment of an employee by the employee's supervisor.
- Reduces the number of age discrimination lawsuits available under the Ohio Civil Rights Law.
- Specifically includes lawsuits related to employment discrimination in the definition of a "tort action" in the Trial Procedure Law (appears to be current law).

* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

- Specifies that the remedies for unlawful discriminatory practice in employment set in the Ohio Civil Rights Law are the sole remedies for an aggrieved person subject to the Law.

Tolling and time limitations

Statute of limitations of actions on a contract

- Shortens from eight to six years the period of limitations of actions on a contract in writing, and expands existing law's exceptions to that period of limitations.
- Shortens from six to four years the period of limitations of actions on a contract not in writing.
- Generally requires an action arising out of a consumer transaction primarily incurred for personal, family, or household purposes, based upon an express or implied agreement, be commenced within six years after the cause of action accrues, and provides the circumstances when such cause of action accrues.
- Excludes from the applicability of the period of limitations described in the preceding dot point the limitation periods under Ohio's Commercial Paper Law, of an action to recover title to or possession of real property, or violations of the Consumer Sales Practices Act.
- Provides that the limitation period of an action arising out of a consumer transaction as described in the 2nd preceding dot point is notwithstanding certain other periods of limitation.

Changes to the "borrowing statute"

- Narrows current law by providing that no *tort action*, instead of civil action under current law, based upon a cause of action that accrued in another state or foreign jurisdiction may be commenced in Ohio if the limitation period under that other state's or jurisdiction's law or under Ohio law has expired.
- Generally prevents an action on a contract in writing that seeks post-default interest at a rate governed by another state's or foreign jurisdiction's law and in excess of the federal short-term rate from being commenced in Ohio if the limitation period of such action under that other state's or jurisdiction's law or under Ohio law has expired.
- Prevents an action arising out of a consumer transaction as described above, that seeks post charge-off interest at a rate governed by another state's or foreign jurisdiction's law and in excess of the federal short-term rate from being commenced in Ohio if the limitation period of such action under that other state's or jurisdiction's law or under Ohio law has expired.

Application

- Generally provides that the limitation periods that apply in actions described above under "**Statute of limitations of actions on a contract**," apply to actions in which the cause of action accrues on or after the bill's effective date.

- Specifies the limitation periods that apply in any of the actions under the preceding dot point if the cause of action accrues prior to the bill’s effective date.

Statutes of limitation and repose for legal malpractice action

- Provides that a legal malpractice action against an attorney or a law firm or legal professional association must be commenced within one year after the action accrues.
- Generally provides that a legal malpractice action against an attorney or a law firm or legal professional association cannot be commenced more than four years after the occurrence of the act or omission constituting the alleged basis of the legal malpractice claim.
- Provides that if a legal malpractice action is not commenced within four years after the occurrence of the act or omission constituting the basis of the claim, then, any action upon that claim is barred.
- Allows a person seeking a legal malpractice claim to commence an action upon the claim not later than one year after the person discovers the injury resulting from an act or omission if certain requirements are met.

Tolling of statutes of limitations and other time limitations

- Specifies that the time period between March 9, 2020, and July 30, 2020, cannot be computed as part of the periods of limitation and time limitations that are tolled under Am. Sub. H.B. 197 of the 133rd General Assembly as a result of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020.
- Specifies that the tolling expires on July 30, 2020, rather than when the period of emergency ends or July 30, 2020, whichever is sooner.
- Declares an emergency.

TABLE OF CONTENTS

Changes to employment discrimination laws.....	4
Definition of employer	4
Separate procedure for employment discrimination charges.....	5
Lawsuit relating to employment	9
Exhaustion of OCRC procedures.....	9
Exceptions to exhaustion	9
Lawsuit for retaliation, aiding, or abetting.....	10
Statute of limitations.....	10
OCRC continuing role.....	10
Age discrimination lawsuits.....	10
Actions brought under federal law	11
Affirmative defense.....	12

Tort actions.....	12
Prohibited claims.....	13
Definitions	14
Age	14
Unlawful discriminatory practice relating to employment.....	14
Notice of right to sue.....	15
Tolling and time limitations	15
Actions on a contract in writing	15
Application.....	15
Actions on an unwritten contract	16
Application.....	16
Actions arising out of a consumer transaction	16
Application	17
Changes to the “borrowing statute”	17
Contract-related actions.....	17
Consumer transaction-related actions.....	18
Statute of limitation for legal malpractice action	18
Statute of repose for legal malpractice action.....	18
Tolling of statutes of limitations and other time limitations	19

