

# HOUSE BILL No. 1318

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-9-1-6.

**Synopsis:** Civil rights commission attorney's fees. Permits the Indiana civil rights commission to award attorney's fees to a prevailing complainant in a discrimination action brought before the commission.

**Effective:** July 1, 2002.

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January 15, 2002, read first time and referred to Committee on Human Affairs.

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Second Regular Session 112th General Assembly (2002)

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 a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

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**HOUSE BILL No. 1318**



A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

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

1 SECTION 1. IC 22-9-1-6 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2002]: Sec. 6. (a) The commission shall  
3 establish and maintain a permanent office in the city of Indianapolis.  
4 (b) The commission may appoint such attorneys and other  
5 employees and agents as it considers necessary, fix their compensation  
6 within the limitation provided by law, and prescribe their duties. All  
7 these employees, with the exception of the executive director and  
8 attorneys, shall be appointed by the commission from eligible lists to  
9 be promulgated by the department of personnel as the result of a  
10 competitive examination held under IC 4-15-2 and rules of the  
11 department and on the basis of training, practical experience,  
12 education, and character. However, special consideration and due  
13 weight shall be given to the practical experience and training that a  
14 person may have for the particular position involved regardless of his  
15 academic training. Promotions, suspensions, and removal of persons  
16 appointed from such lists shall be in accordance with IC 4-15-2. The  
17 reasonable and necessary traveling expenses of each employee of the



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

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

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

15 (e) The commission shall receive and investigate complaints  
16 alleging discriminatory practices. The commission shall not hold  
17 hearings in the absence of a complaint. All investigations of complaints  
18 shall be conducted by staff members of the civil rights commission or  
19 their agents.

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

24 (1) study the problems of discrimination in the areas covered by  
25 section 2 of this chapter when based on race, religion, color, sex,  
26 handicap, national origin, or ancestry; and

27 (2) foster through community effort, or otherwise, good will  
28 among the groups and elements of the population of the state.

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

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

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

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

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

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

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

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

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

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

42 (l) Judicial review of a cease and desist order or other affirmative

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

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

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

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

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

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

42 (r) Upon notice that a complaint is the subject of an action in a

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1 federal court, the commission shall immediately cease investigation of  
2 the complaint and may not conduct hearings or issue findings of fact or  
3 orders concerning that complaint.

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