

/* OHIO has provided for "crisis nurseries," as well as testing, disclosure and counseling, and testing donated organs and blood. Discrimination and insurance are also legislated. */

[AIDS AND HIV PROGRAMS]

Section

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3701.24 Report as to contagious or infectious diseases; AIDS and HIV.

(A) As used in the section and sections 3701.241 [3701.24.1] to 3701.249 [3701.24.9] of the Revised Code:

(1) "AIDS" means the illness designated as acquired immunodeficiency syndrome.

(2) "HIV" means the human immunodeficiency virus identified as the causative agent of AIDS.

(3) "AIDS-related condition" means symptoms of illness related to HIV infection, including AIDS-related complex, that are confirmed by a positive HIV test.

- (4) "HIV test" means any test for the antibody or antigen to HIV that has been approved by the director of health under division (B) of section 3701.241 [3701.24.1] of the Revised Code.
- (5) "Health care facility" has the same meaning as in section 1742.01 of the Revised Code.
- (6) "Director" means the director of health or any employee of the department of health acting on his behalf.
- (7) "Physician" means a person licensed under Chapter 4731. of the Revised Code to practice medicine or surgery or osteopathic medicine and surgery.
- (8) "Nurse" means a registered nurse or licensed practical nurse who holds a license or certificate issued under Chapter 4723. of the Revised Code.
- (9) "Anonymous test" means an HIV test administered so that the individual to be tested can give informed consent to the test and receive the results by means of a code system that does not link his identity to the request for the test or the test results.
- (10) "Confidential test" means an HIV test administered so that the identity of the individual tested is linked to the test but is held in confidence to the extent provided by sections 3701.24 to 3701.248 [3701.24.8]'of the Revised Code.
- (11) "Health care provider" means an individual who provides diagnostic, evaluative, or treatment services. Pursuant to Chapter 119. of the Revised Code, the public health council may adopt rules further defining the scope of the term "health care provider."
- (12) "Significant exposure to body fluids" means a percutaneous or mucous membrane exposure of an individual to the blood, semen, vaginal secretions, or spinal, synovial, pleural, peritoneal, pericardial, or amniotic fluid of another individual.
- (13) "Emergency medical services worker" means all of the following:
- (a) A peace officer;
 - (b) An employee of an emergency medical service as defined in division (G) of section 3303.08 of the Revised Code;
 - (c) A firefighter employed by a political subdivision;
 - (d) A volunteer firefighter, emergency operator,

or rescue operator;

(e) An employee of a private organization that renders rescue services, emergency medical care, or emergency medical transportation to accident victims and persons suffering serious illness or injury.

(14) "Peace officer" has the same meaning as in division (A) of section 109.71 of the Revised Code and includes a sheriff.

(B) Boards of health, health authorities or officials, and physicians in localities in which there are no health authorities or officials, shall report promptly to the department of health the existence of any one of the following diseases:

(1) Asiatic cholera;

(2) Yellow fever;

(3) Diphtheria;

(4) Typhus or typhoid fever;

(5) Any other contagious or infectious diseases that the public health council specifies.

(C) Persons designated by rule adopted by the public health council under section 3701.241 [3701.24.1] of the Revised Code shall report promptly every case of AIDS, every AIDS-related condition, and every confirmed positive HIV test to the department of health on forms and in a manner prescribed by the director. In each county the director shall designate the health commissioner of a health district in the county to receive the reports.

Information reported under this division that identifies an individual is confidential and may be released only with the written consent of the individual except as the director determines necessary to ensure the accuracy of the information, as necessary to provide treatment to the individual, as ordered by a court pursuant to section 3701.243 [3701.24.3] or 3701.247 [3701.24.7] of the Revised Code, or pursuant to a search warrant or a subpoena issued by or at the request of a grand jury, prosecuting attorney, city director of law or similar chief legal officer of a municipal corporation, or village solicitor, in connection with a criminal investigation or prosecution. Information that does not identify an individual may be released in summary, statistical, or other form.

3701.241 AIDS and HIV related duties of director of health.

(A) The director of health shall develop and administer the following:

(1) A surveillance system to determine the number of cases of AIDS and the HIV infection rate in various population groups;

- (2) Counseling and testing programs for groups determined by the director to be at risk of HIV infection, including procedures for both confidential and anonymous tests, counseling training programs for health care providers, and development of counseling guidelines;
- (3) A confidential partner notification system to alert and counsel sexual contacts of individuals with HIV infection;
- (4) Risk reduction and education programs for groups determined by the director to be at risk of HIV infection, and, in consultation with a wide range of community leaders, education programs for the public;
- (5) Pilot programs for the long-term care of individuals with AIDS or AIDS-related condition, including care in nursing homes and in alternative settings;
- (6) Programs to expand regional outpatient treatment of individuals with AIDS or AIDS-related condition;
- (7) A program to assist communities, including communities of less than one hundred thousand population, in establishing AIDS task forces and support groups for individuals with AIDS, AIDS-related condition, and HIV infection, The program may include the award of grants if they are matched by local funds,

Information obtained or maintained under the partner notification system is not a public record under section 149.43 of the Revised Code and may be released only in accordance with division (C) of section 3701.243 [3701.24.3] of the Revised Code,

(B) The director shall:

- (1) Approve a test or tests to be used to determine whether an individual has HIV infection, define a confirmed positive test result, and develop guidelines for interpreting test results;
- (2) Establish sites for confidential and anonymous HIV tests, and prepare a list of sites where an individual may obtain an anonymous test;
- (3) Prepare a list of counseling services;
- (4) Make available a copy of the list of anonymous testing sites or a copy of the list of counseling services to anyone who requests it.

(C) The director of health shall require the director or administrator of each site where anonymous or confidential HIV tests are given to submit a report every three months evaluating from an epidemiologic perspective the effectiveness of the HIV testing program at that site. Not later than January 31, 1991, and each year thereafter, the director of health shall make a report evaluating the anonymous and confidential testing programs throughout the

state with regard to their effectiveness as epidemiologic programs. The report shall be submitted to the speaker of the house of representatives and the president of the senate and shall be made available to the public.

The public health council shall adopt rules pursuant to Chapter 119. of the Revised Code for the implementation of the requirements of division (B)(1) of this section and division (C) of section 3701.24 of the Revised Code.

