



February 14, 2001

HOUSE BILL No. 1022

DIGEST OF HB 1022 (Updated February 13, 2001 2:02 PM - DI 98)

Citations Affected: IC 22-9; noncode.

Synopsis: Civil rights remedies and age discrimination. Transfers jurisdiction over age discrimination proceedings from the commissioner of labor to the Indiana civil rights commission. Adds references to age discrimination to various statutes dealing with discriminatory activity.

Effective: July 1, 2001.

Smith V, Summers, Duncan

January 8, 2001, read first time and referred to Committee on Human Affairs.
February 13, 2001, amended, reported — Do Pass.

C
o
p
y

HB 1022—LS 6236/DI 51+



February 14, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

C
o
p
y

HOUSE BILL No. 1022

A BILL FOR AN ACT to amend the Indiana Code concerning civil rights.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-9-1-2 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) It is the public policy of the
3 state to provide all of its citizens equal opportunity for education,
4 employment, access to public conveniences and accommodations, and
5 acquisition through purchase or rental of real property, including but
6 not limited to housing, and to eliminate segregation or separation based
7 solely on race, religion, color, sex, **age**, disability, national origin or
8 ancestry, since such segregation is an impediment to equal opportunity.
9 Equal education and employment opportunities and equal access to and
10 use of public accommodations and equal opportunity for acquisition of
11 real property are hereby declared to be civil rights.

12 (b) The practice of denying these rights to properly qualified
13 persons by reason of the race, religion, color, sex, **age**, disability,
14 national origin, or ancestry of such person is contrary to the principles
15 of freedom and equality of opportunity and is a burden to the objectives
16 of the public policy of this state and shall be considered as
17 discriminatory practices. The promotion of equal opportunity without

HB 1022—LS 6236/DI 51+



1 regard to race, religion, color, sex, **age**, disability, national origin, or
2 ancestry through reasonable methods is the purpose of this chapter.

3 (c) It is also the public policy of this state to protect employers,
4 labor organizations, employment agencies, property owners, real estate
5 brokers, builders, and lending institutions from unfounded charges of
6 discrimination.

7 (d) It is hereby declared to be contrary to the public policy of the
8 state and an unlawful practice for any person, for profit, to induce or
9 attempt to induce any person to sell or rent any dwelling by
10 representations regarding the entry or prospective entry into the
11 neighborhood of a person or persons of a particular race, religion,
12 color, sex, **age**, disability, national origin, or ancestry.

13 (e) The general assembly recognizes that on February 16, 1972,
14 there are institutions of learning in Indiana presently and traditionally
15 following the practice of limiting admission of students to males or to
16 females. It is further recognized that it would be unreasonable to
17 impose upon these institutions the expense of remodeling facilities to
18 accommodate students of both sexes, and that educational facilities of
19 similar quality and type are available in coeducational institutions for
20 those students desiring such facilities. It is further recognized that this
21 chapter is susceptible of interpretation to prevent these institutions
22 from continuing their traditional policies, a result not intended by the
23 general assembly. Therefore, the amendment effected by Acts 1972,
24 P.L.176, is desirable to permit the continuation of the policies
25 described.

26 (f) This chapter shall be construed broadly to effectuate its purpose.

27 SECTION 2. IC 22-9-1-3 IS AMENDED TO READ AS FOLLOWS
28 [EFFECTIVE JULY 1, 2001]: Sec. 3. As used in this chapter:

29 (a) "Person" means one (1) or more individuals, partnerships,
30 associations, organizations, limited liability companies, corporations,
31 labor organizations, cooperatives, legal representatives, trustees,
32 trustees in bankruptcy, receivers, and other organized groups of
33 persons.

34 (b) "Commission" means the civil rights commission created under
35 section 4 of this chapter.

36 (c) "Director" means the director of the civil rights commission.

37 (d) "Deputy director" means the deputy director of the civil rights
38 commission.

39 (e) "Commission attorney" means the deputy attorney general, such
40 assistants of the attorney general as may be assigned to the
41 commission, or such other attorney as may be engaged by the
42 commission.



C
o
p
y

1 (f) "Consent agreement" means a formal agreement entered into in
2 lieu of adjudication.

3 (g) "Affirmative action" means those acts that the commission
4 determines necessary to assure compliance with the Indiana civil rights
5 law.