DETAILED ANALYSIS

Changes to employment discrimination laws

Definition of employer

The bill limits the application of the Ohio Civil Rights Law¹ and limits the application of a qualified immunity for employers relating to employees with HIV by revising the definition of “employer.”²

Currently, an employer includes the state, any political subdivision of the state, any person employing four or more persons within Ohio, and any person acting directly or indirectly in the interest of an employer. The bill removes “any person acting directly or indirectly in the interest of an employer” and adds an agent of the state, political subdivision, or person. The bill provides that no person has a cause of action or claim under the Ohio Civil Rights Law based on unlawful discriminatory practices relating to employment against a supervisor, manager, or

¹ R.C. Chapter 4112.

² R.C. 4112.01(A)(2) and R.C. 3701.249, not in the bill.

other employee of an employer, unless that person is the employer or the claim is for one of the following:

- Retaliation for opposing a discriminatory practice;
- Aiding a discriminatory practice;
- Obstructing a person from complying with the Ohio Civil Rights Law.³

The bill states that the intent of this change is to exclude managers, supervisors, and employees from personal liability under the Ohio Civil Rights Law for unlawful discriminatory practices relating to employment, unless the allegation is based on retaliation, aiding, or obstructing. Additionally, the bill states the intent to supersede an Ohio Supreme Court case that held that a supervisor can be held jointly or individually liable with the employer for discriminatory conduct under the Ohio Civil Rights Law.⁴

Separate procedure for employment discrimination charges

The bill eliminates the ability to file a charge with the Ohio Civil Rights Commission (OCRC) alleging an unlawful discriminatory practice for any person seeking employment to publish or cause to be published any advertisement indicating the person’s membership in a protected class or expresses a limitation or preference as to a prospective employer’s status in a protected class. It also creates a separate procedure for charges filed with the OCRC that allege an unlawful discriminatory practice relating to employment (see “**Definitions**,” below).⁵ The procedure set out under the bill is similar to the current law requirements for all discrimination charges made under the Ohio Civil Rights Law.

The table below compares the current law and bill procedures at each stage of a charge filed with the OCRC that alleges an unlawful discriminatory practice relating to employment (including claims that relate to employment and allege retaliation for opposing a discriminatory practice, aiding a discriminatory practice, or obstructing a person from complying with the Ohio Civil Rights Law):

Stage of charge	Current law (R.C. 4112.05)	Employment discrimination charge under the bill (R.C. 4112.04 and 4112.051)
Filing	Requires a charge to be filed within 6 months after the alleged unlawful discriminatory practice was committed.	Requires a charge to be filed within 2 years after an alleged unlawful discriminatory practice relating to employment was committed.

³ R.C. 4112.01(A) and 4112.08(A).

⁴ Section 3; *Genaro v. Central Transport, Inc.*, 84 Ohio St.3d 293, 1999-Ohio-353.

⁵ R.C. 4112.051 and conforming changes in R.C. 4112.05, 4112.055, and 4112.056.

Stage of charge	Current law (R.C. 4112.05)	Employment discrimination charge under the bill (R.C. 4112.04 and 4112.051)
		Requires the OCRC to notify a person who files a charge alleging employment discrimination that the person is prohibited from filing a lawsuit based on the alleged discrimination until the requirements described under “Lawsuit relating to employment,” below are satisfied or an exception applies.
Initial alternative dispute resolution	Allows the OCRC to, at any time, attempt to resolve allegations of discrimination through the use of alternative dispute resolution.	Same.
Investigation	Allows, after a person files a charge, the OCRC to initiate a preliminary investigation to determine whether it is probable that discrimination occurred or is occurring.	Allows preliminary investigation, but allows the complainant to make a written request that the OCRC cease the investigation and issue a notice of right to sue. Prohibits the OCRC from granting the request until at least 60 days after the charge was filed. Allows the OCRC to immediately grant the request if it is made more than 60 days after the charge was filed. Prohibits the complaint from refiling the charge with the OCRC.
Probable cause determination	If OCRC finds that it is not probable that discrimination has occurred, requires the OCRC to notify the complainant that it will not issue a complaint. If OCRC finds that it is probable that discrimination has occurred, requires the OCRC to engage in informal methods described below to eliminate the discrimination.	Requires the OCRC to include a notice of right to sue in the notice that it will not issue a complaint. Requires, before engaging in informal methods to eliminate probable discrimination, the OCRC to notify complainant that the complainant may withdraw the charge and file a lawsuit.
Informal methods	Requires the OCRC to endeavor to eliminate the discriminatory practice through informal alternative dispute resolution.	Requires the OCRC to engage in alternative dispute resolution only if the complainant does not dismiss the charge.