3701.242 Informed consent to HIV test; counseling; anonymous testing.

(A) An HIV test shall be performed only if, prior to the test, informed consent is obtained either by the person or agency of state or local government ordering the test or by the person or agency performing the test. Consent may be given orally or in writing after the person or agency performing or ordering the test has given the individual to be tested or his guardian the following information:

(1) An oral or written explanation of the test and testing procedures, including the purposes and limitations of the test and the meaning of its results;

(2) An oral or written explanation that the test is voluntary, that consent to be tested may be withdrawn, if the test is performed on an outpatient basis, at any time before the individual tested leaves the premises where blood is taken for the test, or, if the test is performed on an inpatient basis, within one hour after the blood is taken for the test, and that the individual or guardian may elect to have an anonymous test;

(3) An oral or written explanation about behaviors known to pose risks for transmission of HIV infection.

The public health council shall adopt rules, pursuant to recommendations of the director of health and in accordance with Chapter 119. of the Revised Code, specifying the information required by this section to be given to an individual before he is given an HIV test. The rules shall contain specifications for an informed consent form that includes the required information. The director of health shall prepare and distribute the form. A person or government agency required by division (A) of this section to give information to an individual may satisfy the requirement by obtaining the signature of the individual on the form prepared by the director.

(B) A minor may consent to be given an HIV test. The consent is not subject to disaffirmance because of minority. The parents or guardian of a minor giving consent under this division are not liable for payment for an HIV test given to the minor without the consent of a parent or the guardian.

(C) The person or government agency ordering an HIV test shall provide

counseling for the individual who was tested at the time he is told the result of the test or informed of a diagnosis of AIDS or of an AIDS-related condition. If the test was performed on the order of the individual tested, the person or government agency that performed the test shall provide counseling. The individual shall be given an oral or written explanation of the nature of AIDS and AIDS-related conditions and the relationship between the HIV test and those diseases and a list of resources for further counseling or support. When necessary, the individual shall be referred for further counseling to help him cope with the emotional consequences of learning the test result.

(D) Any individual seeking an HIV test shall have the right, on his request, to an anonymous test. A health care facility or health care provider that does not provide anonymous testing shall refer an individual requesting an anonymous test to a site where it is available.

(E) Divisions (A) to (D) of this section do not apply to the performance of an HIV test in any of the following circumstances:

(1) When the test is performed in a medical emergency by a nurse or physician and the test results are medically necessary to avoid or minimize an immediate danger to the health or safety of the individual to be tested or another individual, except that counseling shall be given to the individual as soon as possible after the emergency is over;

(2) When the test is performed for the purpose of research if the researcher does not know and cannot determine the identity of the individual tested;

(3) When the test is performed by a person who procures, processes, distributes, or uses a human body part from a deceased person donated for a purpose specified in Chapter 2108. of the Revised Code, if the test is medically necessary to ensure that the body part is acceptable for its intended

purpose;

(4) When the test is performed on a person incarcerated in a penal institution under the control of the department of rehabilitation and correction if the head of the institution has determined, based on good cause, that a test is necessary;

(5) When the test is performed by or on the order of a physician who, in the exercise of his professional judgment, determines the test to be necessary for providing diagnosis and treatment to the individual to be tested, if the individual or his parent or guardian has given consent to the physician for medical treatment;

(6) When the test is performed on an individual after the infection control

committee of a health care facility, or other body of a health care facility performing a similar function determines that a health care provider, emergency medical services worker, or peace officer, while rendering health or emergency care to an individual, has sustained a significant exposure to the body fluids of that individual, and the individual has refused to give consent for testing.

(F) If the requirements of division (A) of this section have been met, consent to be tested given under that division shall be presumed to be valid and effective, and no evidence is admissible in a civil action to impeach, modify, or limit the consent.

(G) The consent of the individual to be tested is not required, and the individual or guardian may not elect to have an anonymous test, when the test is ordered by a court in connection with a criminal investigation.

3701.243 Disclosure of HIV test results or diagnosis.

(A) Except as provided in this section or section 3701.248 [3701.24.8] of the Revised Code, no person or agency of state or local government that acquires the information while providing any health care service or while in the employ of a health care facility or health care provider shall disclose or compel another to disclose any of the following:

- (1) The identity of any individual on whom an HIV test is performed;
- (2) The results of an HIV test in a form that identifies the individual tested;
- (3) The identity of any individual diagnosed as having AIDS or an AIDS-related condition.

(B)(1) Except as provided in divisions (B)(2), (C), (D), and (F) of this section, the results of an HIV test or the identity of an individual on whom an HIV test is performed or who is diagnosed as having AIDS or an AIDS-related condition may be disclosed only to the following:

- (a) The individual who was tested or the individual's legal guardian, and his spouse or any sexual partner;
- (b) A person to whom disclosure is authorized by a written release, executed by the individual tested or by his legal guardian and specifying to whom disclosure of the test results or diagnosis is authorized and the time period during which the release is to be effective;
- (c) The individual's physician;
- (d) The department of health or a health commissioner to which reports are made under section 3701.24 of the revised Code;

(e) A health care facility or provider that procures, processes, distributes, or uses a human body part from a deceased individual, donated for a purpose specified in Chapter 2108. of the Revised Code, and that needs medical information about the deceased individual to ensure that the body part is medically acceptable for its intended purpose;

(f) Health care facility staff committees or accreditation or oversight review organizations conducting program monitoring, program evaluation, or service reviews;

(g) A health care provider, emergency medical services worker, or peace officer who sustained a significant exposure to the body fluids of another individual, if that individual was tested pursuant to division (E)(6) of section 3701.242 [3701.24.2] of the Revised Code, except that the identity of the individual tested shall not be revealed;

(h) To law enforcement authorities pursuant to a search warrant or a subpoena issued by or at the request of a grand jury, a prosecuting attorney, city director of law or similar chief legal officer of a municipal corporation, or village solicitor, in connection with a criminal investigation or prosecution.

(2) The results of an HIV test or a diagnosis of AIDS or an AIDS-related condition may be disclosed to a health care provider, or an authorized agent or employee of a health care facility or a health care provider, if the provider, agent, or employee has a medical need to know the information and is participating in the diagnosis, care, or treatment of the individual on whom the test was performed or who has been diagnosed as having AIDS or an AIDS-related condition.

This division does not impose a standard of disclosure different from the standard for disclosure of all other specific information about a patient to health care providers and facilities. Disclosure may not be requested or made solely for the purpose of identifying an individual who has a positive HIV test result or has been diagnosed as having AIDS or an AIDS-related condition in order to refuse to treat the individual. Referral of an individual to another health care provider or facility based on reasonable professional judgment does not constitute refusal to treat the individual.

(3) Not later than ninety days after November 1, 1989, each health care facility in this state shall establish a protocol to be followed by employees and individuals affiliated with the facility in making disclosures authorized by division (B)(2) of this section. A person employed by or affiliated with a health care facility who determines in accordance with the protocol established by the facility that a disclosure is authorized by division (B)(2) of this section is immune from liability to any person in a civil action for damages for injury, death, or loss to person or property resulting from the disclosure.