6 (h) "Employer" means the state or any political or civil subdivision
7 thereof and any person employing six (6) or more persons within the
8 state, except that the term "employer" does not include:

9 (1) any nonprofit corporation or association organized exclusively
10 for fraternal or religious purposes;

11 (2) any school, educational, or charitable religious institution
12 owned or conducted by or affiliated with a church or religious
13 institution; or

14 (3) any exclusively social club, corporation, or association that is
15 not organized for profit.

16 (i) "Employee" means any person employed by another for wages or
17 salary. However, the term does not include any individual employed:

18 (1) by ~~his~~ **the individual's** parents, spouse, or child; or

19 (2) in the domestic service of any person.

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

24 (k) "Employment agency" means any person undertaking with or
25 without compensation to procure, recruit, refer, or place employees.

26 (l) "Discriminatory practice" means:

27 (1) the exclusion of a person from equal opportunities because of
28 race, religion, color, sex, disability, national origin, ~~or~~ ancestry,
29 **or, in relation to employment only, age;**

30 (2) a system that excludes persons from equal opportunities
31 because of race, religion, color, sex, disability, national origin, ~~or~~
32 ancestry, **or, in relation to employment only, age;**

33 (3) the promotion of racial segregation or separation in any
34 manner, including but not limited to the inducing of or the
35 attempting to induce for profit any person to sell or rent any
36 dwelling by representations regarding the entry or prospective
37 entry in the neighborhood of a person or persons of a particular
38 race, religion, color, sex, disability, national origin, or ancestry;
39 or

40 (4) a violation of IC 22-9-5 that occurs after July 25, 1992, and is
41 committed by a covered entity (as defined in IC 22-9-5-4).

42 Every discriminatory practice relating to the acquisition or sale of real

C
O
P
Y



1 estate, education, public accommodations, employment, or the
 2 extending of credit (as defined in IC 24-4.5-1-301) shall be considered
 3 unlawful unless it is specifically exempted by this chapter.

4 (m) "Public accommodation" means any establishment that caters
 5 or offers its services or facilities or goods to the general public.

6 (n) "Complainant" means:

7 (1) any individual charging on ~~his~~ **the individual's** own behalf to
 8 have been personally aggrieved by a discriminatory practice; or

9 (2) the director or deputy director of the commission charging that
 10 a discriminatory practice was committed against a person other
 11 than himself or a class of people, in order to vindicate the public
 12 policy of the state (as defined in section 2 of this chapter).

13 (o) "Complaint" means any written grievance that is:

14 (1) sufficiently complete and filed by a complainant with the
 15 commission; or

16 (2) filed by a complainant as a civil action in the circuit or
 17 superior court having jurisdiction in the county in which the
 18 alleged discriminatory practice occurred.

19 The original of any complaint filed under subdivision (1) shall be
 20 signed and verified by the complainant.

21 (p) "Sufficiently complete" refers to a complaint that includes:

22 (1) the full name and address of the complainant;

23 (2) the name and address of the respondent against whom the
 24 complaint is made;

25 (3) the alleged discriminatory practice and a statement of
 26 particulars thereof;

27 (4) the date or dates and places of the alleged discriminatory
 28 practice and if the alleged discriminatory practice is of a
 29 continuing nature the dates between which continuing acts of
 30 discrimination are alleged to have occurred; and

31 (5) a statement as to any other action, civil or criminal, instituted
 32 in any other form based upon the same grievance alleged in the
 33 complaint, together with a statement as to the status or disposition
 34 of the other action.

35 No complaint shall be valid unless filed within one hundred eighty
 36 (180) days from the date of the occurrence of the alleged
 37 discriminatory practice.

38 (q) "Sex" as it applies to segregation or separation in this chapter
 39 applies to all types of employment, education, public accommodations,
 40 and housing. However:

41 (1) it shall not be a discriminatory practice to maintain separate
 42 rest rooms;

C
O
P
Y



1 (2) it shall not be an unlawful employment practice for an
 2 employer to hire and employ employees, for an employment
 3 agency to classify or refer for employment any individual, for a
 4 labor organization to classify its membership or to classify or refer
 5 for employment any individual, or for an employer, labor
 6 organization, or joint labor management committee controlling
 7 apprenticeship or other training or retraining programs to admit
 8 or employ any other individual in any program on the basis of sex
 9 in those certain instances where sex is a bona fide occupational
 10 qualification reasonably necessary to the normal operation of that
 11 particular business or enterprise; and

12 (3) it shall not be a discriminatory practice for a private or
 13 religious educational institution to continue to maintain and
 14 enforce a policy of admitting students of one (1) sex only.