Stage of charge	Current law (R.C. 4112.05)	Employment discrimination charge under the bill (R.C. 4112.04 and 4112.051)
Complaint	<p>If informal methods are unsuccessful, requires the OCRC to issue and serve a complaint that notifies all parties that a hearing will be held not less than 30 days after service of the complaint. Requires the complaint to be issued not later than one year after the charge was filed.</p> <p>Allows a complaint to be amended by the OCRC, a member of OCRC, or the hearing examiner at any time below or during the hearing.</p>	<p>Same, except allows the OCRC to take any of the following actions after serving the complaint:</p> <ul style="list-style-type: none"> ▪ Dismiss the complaint if the complainant requests a dismissal not later than 30 days before the date of the hearing; ▪ Eliminate the alleged discrimination through alternative dispute resolution; ▪ Continue the hearing process. <p>Does not allow a complaint to be amended by a hearing officer but allows it to be amended by the OCRC's legal counsel if the respondent is given sufficient and reasonable notice. Does not allow a complaint to be amended during a hearing.</p>
Hearing	<p>Requires the Attorney General to represent the OCRC at a hearing located in the county in which the alleged unlawful discriminatory practice has occurred or is occurring or in which the respondent resides or transacts business.</p> <p>Grants the respondent the right to file an answer or an amended answer to the original and amended complaints and to appear at the hearing in person, by attorney, or otherwise to examine and cross-examine witnesses.</p> <p>Requires the presiding officer, who is not bound by the Rules of Evidence, to take into account all reliable, probative, and substantial statistical or other evidence produced at the hearing.</p>	<p>Does not allow hearing to be held in the county in which the respondent resides.</p> <p>Same.</p> <p>Same.</p>

Stage of charge	Current law (R.C. 4112.05)	Employment discrimination charge under the bill (R.C. 4112.04 and 4112.051)
	Requires testimony to be made under oath and reduced to writing and filed with OCRC.	Same.
Orders	<p>If, after a hearing, OCRC determines that the respondent has engaged in, or is engaging in, an unlawful discriminatory practice, requires the OCRC to issue an opinion that states its findings of fact and conclusions of law and to serve the respondent an order requiring the respondent to do all of the following:</p> <ul style="list-style-type: none"> ▪ Cease and desist from the unlawful discriminatory practice; ▪ Take any further affirmative or other action that will effectuate the purposes of the Civil Rights Law; ▪ Report to the OCRC the manner of compliance. <p>On the submission of a compliance report, allows the OCRC to issue an order stating that the respondent has ceased to engage in a particular unlawful discriminatory practice.</p> <p>If, after a hearing, OCRC determines that the respondent has not engaged in, or is not engaging in, an unlawful discriminatory practice, requires the OCRC to issue an opinion that states its findings of fact and conclusions of law and to serve the complainant an order dismissing the complaint.</p>	<p>Same.</p> <p>Same.</p> <p>Requires the order dismissing the complaint to be served on the complainant, respondent, and any other affected party.</p>

Stage of charge	Current law (R.C. 4112.05)	Employment discrimination charge under the bill (R.C. 4112.04 and 4112.051)
	Allows the OCRC, until the time period for an appeal under continuing law expires and on reasonable notice, to modify or set aside any finding or order.	Same.