(C)(1) Any person or government agency may seek access to or authority to disclose the HIV test records of an individual in accordance with the following provisions:

(a) The person or government agency shall bring an action in a court of common pleas requesting disclosure of or authority to disclose the results of an HIV test of a specific individual, who shall be identified in the complaint by a pseudonym but whose name shall be communicated to the court confidentially, pursuant to a court order restricting the use of the name. The court shall provide the individual with notice and an opportunity to participate in the proceedings if he is not named as a party. Proceedings shall be conducted in chambers unless the individual agrees to a hearing in open court.

(b) The court may issue an order granting the plaintiff access to or authority to disclose the test results only if the court finds by clear and convincing evidence that the plaintiff has demonstrated a compelling need for disclosure of the information that cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy right of the individual tested and against any disservice to the public interest that might result from the disclosure, such as discrimination against the individual or the deterrence of others from being tested.

(c) If the court issues an order, it shall guard against unauthorized disclosure by specifying the persons who may have access to the information, the purposes for which the information shall be used, and prohibitions against future disclosure.

(2) A person or government agency that considers it necessary to disclose the results of an HIV test of a specific individual in an action in which it is a party may seek authority for the disclosure by filing an in camera motion with the court in which the action is being heard. In hearing the motion, the court shall employ procedures for confidentiality similar to those specified in division (C)(1) of this section. The court shall grant the motion only if it finds by clear and convincing evidence that a compelling need for the disclosure has been demonstrated.

(3) Except for an order issued in a criminal prosecution or an order under division (C)(1) or (2) of this section granting disclosure of the result of an HIV test of a specific individual, a court shall not compel a blood bank, hospital blood center, or blood collection facility to disclose the result of HIV tests performed on the blood of voluntary donors in a way that reveals the identity of any donor.

(4) In a civil action in which the plaintiff seeks to recover damages from an individual defendant based on an allegation that the plaintiff contracted the HIV virus as a result of actions of the defendant, the prohibitions against

disclosure in this section do not bar discovery of the results of any HIV test given to the defendant or any diagnosis that the defendant suffers from AIDS or an AIDS-related condition.

(D) The results of an HIV test or the identity of an individual on whom an HIV test is performed or who is diagnosed as having AIDS or an AIDS-related condition may be disclosed to a federal, state, or local government agency, or the official representative of such an agency, for purposes of the medical assistance program established under section 5111.01 of the Revised Code, the medicare program established under Title XVIII of the "Social Security Act," 49 Stat. 620 (1935) 42 U.S.C. 301, as amended, or any other public assistance program.

(E) Any disclosure pursuant to this section shall be in writing and accompanied by a written statement that includes the following or substantially similar language: "This information has been disclosed to you from confidential records protected from disclosure by state law. You shall make no further disclosure of this information without the specific, written, and informed release of the individual to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is not sufficient for the purpose of the release of HIV test results or diagnoses.

(F) An individual who knows that he has received a positive result on an HIV test or has been diagnosed as having AIDS or an AIDS-related condition, shall disclose this information to any other person with whom he intends to make common use of a hypodermic needle or engage in sexual conduct as defined in section 2907.01 of the Revised Code.

(C) Nothing in this section prohibits the introduction of evidence concerning an HIV test of a specific individual in a criminal proceeding.

3701.244 Civil action for violation of provisions.

(A) As used in this section, "violation" means an occasion of noncompliance involving a single injured individual.

(B) A person or an agency of state or local government that knowingly violates division (A) of section 3701.242 [3701.24.2], division (A) of section 3701.243 [3701.24.3], or division (E) of section 370L248 [3701.24.8] of the Revised Code may be found liable in a civil action; the action may be brought by any individual injured by the violation. Except as otherwise provided in division (C) or (D) of this section, the court may award compensatory damages and any equitable relief, including injunctive relief, it finds appropriate. If an award is made in favor of the plaintiff, the judge may award reasonable attorney's fees to the plaintiff after a hearing to determine

the amount of the fees.

(C) No person shall be held liable for damages or attorney's fees in an action based on a violation of section 3701.243 [3701.24.3] of the Revised Code by his employee or agent unless the person knew or should have known of the violation.

(D) A person who acts in good faith in accordance with section 3701.242 [3701.24.2], 3701.243 [3701.24.3], or 3701.248 [3701.24.8] of the Revised Code is not liable for damages in a civil action brought pursuant to this section.

(E) A civil action under this section is barred unless the action is commenced within one year after the cause of action accrued. A cause of action does not survive the death of the individual injured by the violation unless a civil action based on the cause of action is commenced prior to the death of that

individual.

(F) The remedies in this section are the exclusive civil remedies for an individual injured by noncompliance with section 3701.242 [3701.24.2], 3701.243 [3701.24.3], or division (E) of section 3701.248 [3701.24.8] of the Revised Code.

(C) Nothing in this section shall be construed to impose civil liability on a person for the disclosure of an HIV test result, a diagnosed case of AIDS, or a diagnosed AIDS-related condition in accordance with a reporting requirement of the department of health or any federal agency.

(H) No person with knowledge that an individual other than himself has or may have AIDS, andt AIDS-related condition, or a positive HIV test shall be held liable for failing to disclose that information to any person unless disclosure is expressly required by law.

3701.245 Public agencies may not require HIV results to obtain services.

(A) No state agency as defined in section 1.60 of the Revised Code, political subdivision, agency of local government, or private nonprofit corporation receiving state or local government funds shall refuse to admit as a patient, or to provide services to, any individual solely because he refuses to con-sent to an HIV test or to disclose HIV test results.

(B) The prohibition contained in division (A) of this section does not prevent a physician or a person licensed to practice dentistry under Chapter 4715. of the Revised Code from referring an individual he has reason to believe may have AIDS or an AIDS-related condition to an appropriate health

care provider or facility, if the referral is based on reasonable professional judgment and not solely on grounds of the refusal of the individual to consent to an HIV test or to disclose the result of an HIV test.

3701.246 HIV testing of donated body parts or fluids.

Any human body part donated for transplantation, including an organ, tissue, eye, bone, artery,

or other part, and any body fluid donated for transfusion or injection into another person, including blood, plasma, a blood product, semen, or other fluid, shall be given an HIV test before being transplanted, transfused, or injected to determine that the part or fluid is not infected with the HIV virus unless, in an emergency, the recipient of the donation or his guardian, after consultation with the recipient's physician, consents to a waiver of this requirement.