15 (r) "Disabled" or "disability" means the physical or mental condition
 16 of a person that constitutes a substantial disability. In reference to
 17 employment, under this chapter, "disabled or disability" also means the
 18 physical or mental condition of a person that constitutes a substantial
 19 disability unrelated to the person's ability to engage in a particular
 20 occupation.

21 (s) "Age" refers to the age of a person who is at least forty (40)
 22 years of age.

23 SECTION 3. IC 22-9-1-6 IS AMENDED TO READ AS FOLLOWS
 24 [EFFECTIVE JULY 1, 2001]: Sec. 6. (a) The commission shall
 25 establish and maintain a permanent office in the city of Indianapolis.

26 (b) The commission may appoint such attorneys and other
 27 employees and agents as it considers necessary, fix their compensation
 28 within the limitation provided by law, and prescribe their duties. **All**
 29 **duties performed by an employee or agent employed by the**
 30 **commission shall be performed in the public interest.** All these
 31 employees, with the exception of the executive director and attorneys,
 32 shall be appointed by the commission from eligible lists to be
 33 promulgated by the department of personnel as the result of a
 34 competitive examination held under IC 4-15-2 and rules of the
 35 department and on the basis of training, practical experience,
 36 education, and character. However, special consideration and due
 37 weight shall be given to the practical experience and training that a
 38 person may have for the particular position involved regardless of ~~his~~
 39 **the person's** academic training. Promotions, suspensions, and removal
 40 of persons appointed from such lists shall be in accordance with
 41 IC 4-15-2. The reasonable and necessary traveling expenses of each
 42 employee of the commission while actually engaged in the performance

C
o
p
y



1 of duties in behalf of the commission shall be paid in accordance with
 2 the state travel policies and procedures established by the Indiana
 3 department of administration and approved by the budget agency.

4 (c) Except as it concerns judicial review, the commission may adopt
 5 rules under IC 4-22-2 to implement this ~~chapter~~ **article**.

6 (d) The commission shall formulate policies to effectuate the
 7 purposes of this chapter and make recommendations to agencies and
 8 officers of the state or local subdivisions thereof to effectuate such
 9 policies. The several departments, commissions, divisions, authorities,
 10 boards, bureaus, agencies, and officers of the state or any political
 11 subdivision or agency thereof shall furnish the commission, upon its
 12 request, all records, papers, and information in their possession relating
 13 to any matter before the commission.

14 (e) The commission shall receive and investigate complaints
 15 alleging discriminatory practices. The commission shall not hold
 16 hearings in the absence of a complaint. All investigations of complaints
 17 shall be conducted by staff members of the civil rights commission or
 18 their agents. **All duties performed by an employee or agent**
 19 **employed by the commission shall be performed in the public**
 20 **interest.**

21 (f) The commission may create such advisory agencies and
 22 conciliation councils, local or statewide, as will aid in effectuating the
 23 purposes of this chapter. The commission may itself, or it may
 24 empower these agencies and councils to:

- 25 (1) study the problems of discrimination in the areas covered by
- 26 section 2 of this chapter when based on race, religion, color, sex,
- 27 **age**, handicap, national origin, or ancestry; and
- 28 (2) foster through community effort, or otherwise, good will
- 29 among the groups and elements of the population of the state.

30 These agencies and councils may make recommendation to the
 31 commission for the development of policies and procedures in general.
 32 Advisory agencies and conciliation councils created by the commission
 33 shall be composed of representative citizens serving without pay but
 34 with reimbursement for reasonable and necessary actual expenses.

35 (g) The commission may issue such publications and such results of
 36 investigations and research as in its judgment will tend to promote
 37 good will and minimize or eliminate discrimination because of race,
 38 religion, color, sex, **age**, handicap, national origin, or ancestry.

39 (h) The commission shall prevent any person from discharging,
 40 expelling, or otherwise discriminating against any other person because
 41 ~~he~~ **the person** filed a complaint, testified in any hearing before this
 42 commission, or in any way assisted the commission in any matter under

C
O
P
Y



1 its investigation.