Lawsuit relating to employment

Under current law, a person may bring a lawsuit alleging any violation of the Civil Rights Law (the “general” lawsuit) within six years after the alleged discriminatory act occurred. The bill creates an avenue under which a person alleging an unlawful discriminatory practice relating to employment may bring a lawsuit (the “employment specific” lawsuit) and prohibits a person from bringing a general lawsuit alleging employment discrimination.⁶

Exhaustion of OCRC procedures

Subject to two exceptions described below, the bill prohibits a person from filing an employment specific lawsuit unless the person has filed a charge with the OCRC and one of the following applies:

- The person has received a notice of right to sue from the OCRC;
- The person has requested a notice of right to sue from the OCRC, and the OCRC fails to issue the notice of right to sue within 45 days after the date that the OCRC may grant the request;
- The OCRC, after a preliminary investigation, informs the person that it is probable that an unlawful discriminatory practice relating to employment has occurred or is occurring and the person elects to file a lawsuit and notifies the OCRC of that fact.⁷

Exceptions to exhaustion

Under the bill, a person may file an employment specific lawsuit without requesting a notice of right to sue from the OCRC and without a finding of probable cause by the OCRC if one of the following exceptions applies:

- The person seeks only injunctive relief;
- The person timely filed a charge with both the OCRC and the Equal Employment Opportunity Commission (EEOC) – the agency that enforces federal employment

⁶ R.C. 4112.052(A) and 4112.99(B) and R.C. 2305.07, not in the bill.

⁷ R.C. 4112.052(B)(1).

discrimination laws – based on the same facts, and the person has received a notice from the EEOC that states the person may file a lawsuit based on the EEOC charge.⁸

With respect to a person who seeks only injunctive relief, the person may amend the complaint to include damages, but the amendment will not relate back to the time the complaint was filed until the person satisfies one of the conditions listed above in **“Exhaustion of OCRC procedures.”**⁹

Lawsuit for retaliation, aiding, or abetting

The bill permits a person to file a lawsuit alleging that a person other than an employer retaliated against the person for exercising legal protections against unlawful discriminatory practices relating to employment or aided and abetted an unlawful discriminatory practice relating to employment, provided the person has satisfied the exhaustion requirement above or an exception applies.¹⁰

Statute of limitations

The bill requires, if a person pursues an employment specific lawsuit after exhaustion of OCRC procedures, that the person file the suit within two years after the alleged employment discrimination occurred. The statute of limitations is tolled while a charge based on the same allegations is pending with the OCRC. If the OCRC charge is filed less than 60 days before the time to file with the OCRC expires, the statute of limitations for the lawsuit is tolled for an additional 60 days after the charge is no longer pending with the OCRC.¹¹

OCRC continuing role

Under the bill, the OCRC may continue offering assistance to a person after issuing a notice of right to sue to the person. The bill also permits the OCRC to intervene in a lawsuit alleging an unlawful discriminatory practice relating to employment if the OCRC determines that the case is of public importance.¹²

Age discrimination lawsuits

Under current law, a person who feels that the person has been discriminated against because of age in an employment decision has the following three avenues under which to file a lawsuit:

⁸ R.C. 4112.052(B)(2).

⁹ R.C. 4112.052(B)(3).

¹⁰ R.C. 4112.052(B)(4).

¹¹ R.C. 4112.052(C).

¹² R.C. 4112.051(M) and 4112.052(E).

1. A lawsuit based on the general prohibition against unlawful discriminatory practices based on age, which must be filed within 180 days after the alleged unlawful discriminatory practice occurred;¹³
2. A lawsuit based on the specific prohibition against employment discrimination based on age, which is subject to a six-year statute of limitations;¹⁴
3. The general lawsuit alleging any violation of the Civil Rights Law, which is subject to a six-year statute of limitations.¹⁵

The bill eliminates avenues (1) and (3) above.¹⁶ Thus, under the bill, a person claiming age discrimination in the context of employment may file an employment specific lawsuit or a lawsuit claiming a violation of the prohibition against age discrimination in employment. Both lawsuits are subject to the requirements and exceptions described in “**Exhaustion of OCRC procedures,**” and both have a two-year statute of limitations that is tolled as described under “**Statute of limitations,**” above. A person may not pursue one of these lawsuits if the person previously pursued the other based on the same allegations and practices. A lawsuit claiming a violation of the prohibition against age discrimination in employment is not available if either of the following applies:

- An employee has the opportunity to arbitrate a discharge;
- A discharge has been arbitrated and been found to be for just cause.¹⁷

Actions brought under federal law

The bill requires that lawsuit based on certain federal anti-discrimination laws – 42 U.S.C. 1981a, 42 U.S.C. 1983, or 42 U.S.C. 1985 – be brought within two years after the cause of action accrues, but this period of limitations does not apply to causes of action based on 42 U.S.C. 1981.¹⁸ There is no statute of limitations for these violations set in federal law. As such, the courts have used state law as a guide.¹⁹ Claims made under these sections of federal law are deemed general personal injuries and the courts have applied the Ohio two-year statute of limitation.²⁰ Thus, for claims of this type, the bill would have no impact.