3701.247 Action for order compelling HIV testing.

(A)(1) Any of the following persons may bring an action in a probate court for an order compelling another person to undergo HIV testing:

(a) A person who believes he may have been exposed to HIV infection while rendering health or emergency care to the other person;

(b) A peace officer who believes he may have been exposed to HIV infection while dealing with the other person in the performance of his duties.

(2) The complaint in the action shall be accompanied by an affidavit in which the plaintiff attests to all of the following:

(a) While rendering health or emergency care to the defendant, or while dealing with the defendant in the performance of his duties, the plaintiff sustained a significant exposure to body fluids of the defendant;

(b) The plaintiff has reason to believe the defendant may have an HIV infection;

(c) The plaintiff made a reasonable attempt to have the defendant submit to HIV testing in accordance with section 3701.242 [3701.24.2] of the Revised Code, and notified the defendant that he would bring an action under this section on the defendant's refusal or failure to be tested, but the defendant has not been tested;

(d) Within seven days after the exposure, the plaintiff took an HIV test and also has received counseling pursuant to section 3701.242 [3701.24.2] of the Revised Code.

In the complaint, the defendant shall be identified by a pseudonym and his name communicated to the court confidentially pursuant to a court order restricting the use of the name. Proceedings shall be conducted in chambers unless the defendant agrees to a hearing in open court.

(B) The court shall hold a hearing on the complaint at the earliest possible time but not later than the third business day after the day the defendant is served with the complaint and notice of the hearing. The court shall enter judgment on the complaint on the day the hearing is concluded.

(C) Notwithstanding division (A) of section 3701.242 [3701.24.2] of the Revised Code, the court may order the defendant to undergo HIV testing if it finds by clear and convincing evidence that the plaintiff has proved the matters attested to in his affidavit and has demonstrated that he has a compelling need for the results of the test and no other means exist to accommodate the need. If granted, the order shall guard against unauthorized disclosure of the test results by specifying the persons and governmental entities that may have access to the results and by limiting further disclosure. The court shall require that the defendant be given test results and that counseling be provided him in accordance with division (C) of section 3701.242 [3701.24.2] of the Revised Code. The court may order the plaintiff to pay the cost of the defendant's testing and counseling.

3701.248 Exposed emergency medical services worker may request notice of test results.

(A) As used in this section:

(1) "Contagious or infectious disease" means a disease specified by rule by the public health council pursuant to division (F) of this section.

(2) "Patient" means a person, whether alive or dead, who has been treated, or handled, or transported for medical care by an emergency medical services worker.

(3) "Significant exposure means:

(a) A percutaneous or mucous membrane exposure of an individual to the blood, semen, vaginal secretions, or spinal, synovial, pleural, peritoneal, pericardial, or amniotic fluid of another person;

(b) Exposure to a contagious or infectious disease.

(B)(1) An emergency medical services worker who believes he has suffered significant exposure through contact with a patient may submit to the health care facility or coroner that received the patient a written request to be notified of the results of any test performed on the patient to determine the presence of a contagious or infectious disease. The request shall include:

(a) The name, address, and telephone number of the emergency medical services worker submitting the request;

(b) The name of the emergency medical services worker's employer, or the entity where he is a volunteer, and his supervisor;

(c) The date, time, location, and manner of the exposure.

(2) The request for notification that is submitted pursuant to division (B)(1) of this section is valid for ten days after it is made. If at the end of that ten-day period no test has been performed to determine the presence of a contagious or infectious disease, no diagnosis has been made, or the result of the test is negative, the health care facility or coroner shall notify the emergency medical services worker accordingly. The notification shall not include the name of the patient or deceased person.

If necessary, the request may be renewed in accordance with the same procedures and requirements as the original request.

(C) The health care facility or coroner who receives a written request for notification shall give an oral notification of the presence of a contagious or infectious disease, or of a confirmed positive test result, if known, to the emergency medical services worker and his supervisor and to the infection control committee or other body described in division (E)(6) of section 3701.242 [3701.24.2] of the Revised Code within two days after determining the presence of a contagious or infectious disease or after a confirmed positive test result. A written notification shall follow oral notification within three days. If a contagious or infectious disease is present, or the test results are confirmed positive, both the oral and written notification shall include the name of the disease, its signs and symptoms, the date of exposure, the incubation period, the mode of transmission of the disease, the medical precautions necessary to prevent transmission to other persons, and the appropriate prophylaxis, treatment, and counseling for the disease. The notification shall not include the name of the patient or deceased person.

If the information is not available from the health care facility to which the request is made because the patient has been transferred from that health care facility, the facility shall assist the emergency medical services worker in locating the patient and securing the requested information from the health care facility that treated or is treating the patient. If the patient has died, the health care facility shall give the emergency medical services worker the name and address of the coroner who received the patient.

(D) Each health care facility and coroner shall develop written procedures to implement the notification procedures required by this section. A health care facility or coroner may take measures in addition to those required in this section to notify emergency medical services workers of possible exposure to a contagious or infectious disease as long as the confidentiality of the information is maintained.

(E) No person shall knowingly fail to comply with division (C) of this section.

(F) The public health council shall adopt rules pursuant to Chapter 119. of the Revised Code that specify the diseases that are reasonably likely to be transmitted by air or blood during the normal course of duties performed by an emergency medical services worker. In adopting such rules, the council shall consider the types of contact that typically occur between patients and emergency medical services workers.

3701.249 Immunity

of employer of HIV infected person.

(A) As used in this section, "employer" and "employee" have the same meanings as in section 4112.01 of the Revised Code.

(B) The employer of a person with HIV infection is immune from liability to any person in a civil action for damages for injury, death, or loss to person or property on a claim arising out of transmission of the human immunodeficiency virus from the infected employee to another employee or to any other person, unless the transmission occurs as a result of the reckless conduct of the employer.

(C) An employer is immune from liability to an employee on a claim asserted under any provision of the Revised Code or in a civil action for damages for injury, death, or loss to person or property if the claim arises from an illness or injury to the employee that is stress-related and results from the employee being required to work with an individual who has received a positive result on an HIV test or has been diagnosed as having AIDS or an AIDS-related condition.

3901.45 Inquiry into and effect of sexual orientation or AIDS or related condition.

(A) As used in sections 3901.45 and 3901.46 of the Revised Code:

(1) "AIDS," "HIV," "AIDS-related condition," and "HIV test" have the same meanings as in section 3701.24 of the Revised Code.

(2) "Insurer" means any person authorized to engage in the business of life or sickness and accident insurance under Title XXXIX [39] of the Revised Code or any person or governmental entity providing health services coverage for individuals on a self-insurance basis.