2 (i) The commission may hold hearings, subpoena witnesses, compel
 3 their attendance, administer oaths, take the testimony of any person
 4 under oath, and require the production for examination of any books
 5 and papers relating to any matter under investigation or in question
 6 before the commission. The commission may make rules as to the
 7 issuance of subpoenas by individual commissioners. Contumacy or
 8 refusal to obey a subpoena issued under this section shall constitute a
 9 contempt. All hearings shall be held within Indiana at a location
 10 determined by the commission. A citation of contempt may be issued
 11 upon application by the commission to the circuit or superior court in
 12 the county in which the hearing is held or in which the witness resides
 13 or transacts business.

14 (j) The commission may appoint administrative law judges other
 15 than commissioners, when an appointment is deemed necessary by a
 16 majority of the commission. The administrative law judges shall be
 17 members in good standing before the bar of Indiana and shall be
 18 appointed by the chairman of the commission. An administrative law
 19 judge appointed under this subsection shall have the same powers and
 20 duties as a commissioner sitting as an administrative law judge.
 21 However, the administrative law judge may not issue subpoenas.

22 (k) The commission shall state its findings of fact after a hearing
 23 and, if the commission finds a person has engaged in an unlawful
 24 discriminatory practice, shall cause to be served on this person an order
 25 requiring the person to cease and desist from the unlawful
 26 discriminatory practice and requiring the person to take further
 27 affirmative action as will effectuate the purposes of this chapter,
 28 including but not limited to the power:

29 (A) to restore **the** complainant's losses incurred as a result of
 30 discriminatory treatment, as the commission may deem necessary
 31 to assure justice; however, this specific provision when applied to
 32 orders pertaining to employment shall include only wages, salary,
 33 or commissions;

34 (B) to require the posting of notice setting forth the public policy
 35 of Indiana concerning civil rights and respondent's compliance
 36 with the policy in places of public accommodations;

37 (C) to require proof of compliance to be filed by **the** respondent
 38 at periodic intervals; and

39 (D) to require a person who has been found to be in violation of
 40 this chapter and who is licensed by a state agency authorized to
 41 grant a license to show cause to the licensing agency why **his the**
 42 license should not be revoked or suspended.



C
O
P
Y

1 (l) Judicial review of a cease and desist order or other affirmative
2 action as referred to in this chapter may be obtained under IC 22-9-8.
3 If no proceeding to obtain judicial review is instituted within thirty (30)
4 days from receipt of notice by a person that an order has been made by
5 the commission, the commission, if it determines that the person upon
6 whom the cease and desist order has been served is not complying or
7 is making no effort to comply, may obtain a decree of a court for the
8 enforcement of the order in circuit or superior court upon showing that
9 the person is subject to the commission's jurisdiction and resides or
10 transacts business within the county in which the petition for
11 enforcement is brought.

12 (m) If, upon all the evidence, the commission shall find that a
13 person has not engaged in any unlawful practice or violation of this
14 chapter, the commission shall state its findings of facts and shall issue
15 and cause to be served on the complainant an order dismissing the
16 complaint as to the person.

17 (n) The commission may furnish technical assistance requested by
18 persons subject to this chapter to further compliance with this chapter
19 or with an order issued thereunder.

20 (o) The commission shall promote the creation of local civil rights
21 agencies to cooperate with individuals, neighborhood associations, and
22 state, local, and other agencies, both public and private, including
23 agencies of the federal government and of other states.

24 (p) The commission may reduce the terms of conciliation agreed to
25 by the parties to writing (to be called a consent agreement) that the
26 parties and a majority of the commissioners shall sign. When signed,
27 the consent agreement shall have the same effect as a cease and desist
28 order issued under subsection (k). If the commission determines that a
29 party to the consent agreement is not complying with it, the
30 commission may obtain enforcement of the consent agreement in a
31 circuit or superior court upon showing that the party is not complying
32 with the consent agreement and the party is subject to the commission's
33 jurisdiction and resides or transacts business within the county in
34 which the petition for enforcement is brought.