¹³ R.C. 4112.02(L), repealed.

¹⁴ R.C. 4112.14 and *Howe v. City of Akron*, 789 F.Supp.2d 786, 804 (N.D. Ohio 2010).

¹⁵ R.C. 4112.99 and R.C. 2305.07, not in the bill, and *Cosgrove v. Williamsburg of Cincinnati Management Company, Inc.*, 70 Ohio St.3d 281, 1994-Ohio-295.

¹⁶ R.C. 4112.02(L) and (M), 4112.08, and 4112.99(B).

¹⁷ R.C. 4112.052(B) and (C) and 4112.14(C), (D), and (E).

¹⁸ R.C. 4112.052(D).

¹⁹ *Vodila v. Clelland*, 836 F.2d 231 (6th Cir. 1987).

²⁰ *Owens v. Okure*, 488 U.S. 235 (1989); *Durante v. Ohio Civil Rights Commission*, 902 F.2d 1568 (6th Cir. 1990).

Affirmative defense

The bill prescribes what an employer must prove, by a preponderance of the evidence, to raise an affirmative defense to a claim for vicarious liability in which an employee alleges that a supervisor with immediate or successively higher authority over the employee created a hostile work environment through sexually harassing behavior. The affirmative defense has two basic elements. First, the employer must show that the employer exercised reasonable care to prevent or promptly correct any sexually harassing behavior.

Second, the employer must show that the employee alleging the hostile work environment unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. This affirmative defense is unavailable if the supervisor's harassment resulted in a tangible employment action against the employee making the allegation. A "tangible employment action" is an action that results in significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.²¹

The bill states that the General Assembly intends to encourage implementation of meaningful anti-discrimination policies and foster a work environment that is fair and tolerant. Additionally, the bill states that human resource professionals should have the first opportunity to resolve issues in the workplace before issues related to personnel complaints and workplace behavior result in costly litigation.²²

Tort actions

The bill adds the employment specific lawsuit and the lawsuit based on a specific prohibition against employment discrimination based on age to the definition of "tort actions" in the Trial Procedure Law.²³ The addition appears to be current law.²⁴ All of the following apply to tort actions:

- Compensatory damages for the plaintiff's economic loss are not limited;
- Compensatory damages for the plaintiff's noneconomic loss cannot exceed the greater of \$250,000 or an amount that is equal to three times the plaintiff's economic loss, as determined by the trier of fact (a jury or a judge in a nonjury trial), to a maximum of \$350,000 for each plaintiff or a maximum of \$500,000 for each occurrence that forms the basis of the tort action;

²¹ R.C. 4112.054.

²² Section 3.

²³ R.C. Chapter 2315.

²⁴ *Luri v. Republic Servs.*, 193 Ohio App.3d 682, 2011-Ohio-2389 (8th Dist.), *judgment rev'd on other grounds*, 132 Ohio St.3d 216, 2012-Ohio-2914.

- Punitive or exemplary damages cannot exceed two times the amount of the compensatory damages awarded to the plaintiff or 10% of a small employer's or individual's net worth when the tort was committed, to a maximum of \$350,000.

The limitation on damages for noneconomic loss does not apply in a tort action if the plaintiff suffers permanent and substantial physical deformity, loss of use of a limb, loss of a bodily organ system, or a permanent physical injury that permanently prevents the plaintiff from being able to independently care for themselves or perform life-sustaining activities. The limitation on punitive or exemplary damages does not apply if the defendant committed the tort action "purposely" or "knowingly" as those terms are defined in the Criminal Code²⁵ or if the tort action is based on conduct by the defendant that resulted in the defendant being convicted of or pleading guilty to a felony that has as an element of the offense a culpable mental state of "purposely" or "knowingly."²⁶