(3) "Group policy" means, with respect to life insurance, a policy covering more than twenty-five individuals and issued pursuant to section 3917.01 of the Revised Code, and with respect to sickness and accident insurance, a policy covering more than twenty-five individuals and issued pursuant to section 3923.11, 3923.12, or 3923.13 of the Revised Code. "Group policy" includes a certificate of life or sickness and accident insurance covering more than twenty-five individuals under a group policy issued to a multiple employer trust.

(4) "Individual policy" means, with respect to life insurance and sickness and accident insurance, a policy other than a group policy, except that "individual policy" also includes all of the following:

(a) The coverage under a group policy of an individual who seeks to become a member of an insured group after having declined a previous offer of coverage under the group policy;

(b) An individual who seeks life insurance coverage under a group policy in excess of the maximum coverage available under the policy without evidence of insurability;

(c) A certificate of life or sickness and accident insurance covering no more than twenty-five individuals under a group policy issued to a multiple employer trust.

(B) In processing an application for an individual policy of life or sickness and accident insurance or in determining insurability of an applicant, no insurer shall:

(1) Take into consideration an applicant's sexual orientation;

(2) Make any inquiry toward determining an applicant's sexual orientation or direct any person who provides services to the insurer to investigate an applicant's sexual orientation;

(3) Make a decision adverse to the applicant based on entries in medical records or other reports that show that the applicant has sought an HIV test, consultation regarding the possibility of developing AIDS or an AIDS-related condition, or counseling for concerns related to AIDS from health care professionals unless there has been a diagnosis, confirmed by a positive HIV test, of AIDS or an AIDS-related condition or the applicant has been treated for either.

(C)(1) In developing and asking questions regarding medical histories and

lifestyles of applicants for life or sickness and accident insurance and in assessing the answers, an insurer shall not ask questions designed to ascertain the sexual orientation of the applicant nor use factors such as marital status, living arrangements, occupation, gender, medical history, beneficiary designation, or zip code or other geographic designation to aid in ascertaining the applicant's sexual orientation.

(2) An insurer may ask the applicant if he has ever been diagnosed as having AIDS or an AIDS-related condition.

(3) An insurer may ask the applicant specifically whether he has ever had a positive result on an HIV test. "Positive result" means a result interpreted as positive in accordance with guidelines developed by the director of health under division (B)(1)(a) of section 3701.241 [3701.24.1] of the Revised Code, even though the applicant may have been tested in another state. "Positive result" does not mean an initial positive result that further testing showed to be false.

(4) The insurer shall not ask the applicant whether he has ever taken an HIV test.

(D)(1) Except as provided in division (D)(2) of this section, no insurer shall cancel a policy of life or sickness and accident insurance, or refuse to renew a policy of life or sickness and accident insurance other than a policy that is renewable at the option of the insurer, based solely on the fact that, after the effective date of the policy, the policyholder is diagnosed as having AIDS, an AIDS-related condition, or an HIV infection.

(2) If a policy of life or sickness and accident insurance provides for a contestability period, an insurer may cancel the policy during the contestability period if the applicant made a false statement in the application with regard to the question of whether he has been diagnosed as having AIDS, an AIDS-related condition, or an HIV infection.

(E) No insurer shall deliver, issue for delivery, or renew a policy of life or sickness and accident insurance that limits benefits or coverage in the event that, after the effective date of the policy, the insured develops AIDS or an AIDS-related condition or receives a positive result on an HIV test.

(F) An insurer is not required to offer coverage under a policy of life or sickness and accident insurance to an individual or group member, or a dependent of an individual or group member, who has AIDS or an AIDS-related condition, or who has had a positive result on an HIV test.

(G) An insurer is not required to continue to provide coverage under a policy of life or sickness and accident insurance to an individual or group member, or a dependent of an individual or group member, if the insurer determines the individual or group member or dependent of the individual or

group member knew on the effective date of the policy that he had AIDS, an AIDS-related condition, or a positive result of an HIV test.

(H) A violation of this section is an unfair insurance practice under sections 3901.19 to 3901.26 of the Revised Code.

3901.46 When insurer may require HIV testing of applicant.

As used in this section, "membership organization" means a fraternal or other association or group of individuals involved in the same occupation, activity, or interest that is organized and maintained in good faith for purposes other than to obtain insurance and is not organized or maintained for the purpose of engaging in activities for gain or profit.

(A) In underwriting an individual policy of life or sickness and accident insurance or a group policy of life or sickness and accident insurance providing coverage for members of a membership organization, an insurer may require an applicant for coverage under the policy to submit to an HIV test only in conjunction with tests for other health conditions. No applicant shall be required to submit to an HIV test on the basis of his sexual orientation or factors described in division (C)(1) of section 3901.45 of the Revised Code that are used to ascertain his sexual orientation.

(B)(1) An insurer that requests an applicant to take an HIV test shall obtain the applicant's written consent for the test and shall inform the applicant of the purpose of the test. The consent form shall include information about the tests to be performed, the confidentiality of the results, procedures for notifying the applicant of the results, and a general interpretation of test results.

(2) The superintendent of insurance shall adopt rules under Chapter 119. of the Revised Code establishing the form and content of the consent required under division (B)(1) of this section.

(C) An insurer may disclose the results of a positive HIV test only to the following persons:

(1) The applicant;

(2) The applicant's or insured's physician or other health care provider if the applicant or insured provides the insurer with prior written consent for disclosure;

(3) Another person that the applicant or insured specifically designates in writing;

(4) A medical information exchange for insurers operated under

procedures intended to ensure confidentiality, including the use of general codes for results of tests for a number of diseases and conditions as well as for AIDS or an AIDS-related condition.

(D) The HIV test or tests to be given the applicant shall be a test or tests approved by the director of health pursuant to division (B) of section 3701.241 [3701.24.1] of the Revised Code. Test results shall be interpreted strictly in accordance with guidelines for the use of the tests adopted by the director.

(E) The requirements of division (C) of section 3701.24 and sections 3701.242 [3701.24.21 and 3701.243 [3701.24.3] of the Revised Code do not apply to insurers in the underwriting of an individual policy of life or sickness and accident insurance or of a group policy of life or sickness and accident insurance providing coverage for members of a membership organization, except that an insurer may make use of the procedures in division (C) of section 3701.243 [3701.24.3] of the Revised Code.

(F) In underwriting a group policy of life or sickness and accident insurance, no insurer shall require an individual seeking coverage, other than an individual seeking coverage under the policy of a membership organization, to submit to an HIV test

(G) A violation of this section is an unfair insurance practice under sections 3901.19 to 3901.26 of the Revised Code.

