

As Introduced

**130th General Assembly
Regular Session
2013-2014**

H. B. No. 456

Representative Pillich

**Cosponsors: Representatives Antonio, Bishoff, Boyd, Clyde, Driehaus,
Fedor, Heard, Phillips, Reece, Ramos, Hagan, R., Foley, Stinziano, Barborak,
Sheehy, Lundy**

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A B I L L

To amend section 4112.05 of the Revised Code to 1
clarify that a discriminatory compensation 2
decision that is unlawful under the Civil Rights 3
Laws occurs each time compensation is paid 4
pursuant to that decision. 5

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

Section 1. That section 4112.05 of the Revised Code be 6
amended to read as follows: 7

Sec. 4112.05. (A) The commission, as provided in this 8
section, shall prevent any person from engaging in unlawful 9
discriminatory practices, provided that, before instituting the 10
formal hearing authorized by division (B) of this section, it 11
shall attempt, by informal methods of conference, conciliation, 12
and persuasion, to induce compliance with this chapter. 13

(B)(1) Any person may file a charge with the commission 14
alleging that another person has engaged or is engaging in an 15
unlawful discriminatory practice. In the case of a charge alleging 16
an unlawful discriminatory practice described in division (A), 17

(B), (C), (D), (E), (F), (G), (I), or (J) of section 4112.02 or in 18
section 4112.021 or 4112.022 of the Revised Code, the charge shall 19
be in writing and under oath and shall be filed with the 20
commission within six months after the alleged unlawful 21
discriminatory practice was committed. In the case of a charge 22
alleging an unlawful discriminatory practice described in division 23
(H) of section 4112.02 of the Revised Code, the charge shall be in 24
writing and under oath and shall be filed with the commission 25
within one year after the alleged unlawful discriminatory practice 26
was committed. 27

For the purposes of division (B)(1) of this section, an 28
unlawful discriminatory practice in compensation is committed when 29
one of the following occurs: 30

(a) A discriminatory compensation decision or other practice 31
is adopted; 32

(b) An individual becomes subject to a discriminatory 33
compensation decision or other practice; 34

(c) An individual is affected by application of a 35
discriminatory compensation decision or other practice, including 36
each time wages, benefits, or other compensation is paid, 37
resulting in whole or in part from a discriminatory compensation 38
decision or other practice. 39

(2) Upon receiving a charge, the commission may initiate a 40
preliminary investigation to determine whether it is probable that 41
an unlawful discriminatory practice has been or is being engaged 42
in. The commission also may conduct, upon its own initiative and 43
independent of the filing of any charges, a preliminary 44
investigation relating to any of the unlawful discriminatory 45
practices described in division (A), (B), (C), (D), (E), (F), (I), 46
or (J) of section 4112.02 or in section 4112.021 or 4112.022 of 47
the Revised Code. Prior to a notification of a complainant under 48

division (B)(4) of this section or prior to the commencement of 49
informal methods of conference, conciliation, and persuasion under 50
that division, the members of the commission and the officers and 51
employees of the commission shall not make public in any manner 52
and shall retain as confidential all information that was obtained 53
as a result of or that otherwise pertains to a preliminary 54
investigation other than one described in division (B)(3) of this 55
section. 56

(3)(a) Unless it is impracticable to do so and subject to its 57
authority under division (B)(3)(d) of this section, the commission 58
shall complete a preliminary investigation of a charge filed 59
pursuant to division (B)(1) of this section that alleges an 60
unlawful discriminatory practice described in division (H) of 61
section 4112.02 of the Revised Code, and shall take one of the 62
following actions, within one hundred days after the filing of the 63
charge: 64

(i) Notify the complainant and the respondent that it is not 65
probable that an unlawful discriminatory practice described in 66
division (H) of section 4112.02 of the Revised Code has been or is 67
being engaged in and that the commission will not issue a 68
complaint in the matter; 69