In determining an award of compensatory damages for noneconomic loss in a tort action, the trier of fact is prohibited from considering any of the following:

- Evidence of a defendant's alleged wrongdoing, misconduct, or guilt;
- Evidence of the defendant's wealth or financial resources;
- Any evidence offered for the purpose of punishing the defendant.²⁷

In a tort action, "economic loss" includes lost wages, salaries, or compensation and all expenditures for medical care or treatment, rehabilitation services, and any other expenditure incurred as a result of an injury or loss to person or property. "Noneconomic loss" means nonpecuniary harm resulting from an injury or loss to person or property. It includes intangible losses such as pain and suffering, loss of consortium, and mental anguish.²⁸

The Trial Procedure Law specifies procedural requirements with respect to awarding damages.²⁹ The Law also governs how a trial court in a tort action must review the evidence supporting an award of compensatory damages for noneconomic loss when a defendant challenges the award as excessive.³⁰

Prohibited claims

The bill specifies that the procedures and remedies for unlawful discriminatory practices relating to employment set forth in the Ohio Civil Rights Law are the sole and exclusive

²⁵ R.C. 2901.22, not in the bill.

²⁶ R.C. 2315.18(B) and 2315.21(D).

²⁷ R.C. 2315.18(C).

²⁸ R.C. 2315.18(A).

²⁹ R.C. 2315.18(D) and 2315.21(B).

³⁰ R.C. 2315.19, not in the bill.

procedures and remedies for such a practice actionable under the Law.³¹ The bill specifies that the intent of this change is that common law claims for wrongful discharge are not to be available for actions arising out of an unlawful discriminatory practice relating to employment.³²

To provide some context, common law is the term used to describe nonlegislative law determined by court decisions. Previous court decisions have held that the intent of the legislature in enacting the Ohio Civil Rights Law was to provide a range of remedies by which an employee could combat discrimination, and have allowed lawsuits related to workplace discrimination under common law, meaning that different limitations and restrictions apply to these actions than to actions brought under the Ohio Civil Rights Law.³³

Definitions

Age

The bill changes the definition of “age” as it relates to discrimination claims. Under current law, the definition of age is at least 40 years old. Under the bill, “age” means an individual aged 40 years or older. The inclusion of the word “individual” to define a characteristic of an individual may be problematic because it is circular.³⁴

Unlawful discriminatory practice relating to employment

The bill defines “unlawful discriminatory practice relating to employment” as the following:

- Those practices specifically related to employment that are defined as unlawful discriminatory practices under continuing law involving actions taken by employers, unions, or employment agencies, administering apprenticeship programs, obtaining information about a person for employment purposes, and advertising that a person is a member of a protected class or has preferences regarding an employer’s protected class status.³⁵
- The following practices, which are defined as unlawful discriminatory practices under continuing law, if they are related to employment:
 - Retaliatory practices;
 - Assisting or compelling someone to commit an unlawful discriminatory practice;
 - Obstructing or preventing compliance with the Ohio Civil Rights Law;

³¹ R.C. 4112.08(B).

³² Section 3.

³³ *Helmick v. Cincinnati Word Processing, Inc.*, 45 Ohio St.3d 131 (1989).

³⁴ R.C. 4112.01(A)(14).

³⁵ R.C. 4112.01(A)(24)(a), by reference to R.C. 4112.02(A), (B), (C), (D), (E), and (F).

- Attempting to commit an unlawful discriminatory practice.³⁶

Notice of right to sue

The bill defines “notice of right to sue” as a notice sent by the OCRC to a person who filed a charge with the OCRC alleging an unlawful discriminatory practice relating to employment that states that the person who filed the charge may bring an employment specific lawsuit or, in the case of age discrimination, a lawsuit based on the specific prohibition against age discrimination in the workplace that is related to the charge filed with the OCRC.³⁷

Tolling and time limitations

Actions on a contract in writing

Under the bill, an action on a specialty (a contract under seal) or an agreement, contract, or promise *in writing* generally must be brought within six years after the cause of action accrued, rather than eight years as provided under current law.³⁸ It expands the exceptions under current law to the above period of limitation on a contract in writing to include the following:³⁹

- Generally, the periods of limitations of actions under Ohio’s Commercial Paper Law;
- Generally, an action to recover title to or possession of real property that must be brought within 21 years after the cause of action accrued;
- Violations of the Consumer Sales Practices Act.