3915.141 Indorsement or rider providing accelerated benefits.

In the case of an indorsement or rider that provides accelerated benefits in accordance with sections 3915.21 to 3915.24 of the Revised Code, the filing of the form of the indorsement or rider as required by section 3915.14 of the Revised Code shall include the form number of the policy or contract with which the indorsement or rider may be used.

3915.21 Definitions.

As used in sections 3915.21 to 3915.24 of the Revised Code:

(A) "Accelerated benefits" means the benefits that are payable under a policy and that meet all of the following criteria:

(1) The benefits are payable to the policyholder or certificate holder during the lifetime of the insured and upon the occurrence of a qualifying event.

(2) The benefits are payable in amounts that are fixed at the time of the acceleration of the benefits.

(3) The benefits reduce the death benefit otherwise payable under the policy.

(B) "Policy" means any policy, rider, endorsement, annuity contract, or endowment contract delivered or issued for delivery in this state by a life insurance company.

(C) "Qualifying event" means the occurrence of any of the following:

(1) A medical condition that drastically reduces the potential life span of the insured to a period of time that is within the period of time specified in the policy;

(2) A medical condition that requires the use of extensive or extraordinary medical care or treatment, including a major organ transplant or the continuous use of artificial life support systems without which the insured would likely die;

(3) A condition that normally results in continuous confinement in an eligible institution, as defined in the policy, if the insured is expected to remain in the institution for the remainder of his life;

(4) A medical condition that, in the absence of extensive or extraordinary medical care or treatment, would drastically reduce the potential life span of the insured. Such conditions may include any of the following:

(a) Coronary artery disease that results in an acute infarction or that requires surgery;

(b) Permanent neurological deficit resulting from cerebral vascular accident;

(c) End stage renal failure;

(d) Acquired immunodeficiency syndrome;

(e) Any other medical condition that the superintendent of insurance may approve for a particular policy filing.

(5) Any other qualifying event that the superintendent may approve for a particular policy filing.

3915.22 Application of provisions.

(A) Except as provided in division (B) of this section, every policy that provides accelerated benefits and that is issued or delivered in this state on or after the effective date of this section is subject to this chapter.

(B) Sections 3915.21 to 3915.24 of the Revised Code do not apply to any policy that provides accelerated benefits for the sole purpose of providing directly or supplementing long-term care insurance as defined in section 3923.41 of the Revised Code.

3915.23 Calculation of accelerated benefits.

The accelerated benefits provided by any policy subject to this chapter are life insurance benefits and are calculated primarily on the basis of mortality risks rather than morbidity risks.

3915.24 Rules.

Within six months after the effective date of this section, the superintendent of insurance shall adopt rules in accordance with Chapter 119. of the Revised Code to carry out the purposes of sections 3915.21 to 3915.24 of the Revised Code. The rules shall include criteria for the payment of accelerated benefits, disclosure requirements, and actuarial standards.

4112.01 Definitions.

(A) As used in this chapter:

(1) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and other organized groups of persons. "Person" also includes, but is not limited to, any owner, lessor, assignor, builder, manager, broker, salesman, appraiser, agent, employee, lending institution, and the state and all political subdivisions, authorities, agencies, boards, and commissions of the state.

(2) "Employer" includes the state, any political subdivision of the state, any person employing four or more persons within the state, and any person acting directly or indirectly in tile interest of an employer.

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

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

(5) "Employment agency" includes any person regularly undertaking, with or

without compensation, to procure opportunities to work or to procure, recruit, refer, or place employees.

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

(7) "Discriminate" includes segregate or separate.

(8) "Unlawful discriminatory practice" means any act prohibited by section 4112.02, 4112.021 [4112.02.1], or 4112.022 [4112.02.2] of the Revised Code.

(9) "Place of public accommodation" means any inn, restaurant, eating house, barbershop, public conveyance by air, land, or water, theater, store, other place for the sale of merchandise, or any other place of public accommodation or amusement of which the accommodations, advantages, facilities, or privileges are available to the public.

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

(11) "Restrictive covenant" means any specification limiting the transfer, rental, lease, or other use of any housing accommodations because of race, color, religion, sex, familial status, national origin, handicap, or ancestry, or any limitation based upon affiliation with or approval by any person, directly or indirectly, employing race, color, religion, sex, familial status, national origin, handicap, or ancestry as a condition of affiliation or approval.

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

(13) "Handicap" means a physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment.

(14) Except as otherwise provided in section 4112.021 [4112.02.1] of the Revised Code, "age" means at least forty years old.

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

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

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

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

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

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

(iii) Diseases and conditions, including, but not limited to, orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, mental retardation, emotional illness, drug addiction, and alcoholism.

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

(i) Homosexuality and bisexuality;

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

(iii) Compulsive gambling, kleptomania, or pyromania;

(iv) Psychoactive substance use disorders resulting from current illegal use of a controlled substance.

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

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

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

(20) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

(21) "Handicapped person means a person with a handicap.

(22) "Handicapped tenant" means a tenant or prospective tenant who is a handicapped person.

(B) For the purposes of divisions (A) to (F) of section 4112.02 of the Revised Code, the terms "because of sex" and "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, any illness arising out of and occurring during the course of a pregnancy, childbirth, or related medical conditions. Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in division (B) of section 4111.17 of the Revised Code shall be interpreted to permit otherwise. This division shall not be construed to require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term or except where medical complications have arisen from the abortion, provided that nothing in this division precludes an employer from providing abortion benefits or otherwise affects bargaining agreements in regard to abortion.

4112.02 Unlawful discriminatory practices.

It shall be an unlawful discriminatory practice:

(A) For any employer, because of the race, color, religion, sex, national origin, handicap, 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 related to employment.

(B) For an employment agency or personnel placement service, because of race, color, religion, sex, national origin, handicap, age, or ancestry, to do any of the following:

(1) Refuse or fail to accept, register, classify properly, or refer for employment, or otherwise discriminate against any person;

(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.

(C) For any labor organization to do any of the following:

(1) Limit or classify its membership on the basis of race, color, religion, sex, national origin, handicap, age, or ancestry;

(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, national origin, handicap, age, or ancestry.

(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, national origin, handicap, or ancestry in admission to, or employment in, any program established to provide apprentice training.

(E) Except where based on a bona fide occupational 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:

(1) Elicit or attempt to elicit any information concerning the race, color, religion, sex, national origin, handicap, age, or ancestry of an applicant for employment or membership;

(2) Make or keep a record of the race, color, religion, sex, national origin, handicap, age, or ancestry of any applicant for employment or membership;

(3) Use any form of application for employment, or personnel or membership blank, seeking to elicit information regarding race, color, religion, sex, national origin, handicap, 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;

(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, national origin, handicap, age, or ancestry;

(5) Announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group

because of the race, color, religion, sex, national origin, handicap, age, or ancestry of that group;

(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, national origin, handicap, age, or ancestry.