(ii) Initiate a complaint and schedule it for informal 70
methods of conference, conciliation, and persuasion; 71

(iii) Initiate a complaint and refer it to the attorney 72
general with a recommendation to seek a temporary or permanent 73
injunction or a temporary restraining order. If this action is 74
taken, the attorney general shall apply, as expeditiously as 75
possible after receipt of the complaint, to the court of common 76
pleas of the county in which the unlawful discriminatory practice 77
allegedly occurred for the appropriate injunction or order, and 78
the court shall hear and determine the application as 79
expeditiously as possible. 80

(b) If it is not practicable to comply with the requirements 81
of division (B)(3)(a) of this section within the one-hundred-day 82
period described in that division, the commission shall notify the 83
complainant and the respondent in writing of the reasons for the 84
noncompliance. 85

(c) Prior to the issuance of a complaint under division 86
(B)(3)(a)(ii) or (iii) of this section or prior to a notification 87
of the complainant and the respondent under division (B)(3)(a)(i) 88
of this section, the members of the commission and the officers 89
and employees of the commission shall not make public in any 90
manner and shall retain as confidential all information that was 91
obtained as a result of or that otherwise pertains to a 92
preliminary investigation of a charge filed pursuant to division 93
(B)(1) of this section that alleges an unlawful discriminatory 94
practice described in division (H) of section 4112.05 of the 95
Revised Code. 96

(d) Notwithstanding the types of action described in 97
divisions (B)(3)(a)(ii) and (iii) of this section, prior to the 98
issuance of a complaint or the referral of a complaint to the 99
attorney general and prior to endeavoring to eliminate an unlawful 100
discriminatory practice described in division (H) of section 101
4112.02 of the Revised Code by informal methods of conference, 102
conciliation, and persuasion, the commission may seek a temporary 103
or permanent injunction or a temporary restraining order in the 104
court of common pleas of the county in which the unlawful 105
discriminatory practice allegedly occurred. 106

(4) If the commission determines after a preliminary 107
investigation other than one described in division (B)(3) of this 108
section that it is not probable that an unlawful discriminatory 109
practice has been or is being engaged in, it shall notify any 110
complainant under division (B)(1) of this section that it has so 111
determined and that it will not issue a complaint in the matter. 112

If the commission determines after a preliminary investigation 113
other than the one described in division (B)(3) of this section 114
that it is probable that an unlawful discriminatory practice has 115
been or is being engaged in, it shall endeavor to eliminate the 116
practice by informal methods of conference, conciliation, and 117
persuasion. 118

(5) Nothing said or done during informal methods of 119
conference, conciliation, and persuasion under this section shall 120
be disclosed by any member of the commission or its staff or be 121
used as evidence in any subsequent hearing or other proceeding. 122
If, after a preliminary investigation and the use of informal 123
methods of conference, conciliation, and persuasion under this 124
section, the commission is satisfied that any unlawful 125
discriminatory practice will be eliminated, it may treat the 126
charge involved as being conciliated and enter that disposition on 127
the records of the commission. If the commission fails to effect 128
the elimination of an unlawful discriminatory practice by informal 129
methods of conference, conciliation, and persuasion under this 130
section and to obtain voluntary compliance with this chapter, the 131
commission shall issue and cause to be served upon any person, 132
including the respondent against whom a complainant has filed a 133
charge pursuant to division (B)(1) of this section, a complaint 134
stating the charges involved and containing a notice of an 135
opportunity for a hearing before the commission, a member of the 136
commission, or a hearing examiner at a place that is stated in the 137
notice and that is located within the county in which the alleged 138
unlawful discriminatory practice has occurred or is occurring or 139
in which the respondent resides or transacts business. The hearing 140
shall be held not less than thirty days after the service of the 141
complaint upon the complainant, the aggrieved persons other than 142
the complainant on whose behalf the complaint is issued, and the 143
respondent, unless the complainant, an aggrieved person, or the 144
respondent elects to proceed under division (A)(2) of section 145