Current law’s exceptions to the above period of limitation on a contract in writing are as follows:⁴⁰

- Generally, an action against the state or a state agency for failure to make any distribution or other payment that must be brought within five years after the cause of action accrued;
- Generally, an action for breach of any contract for sale that must be commenced within four years after the cause of action has accrued.

Application

Generally, under the bill, the period of limitation of an action on a contract in writing as described above applies to an action in which the cause of action accrues on or after the bill’s

³⁶ R.C. 4112.01(A)(24)(b), by reference to R.C. 4112.02(I) and (J).

³⁷ R.C. 4112.01(A)(25), by reference to R.C. 4112.051, 4112.052, and 4112.014.

³⁸ R.C. 2305.06; *Black’s Law Dictionary*, Fifth Edition (1979).

³⁹ R.C. 2305.06, and by reference to R.C. 1303.16, 1345.10, and 2305.04.

⁴⁰ R.C. 2305.06, and by reference to R.C. 126.301 and 1302.98.

effective date.⁴¹ For causes of action that accrued prior to that effective date, the period of limitation will be six years from that effective date or the expiration of the period of limitation in effect prior to the effective date, whichever occurs first.⁴²

Actions on an unwritten contract

Under the bill, an action on a contract *not in writing*, express or implied, generally must be brought within four years after the cause of action accrued, rather than six years as currently required.⁴³

Application

Generally, under the bill, the period of limitation of an action on a contract not in writing as described above applies to an action in which the cause of action accrues on or after the bill's effective date.⁴⁴ For causes of action that accrued prior to that effective date, the period of limitation will be four years from that effective date or the expiration of the period of limitation in effect prior to the effective date, whichever occurs first.⁴⁵

Actions arising out of a consumer transaction

With the exceptions described below and notwithstanding certain actions described below, the bill provides that an action arising out of a consumer transaction incurred primarily for personal, family, or household purposes, based upon any contract, agreement, obligation, liability, or promise, express or implied, including an account stated, whether or not reduced to writing or signed by the party to be charged by that transaction, must be brought within six years after the cause of action accrued.⁴⁶ The bill provides the following *exceptions* to the period of limitation described in the preceding paragraph:⁴⁷

- Generally, the periods of limitations of actions under Ohio's Commercial Paper Law;
- Generally, an action to recover title to or possession of real property that must be brought within 21 years after the cause of action accrued;
- Violations of the Consumer Sales Practices Act.

The bill further provides that the period of limitation of an action arising out of a consumer transaction as described above is *notwithstanding* the following limitation periods:⁴⁸

⁴¹ Section 4(A).

⁴² Section 5.

⁴³ R.C. 2305.07(A).

⁴⁴ Section 4(A).

⁴⁵ Section 6(A).

⁴⁶ R.C. 2305.07(C).

⁴⁷ R.C. 2305.07(C), and by reference to R.C. 1303.16, 1345.10, and 2305.04.

⁴⁸ R.C. 2305.07(C), and by reference to R.C. 1302.98, 2305.03(B), and 2305.07(A) and (B).

- The four-year limitation period of an action on a contract not in writing or the six-year limitation period of an action upon a liability created by statute other than a forfeiture or penalty;
- The four-year limitation period of an action for breach of a contract of sale;
- The period of limitation of a tort action under “**Changes to the ‘borrowing statute,’**” below.

Application

Generally, under the bill, the period of limitation of an action on a contract arising out of a consumer transaction as described above applies to an action in which the cause of action accrues on or after the bill’s effective date.⁴⁹ For causes of action that accrued prior to that effective date, the period of limitation will be six years from that effective date or the expiration of the period of limitation in effect prior to the effective date, whichever occurs first.⁵⁰

Changes to the “borrowing statute”

Under the current so-called borrowing statute, no civil action that is based upon a cause of action that accrued in any other state, territory, district, or foreign jurisdiction (other jurisdiction) may be commenced and maintained in Ohio if the period of limitation that applies to that action under the laws of that other jurisdiction, or under Ohio law, has expired.⁵¹ The bill limits the above provision to a “*tort action*” which it defines as a civil action for damages for injury, death, or loss to person or property other than a civil action for damages for a breach of contract or another agreement between persons.⁵² The bill provides that the preceding provision applies retroactively to April 7, 2005, the effective date of S.B. 80 (Tort Reform Act) of the 125th General Assembly.⁵³

Contract-related actions

The bill provides that no action upon a specialty or an agreement, contract, or promise in writing, other than an action described above under “**Actions arising out of a consumer transaction,**” that seeks post-default interest at a rate governed by or provided in the substantive laws of any other jurisdiction, and in excess of the federal short-term rate as determined by the Ohio Tax Commissioner, may be commenced and maintained in Ohio if the

⁴⁹ Section 4(A).