(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, national origin, handicap, age, or ancestry, or expresses a limitation or preference as to the race, color, religion, sex, national origin, handicap, age, or ancestry of any prospective employer.

(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, national origin, handicap, age, or ancestry, the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of public accommodation.

(H) For any person to do any of the following:

(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, familial status, ancestry, handicap, or national origin;

(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, familial status, ancestry, handicap, or national origin;

(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, familial status, ancestry, handicap, 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 his principal business and not only as a part of the purchase price of an owner-occupied residence he is selling nor merely casually or occasionally to a relative or friend;

(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, familial status, ancestry, handicap, or national origin or because of the racial composition of the neighborhood in which the housing accommodations are located;

(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, familial status, ancestry, handicap, or national origin or because of the racial composition of the neighborhood in which the housing accommodations are located;

(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;

(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, familial status, ancestry, handicap, or national origin, or an intention to make any such preference, limitation, specification, or discrimination;

(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, familial status, ancestry, handicap, 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, familial status, ancestry, handicap, or national origin for the purpose of monitoring compliance with this chapter.

(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;

(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, 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, familial status, ancestry, handicap, or national origin, in the block, neighborhood, or other area will or may have results including, but not limited to, the following:

(a) The lowering of property values;

(b) A change in the racial, religious, sexual, familial status, or ethnic composition of the block, neighborhood, or other area;

(c) An increase in criminal or antisocial behavior in the block, neighborhood, or other area;

(d) A decline in the quality of the schools serving the block, neighborhood, or other area.

(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, familial status, national origin, handicap, or ancestry;

(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;

(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, familial status, or ethnic composition;

(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, familial status, age, ancestry, handicap, or national origin of any prospective owner or user of the lot;

(15) Discriminate in the sale or rental of, or otherwise make unavailable or deny, housing accommodations to any buyer or renter because of a handicap of any of the following:

(a) The buyer or renter;

(b) A person residing in or intending to reside in the housing

accommodations after they are sold, rented, or made available;

(c) Any individual associated with the person described in division (H)(15)(b) of this section.

(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 handicap of any of the following:

(a) That person;

(b) A person residing in or intending to reside in the housing accommodations after they are sold, rented, or made available;

(c) Any individual associated with the person described in division (H)(16)(b) of this section.

(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 handicap, or make an inquiry to determine the nature or severity of a handicap 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 handicaps:

(a) An inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

(b) An inquiry to determine whether an applicant is qualified for housing accommodations available only to persons with handicaps or persons with a particular type of handicap;

(c) An inquiry to determine whether an applicant is qualified for a priority available to persons with handicaps or persons with a particular type of handicap;

(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;

(e) An inquiry to determine whether an applicant at any time has been convicted of or pleaded guilty to the illegal sale, offer to sell, cultivation, manufacture, other production, shipment, transportation, delivery, or other distribution of a controlled substance.

(18)(a) Refuse to permit, at the expense of a handicapped person,

reasonable modifications of existing housing accommodations that are occupied or to be occupied by the handicapped person, if the modifications may be necessary to afford the handicapped person 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 handicapped tenant from conditioning permission for a proposed modification upon the handicapped tenant's doing one or more of the following:

(i) Providing a reasonable description of the proposed modification and reasonable assurances that the proposed modification will be made in a workmanlike manner and that any required building permits will be obtained prior to the commencement of the proposed modification;

(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;

(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 handicapped tenant who makes payments into the account.

(b) A landlord shall not condition permission for a proposed modification upon a handicapped tenant's payment of a security deposit that exceeds the customarily required security deposit of all tenants of the particular housing accommodations.

(19) Refuse to make reasonable accommodations in rules, policies, practices, or services when necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including associated public and common use areas;

(20) Fail to comply with the standards and rules adopted under division (A) of section 3781.111 [3781.11.11 of the Revised Code.

(21) Discriminate against any person in the selling, brokering, or appraising of real property because of race, color, religion, sex, familial status, ancestry, handicap, or national origin;

(22) Fail to design and construct covered multifamily dwellings for first

occupancy on or after the effective date of this amendment in accordance with the following conditions:

(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.

(b) With respect to dwellings that have a building entrance on an accessible route, all of the following apply:

(i) The public use areas and common use areas of the dwellings shall be readily accessible to and usable by handicapped persons.

(ii) All the doors designed to allow passage into and within all premises shall be sufficiently wide to allow passage by handicapped persons in wheelchairs.

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

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

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

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

(K)(1) Nothing in division (H) of this section shall bar any religious or denominational institution or organization, or any nonprofit charitable or educational organization that is operated, supervised, or controlled by or in connection with a religious organization, from limiting the sale, rental, or occupancy of housing accommodations that it owns or operates for other than a commercial purpose to persons of the same religion, or from giving

preference in the sale, rental, or occupancy of such housing accommodations to persons of the same religion, unless membership in the religion is restricted on account of race, color, or national origin.

(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.

(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.

(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.

(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:

(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. 3607, as amended, to be specifically designed and operated to assist elderly persons;

(b) Housing accommodations intended for and solely occupied by persons who are sixty-two years of age or older;

(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.

(L) Nothing in divisions (A) to (E) of this section shall be construed to require a handicapped person to be employed or trained under circumstances that would significantly increase the occupational hazards affecting either the handicapped person, 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 handicapped person in a job that requires him routinely to undertake any task, the performance of which is substantially and inherently impaired by his handicap.

(M) 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 having a handicap, to relieve any handicapped person of any obligation generally imposed on all persons regardless of handicap 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.

(N) An aggrieved individual may enforce his 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 his rights.

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 4101.17 of the Revised Code and from filing a charge with the commission under section 4112.05 of the Revised Code.

(O) With regard to age, it shall not be an unlawful discriminatory practice and it shall not constitute a violation of division (A) of section 4101.17 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:

(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;

(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 his age except as provided for in the "Age Discrimination in Employment Act Amendment of 1978," 92 Stat. 189, 29 U.S.C.A. 623, as amended by the "Age Discrimination in Employment Act Amendments of 1986," 100 Stat. 3342, 29 U.S.C.A. 623, as amended.