4112.051 of the Revised Code when that division is applicable. If 146
a complaint pertains to an alleged unlawful discriminatory 147
practice described in division (H) of section 4112.02 of the 148
Revised Code, the complaint shall notify the complainant, an 149
aggrieved person, and the respondent of the right of the 150
complainant, an aggrieved person, or the respondent to elect to 151
proceed with the administrative hearing process under this section 152
or to proceed under division (A)(2) of section 4112.051 of the 153
Revised Code. 154

(6) The attorney general shall represent the commission at 155
any hearing held pursuant to division (B)(5) of this section and 156
shall present the evidence in support of the complaint. 157

(7) Any complaint issued pursuant to division (B)(5) of this 158
section after the filing of a charge under division (B)(1) of this 159
section shall be so issued within one year after the complainant 160
filed the charge with respect to an alleged unlawful 161
discriminatory practice. 162

(C) Any complaint issued pursuant to division (B) of this 163
section may be amended by the commission, a member of the 164
commission, or the hearing examiner conducting a hearing under 165
division (B) of this section, at any time prior to or during the 166
hearing. The respondent has the right to file an answer or an 167
amended answer to the original and amended complaints and to 168
appear at the hearing in person, by attorney, or otherwise to 169
examine and cross-examine witnesses. 170

(D) The complainant shall be a party to a hearing under 171
division (B) of this section, and any person who is an 172
indispensable party to a complete determination or settlement of a 173
question involved in the hearing shall be joined. Any aggrieved 174
person who has or claims an interest in the subject of the hearing 175
and in obtaining or preventing relief against the unlawful 176
discriminatory practices complained of shall be permitted to 177

appear only for the presentation of oral or written arguments, to 178
present evidence, perform direct and cross-examination, and be 179
represented by counsel. The commission shall adopt rules, in 180
accordance with Chapter 119. of the Revised Code governing the 181
authority granted under this division. 182

(E) In any hearing under division (B) of this section, the 183
commission, a member of the commission, or the hearing examiner 184
shall not be bound by the Rules of Evidence but, in ascertaining 185
the practices followed by the respondent, shall take into account 186
all reliable, probative, and substantial statistical or other 187
evidence produced at the hearing that may tend to prove the 188
existence of a predetermined pattern of employment or membership, 189
provided that nothing contained in this section shall be construed 190
to authorize or require any person to observe the proportion that 191
persons of any race, color, religion, sex, military status, 192
familial status, national origin, disability, age, or ancestry 193
bear to the total population or in accordance with any criterion 194
other than the individual qualifications of the applicant. 195

(F) The testimony taken at a hearing under division (B) of 196
this section shall be under oath and shall be reduced to writing 197
and filed with the commission. Thereafter, in its discretion, the 198
commission, upon the service of a notice upon the complainant and 199
the respondent that indicates an opportunity to be present, may 200
take further testimony or hear argument. 201

(G)(1) If, upon all reliable, probative, and substantial 202
evidence presented at a hearing under division (B) of this 203
section, the commission determines that the respondent has engaged 204
in, or is engaging in, any unlawful discriminatory practice, 205
whether against the complainant or others, the commission shall 206
state its findings of fact and conclusions of law and shall issue 207
and, subject to the provisions of Chapter 119. of the Revised 208
Code, cause to be served on the respondent an order requiring the 209

respondent to cease and desist from the unlawful discriminatory 210
practice, requiring the respondent to take any further affirmative 211
or other action that will effectuate the purposes of this chapter, 212
including, but not limited to, hiring, reinstatement, or upgrading 213
of employees with or without back pay, or admission or restoration 214
to union membership, and requiring the respondent to report to the 215
commission the manner of compliance. If the commission directs 216
payment of back pay, it shall make allowance for interim earnings. 217
If it finds a violation of division (H) of section 4112.02 of the 218
Revised Code, the commission additionally shall require the 219
respondent to pay actual damages and reasonable attorney's fees, 220
and may award to the complainant punitive damages as follows: 221