⁵⁰ Section 6(B).

⁵¹ R.C. 2305.03(B).

⁵² R.C. 2305.03(B), and by reference to R.C. 2305.236.

⁵³ Section 4(B).

period of limitation that applies to that action under the laws of that other jurisdiction, or under Ohio law, has expired.⁵⁴

Consumer transaction-related actions

Under the bill, no action arising out of a consumer transaction described above under **“Actions arising out of a consumer transaction,”** that seeks post charge-off interest at a rate governed by or provided in the substantive laws of any other jurisdiction, and in excess of the federal short-term rate as determined by the Ohio Tax Commissioner, may be commenced and maintained in Ohio if the period of limitation that applies to that action under the laws of that other jurisdiction, or under Ohio law, has expired.⁵⁵

Statute of limitation for legal malpractice action

The bill provides that a legal malpractice action against an attorney or a law firm or legal professional association must be commenced within one year after the action accrues.⁵⁶

Statute of repose for legal malpractice action

The bill generally specifies that an action upon a legal malpractice claim against an attorney or a law firm or legal professional association must be commenced within one year after the cause of action accrued.⁵⁷

Except as to persons within the age of minority or of unsound mind, generally both of the following apply:⁵⁸

- No action upon a legal malpractice claim against an attorney or a law firm or legal professional association may be commenced more than four years after the occurrence of the act or omission constituting the alleged basis of the legal malpractice claim.
- If an action upon a legal malpractice claim against an attorney or a law firm or legal professional association is not commenced within four years after the occurrence of the act or omission constituting the alleged basis of the claim, then, any action upon that claim is barred.

Under the bill, if a person making a legal malpractice claim against an attorney or a law firm or legal professional association, in the exercise of reasonable care and diligence, could not have discovered the injury resulting from the act or omission constituting the alleged basis of the claim within three years after the occurrence of the act or omission, but, in the exercise of reasonable care and diligence, discovers the injury resulting from that act or omission before the expiration of the four-year period described above, the person may commence an action

⁵⁴ R.C. 2305.03(C), and by reference to R.C. 5703.47.

⁵⁵ R.C. 2305.03(D), and by reference to R.C. 5703.47.

⁵⁶ R.C. 2305.11(A).

⁵⁷ R.C. 2305.117(A).

⁵⁸ R.C. 2305.117(B).

upon the claim not later than one year after the person discovers the injury resulting from that act or omission.⁵⁹

A person who commences an action upon a legal malpractice claim under the circumstances described in the previous paragraph has the affirmative burden of proving, by clear and convincing evidence, that the person, with reasonable care and diligence, could not have discovered the injury resulting from the act or omission constituting the alleged basis of the claim within that three-year period.⁶⁰

Tolling of statutes of limitations and other time limitations

The bill specifies that the time period between March 9, 2020, and July 30, 2020, cannot be computed as part of the periods of limitation and time limitations that are tolled under Am. Sub. H.B. 197 of the 133rd General Assembly as a result of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020. The bill also specifies that the tolling expires on July 30, 2020, rather than when the period of emergency ends or July 30, 2020, whichever is sooner.⁶¹

The bill includes an emergency clause that states that the provisions described in the previous paragraph are to go into immediate effect to ensure that the tolling of those periods of limitation and time limitations runs until July 30, 2020.⁶²

HISTORY

Action	Date
Introduced	10-09-19
Reported, H. Civil Justice	05-13-20
Passed House (76-13)	11-19-20
Reported, S. Judiciary	---

H0352-RS-133/ts

⁵⁹ R.C. 2305.117(C)(1).

⁶⁰ R.C. 2305.117(C)(2).

⁶¹ Section 7.

⁶² Section 10.