(3) Retire an employee who has attained sixty-five years of age who, for

the two-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if the employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans, of the employer of the employee, which equals, in the aggregate, at least forty-four thousand dollars, in accordance with the conditions of the "Age Discrimination in Employment Act Amendment of 1978," 92 Stat. 189, 29 U.S.C.A. 631, as amended by the "Age Discrimination in Employment Act Amendments of 1986," 100 Stat. 3342, 29 U.S.C.A. 631, as amended;

(4) To observe the terms of any bona fide apprenticeship program if the program is registered with the Ohio apprenticeship council pursuant to sections 4101.25 to 4101.30 of the Revised Code and is approved by the federal committee on apprenticeship of the United States department of labor.

(P) Nothing in this chapter prohibiting age discrimination and nothing in division (A) of section 4101.17 of the Revised Code shall be construed to prohibit the following:

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

(2) The mandatory retirement of uniformed patrol officers of the state highway patrol as provided in section 5505.16 of the Revised Code;

(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;

(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;

(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 fire fighter;

(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 fire fighters;

(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).

(Q)(1)(a) Except as provided in division (Q)(1)(b) of this section, for purposes

of divisions (A) to (E) of this section, a handicap 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 employer, employment agency, personnel placement service, labor organization, or joint labor-management committee acts on the basis of that illegal use.

(b) Division (Q)(1)(a) of this section does not apply to an employee, applicant, or other person who satisfies any of the following:

(i) He has successfully completed a supervised drug rehabilitation program and no longer is engaging in the illegal use of any controlled substance, or he otherwise successfully has been rehabilitated and no longer is engaging in that illegal use.

(ii) He is participating in a supervised drug rehabilitation program and no longer is engaging in the illegal use of any controlled substance.

(iii) He is erroneously regarded as engaging in the illegal use of any controlled substance, but he is not engaging in that illegal use.

(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:

(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)(1)(b)(i) or (ii) of this section no longer is engaging in the illegal use of any controlled substance;

(b) Prohibiting the illegal use of controlled substances and the use of alcohol at the workplace by all employees;

(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;

(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;

(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, that 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;

(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.

(3) For purposes of this chapter, a test to determine the illegal use of any controlled substance does not include a medical examination.

(4) Division (Q) 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, applicants, or other persons, or the making of employment decisions based on the results of that type of testing.

5103.031 Crisis nurseries for certain minors under age six.

(A) As used in this section, "HIV" has the same meaning as in section 3701.24 of the Revised Code.

(B) The department of human services shall provide, by rules adopted pursuant to Chapter 119. of the Revised Code, for the licensure of crisis nurseries that provide temporary shelter and other care for drug-exposed minors under six years of age, for HIV-infected minors under six years of age, for other minors under six years of age who are referred by a public children services agency, or for any combination of these types of minors. The rules shall specify that a license shall not be issued to an applicant for licensure as a crisis nursery if the conditions at any of its facilities would jeopardize the health or safety of minors as described in this division.

(C) A crisis nursery licensed by the department pursuant to this section may provide temporary shelter and other care per facility for a period not to exceed sixty days for up to twenty drug-exposed minors under six years of age, for up to twenty HIV-infected minors under six years of age, for up to twenty other minors under six years of age who are referred as described in division (B) of this section, or for up to twenty minors in any of these categories.

(D) This section does not apply to children residential centers or group homes that are certified pursuant to this chapter.

5103.04 Certificate required before filing articles of incorporation.

No association whose object embraces the care of dependent, neglected, abused, or delinquent children, or the placing of such children in private homes, shall be incorporated unless the proposed articles of incorporation

have been submitted first to the department of human services. The secretary of state shall not issue a certificate of incorporation to such association until there is filed in his office the certificate of the department that it has examined the articles of incorporation, that in its judgment the incorporators are reputable and respectable persons, the proposed work is needed, and the incorporation of such association is desirable and for the public good.

Amendments proposed to the articles of incorporation of any such association shall be submitted in like manner to the department, and the secretary of state shall not record such amendment or issue his certificate therefor until there is filed in his office the certificate of the department that it has examined such amendment, that the association in question is performing in good faith the work undertaken by it, and that such amendment is a proper one, and for the public good.

5103.05 Duties of division of social ad-ministration.

The division of social administration shall investigate by correspondence and inspection the system, condition, and management of the public, private, benevolent, and correctional institutions of the state and county, and municipal jails, workhouses, infirmaries, and children's homes as well as all institutions which receive and care for children. Officers in charge of such institutions or responsible for the administration of public funds used for the relief and maintenance of the poor shall furnish the division or the chief of the division of social administration such information as he requires. The division may prescribe forms of report and registration.

For the purpose of such investigation and to administer sections 5103.02 to 5103.19, inclusive, of the Revised Code, the division shall employ such visitors as are necessary, who shall, in addition to other duties, investigate the care and disposition of children made by institutions for receiving children, and by all institutions including within their objects the placing of children in private homes, and such visitors may visit such children in such homes, and report the result of such inspection to the division.

The chief and such of his executive force as he designates may attend state and national conferences for the discussion of questions pertinent to their duties.

5120.16 Examination, observation, and classification; assignment to institutions; transfer.

Persons sentenced to any institution, division, or place under the control and

management of the department of rehabilitation and correction are committed to the control, care, and custody of the department. The director of rehabilitation and correction or his designee may direct that persons sentenced to the department, or to any institution or place within the department, shall first be conveyed to an appropriate facility established and maintained by the department for reception, examination, observation, and classification of the persons so sentenced.

When the examination, observation, and classification of the person have been completed by the facility and a written report of the examination, observation, and classification is filed with the commitment papers, the director or his designee shall assign the person to a suitable state institution or place maintained by the state within his department or shall designate that the person is to be housed in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, if authorized by section 5120.161 [5120.16.1] of the Revised Code, there to be confined, cared for, treated, trained, and rehabilitated until paroled, released in accordance with section 2967.23 of the Revised Code, or otherwise released under the order of the court making such sentence. No person committed by a probate court, trial court pursuant to section 2945.40 of the Revised Code, or juvenile court shall be assigned to a penal institution.

Any person sentenced, committed, or assigned for the commission of a felony to any one of the institutions or places maintained by the department or to a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse may, by order of the department duly recorded, be transferred to any other institution, or, if authorized by section 5120.161 [5120.16.1] of the Revised Code, to a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse. No person shall be transferred from a benevolent to a penal institution, except as provided in section 5120.17 of the Revised Code.

The director or his designee shall develop a policy for dealing with problems related to infection with the human immunodeficiency virus. The policy shall include methods of identifying individuals committed to the custody of the department who are at high risk of infection with the virus, counseling these individuals, and, if it is determined to be medically appropriate, offering them the opportunity to be given an HIV test approved by the director of health pursuant to section 3701.241 of the Revised Code.

Arrangements for housing individuals diagnosed as having AIDS or an AIDS-related condition shall be made by the department based on security and medical considerations.