(a) If division (G)(1)(b) or (c) of this section does not 222
apply, punitive damages in an amount not to exceed ten thousand 223
dollars; 224

(b) If division (G)(1)(c) of this section does not apply and 225
if the respondent has been determined by a final order of the 226
commission or by a final judgment of a court to have committed one 227
violation of division (H) of section 4112.02 of the Revised Code 228
during the five-year period immediately preceding the date on 229
which a complaint was issued pursuant to division (B) of this 230
section, punitive damages in an amount not to exceed twenty-five 231
thousand dollars; 232

(c) If the respondent has been determined by a final order of 233
the commission or by a final judgment of a court to have committed 234
two or more violations of division (H) of section 4112.02 of the 235
Revised Code during the seven-year period immediately preceding 236
the date on which a complaint was issued pursuant to division (B) 237
of this section, punitive damages in an amount not to exceed fifty 238
thousand dollars. 239

(2) Upon the submission of reports of compliance, the 240
commission may issue a declaratory order stating that the 241

respondent has ceased to engage in particular unlawful 242
discriminatory practices. 243

(3) In relation to an unlawful discriminatory practice 244
relating to compensation, liability may accrue and the complainant 245
may obtain relief, including recovery of back pay for up to two 246
years preceding the filing of the charge, if the unlawful 247
discriminatory practice that occurred during the charge filing 248
period described in division (B)(1) of this section is similar or 249
related to an unlawful employment practice with regard to 250
discrimination in compensation that occurred outside the time for 251
filing a charge. 252

(H) If the commission finds that no probable cause exists for 253
crediting charges of unlawful discriminatory practices or if, upon 254
all the evidence presented at a hearing under division (B) of this 255
section on a charge, the commission finds that a respondent has 256
not engaged in any unlawful discriminatory practice against the 257
complainant or others, it shall state its findings of fact and 258
shall issue and cause to be served on the complainant an order 259
dismissing the complaint as to the respondent. A copy of the order 260
shall be delivered in all cases to the attorney general and any 261
other public officers whom the commission considers proper. 262

(I) Until the time period for appeal set forth in division 263
(H) of section 4112.06 of the Revised Code expires, the 264
commission, subject to the provisions of Chapter 119. of the 265
Revised Code, at any time, upon reasonable notice, and in the 266
manner it considers proper, may modify or set aside, in whole or 267
in part, any finding or order made by it under this section. 268

Section 2. That existing section 4112.05 of the Revised Code 269
is hereby repealed. 270

Section 3. (A) The General Assembly hereby determines and 271
declares that it recognizes and finds all of the following: 272

(1) The United States Supreme Court in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), significantly impaired statutory protections against discrimination in compensation that Congress established and that have been bedrock principles of American law for decades. The *Ledbetter* decision undermined those statutory protections by unduly restricting the time period in which victims of discrimination could challenge and recover for discriminatory compensation decisions or other practices, contrary to the intent of Congress.

(2) The limitation imposed by the Court on the filing of discriminatory compensation claims ignored the reality of wage discrimination and was at odds with the robust application of the Civil Rights Laws that Congress intended.

(B) The General Assembly hereby declares that, in amending section 4112.05 of the Revised Code to clarify that a discriminatory compensation decision that is unlawful under the Ohio Civil Rights Laws occurs each time compensation is paid pursuant to that decision, it is the General Assembly's intent to protect the safety and general welfare of the people of this state by codifying at the state level the "Lilly Ledbetter Fair Pay Act of 2009," Pub. Law No. 111-2, 123 Stat. 5. Consequently, the amendments made by this act are remedial and not punitive in nature and shall take effect as if enacted on May 28, 2007, and apply to all claims of discrimination in compensation under Chapter 4112. of the Revised Code that are pending on or after that date.