35 (q) In lieu of investigating a complaint and holding a hearing under
36 this section, the commission may issue an order based on findings and
37 determinations by the federal Department of Housing and Urban
38 Development or the federal Equal Employment Opportunity
39 Commission concerning a complaint that has been filed with one (1) of
40 these federal agencies and with the commission. The commission shall
41 adopt by rule standards under which the commission may issue such an
42 order.



C
o
p
y

1 (r) Upon notice that a complaint is the subject of an action in a
 2 federal court, the commission shall immediately cease investigation of
 3 the complaint and may not conduct hearings or issue findings of fact or
 4 orders concerning that complaint.

5 SECTION 4. IC 22-9-1-10 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10. Every contract to
 7 which the state or any of its political or civil subdivisions is a party,
 8 including franchises granted to public utilities, shall contain a provision
 9 requiring the contractor and **his the contractor's** subcontractors not to
 10 discriminate against any employee or applicant for employment to be
 11 employed in the performance of such contract, with respect to **his the**
 12 **individual's** hire, tenure, terms, conditions or privileges of
 13 employment or any matter directly or indirectly related to employment,
 14 because of **his the individual's** race, religion, color, sex, **age,**
 15 **disability,** national origin, or ancestry. Breach of this covenant may be
 16 regarded as a material breach of the contract.

17 SECTION 5. IC 22-9-1-11 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 11. In addition to its
 19 power to investigate the discriminatory practices referred to in this
 20 chapter, the commission may receive written complaints of violation of
 21 this chapter or other discriminatory practices based upon race, religion,
 22 color, sex, **age, disability,** national origin, or ancestry and to
 23 investigate such complaints as it deems meritorious, or to conduct such
 24 investigation in the absence of complaints whenever it deems it in the
 25 public interest. It may transmit to the general assembly its
 26 recommendations for legislation designed to aid in the removing of
 27 such discrimination.

28 SECTION 6. IC 22-9-2 IS REPEALED [EFFECTIVE JULY 1,
 29 2001].

30 SECTION 7. [EFFECTIVE JULY 1, 2001] **(a) A proceeding**
 31 **pending before the commissioner of labor under IC 22-9-2 before**
 32 **its repeal is transferred to the civil rights commission on July 1,**
 33 **2001, and shall be treated after June 30, 2001, as if the proceeding**
 34 **had been properly filed with the civil rights commission.**

35 **(b) The commissioner of labor shall arrange for the transfer to**
 36 **the civil rights commission of records and other property needed**
 37 **to carry out this SECTION.**

C
o
p
y



COMMITTEE REPORT

Mr. Speaker: Your Committee on Human Affairs, to which was referred House Bill 1022, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 7, delete lines 22 through 42, begin a new paragraph and insert:

"(k) The commission shall state its findings of fact after a hearing and, if the commission finds a person has engaged in an unlawful discriminatory practice, shall cause to be served on this person an order requiring the person to cease and desist from the unlawful discriminatory practice and requiring the person to take further affirmative action as will effectuate the purposes of this chapter, including but not limited to the power:

(A) to restore **the** complainant's losses incurred as a result of discriminatory treatment, as the commission may deem necessary to assure justice; however, this specific provision when applied to orders pertaining to employment shall include only wages, salary, or commissions;

(B) to require the posting of notice setting forth the public policy of Indiana concerning civil rights and respondent's compliance with the policy in places of public accommodations;

(C) to require proof of compliance to be filed by **the** respondent at periodic intervals; and

(D) to require a person who has been found to be in violation of this chapter and who is licensed by a state agency authorized to grant a license to show cause to the licensing agency why **his the** license should not be revoked or suspended."

Page 8, delete lines 1 through 15.

Page 9, delete lines 20 through 42.

Page 10, delete lines 1 through 10.

Page 10, delete lines 34 through 42.

Delete page 11.

Page 12, delete lines 1 through 8.

Page 12, line 11, delete "IC 22-9-1-6 and" and insert "**(a) A**".

Page 12, delete lines 12 through 17.

Page 12, line 18, delete "(2) a".

Page 12, line 18, after "commissioner" insert "**of labor**".

Page 12, run in lines 11 and 18.

C
O
P
Y



Page 12, line 23, before "The", begin a new paragraph and insert:
"(b)".

and when so amended that said bill do pass.

(Reference is to HB 1022 as introduced.)

SUMMERS, Chair

Committee Vote: yeas 12, nays 0.

C
o
p
y

