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# HOUSE BILL No. 1034

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## DIGEST OF INTRODUCED BILL

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

**Synopsis:** Age discrimination. Transfers jurisdiction over age discrimination proceedings from the commissioner of labor to the civil rights commission (commission). Prohibits certain actions by an employer, a labor organization, or an employment agency relating to discrimination against an individual at least 40 years of age. Establishes procedures for filing an age discrimination complaint. Provides specific remedies for an age discrimination violation for a complaint filed with the commission or a circuit court. Repeals provisions concerning the jurisdiction of the commissioner of labor over age discrimination cases.

**Effective:** July 1, 2008.

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## Smith V, Niezgodski

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January 8, 2008, read first time and referred to Committee on Labor and Employment.

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Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

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# HOUSE BILL No. 1034



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

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

- 1 SECTION 1. IC 22-9-1-3 IS AMENDED TO READ AS FOLLOWS
- 2 [EFFECTIVE JULY 1, 2008]: Sec. 3. As used in this chapter:
- 3 (a) "Person" means one (1) or more individuals, partnerships,
- 4 associations, organizations, limited liability companies, corporations,
- 5 labor organizations, cooperatives, legal representatives, trustees,
- 6 trustees in bankruptcy, receivers, and other organized groups of
- 7 persons.
- 8 (b) "Commission" means the civil rights commission created under
- 9 section 4 of this chapter.
- 10 (c) "Director" means the director of the civil rights commission.
- 11 (d) "Deputy director" means the deputy director of the civil rights
- 12 commission.
- 13 (e) "Commission attorney" means the deputy attorney general, such
- 14 assistants of the attorney general as may be assigned to the
- 15 commission, or such other attorney as may be engaged by the
- 16 commission.
- 17 (f) "Consent agreement" means a formal agreement entered into in



1 lieu of adjudication.

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

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

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

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

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

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

17 (1) by ~~his~~ **the individual's** parents, spouse, or child; or  
18 (2) in the domestic service of any person.

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

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

25 (l) "Discriminatory practice" means:

26 (1) the exclusion of a person from equal opportunities because of  
27 race, religion, color, sex, disability, national origin, or ancestry;

28 (2) a system that excludes persons from equal opportunities  
29 because of race, religion, color, sex, disability, national origin, or  
30 ancestry;

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

37 **or**

38 (4) a violation of IC 22-9-5 that occurs after July 25, 1992, and is  
39 committed by a covered entity (as defined in IC 22-9-5-4); **or**

40 **(5) a violation of IC 22-9-2.1.**

41 Every discriminatory practice relating to the acquisition or sale of real  
42 estate, education, public accommodations, employment, or the

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1 extending of credit (as defined in IC 24-4.5-1-301) shall be considered  
2 unlawful unless it is specifically exempted by this chapter.

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

5 (n) "Complainant" means:

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

8 (2) the director or deputy director of the commission charging that  
9 a discriminatory practice was committed against a person other  
10 than ~~himself~~ **the director or deputy director of the commission**  
11 or a class of people, in order to vindicate the public policy of the  
12 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;

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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 2. IC 22-9-1-6 IS AMENDED TO READ AS FOLLOWS  
 24 [EFFECTIVE JULY 1, 2008]: 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

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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, disability**, 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~~  
31 **recommendations** to the commission for the development of policies  
32 and procedures in general. Advisory agencies and conciliation councils  
33 created by the commission shall be composed of representative citizens  
34 serving without pay but with reimbursement for reasonable and  
35 necessary actual expenses.

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

41 (h) The commission shall prevent any person from discharging,  
42 expelling, or otherwise discriminating against any other person because

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1 ~~he~~ **the person** filed a complaint, testified in any hearing before this  
 2 commission, or in any way assisted the commission in any matter under  
 3 its investigation.

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

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

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

31 ~~(A)~~ **(1)** to restore **the** complainant's losses incurred as a result of  
 32 discriminatory treatment, as the commission may deem necessary  
 33 to assure justice; however, this specific provision when applied to  
 34 orders pertaining to employment shall include only wages, salary,  
 35 or commissions;

36 ~~(B)~~ **(2)** to require the posting of notice setting forth the public  
 37 policy of Indiana concerning civil rights and respondent's  
 38 compliance with the policy in places of public accommodations;

39 ~~(C)~~ **(3)** to require proof of compliance to be filed by **the**  
 40 respondent at periodic intervals; and

41 ~~(D)~~ **(4)** to require a person who has been found to be in violation  
 42 of this chapter and who is licensed by a state agency authorized

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to grant a license to show cause to the licensing agency why ~~his~~  
**the** license should not be revoked or suspended.

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

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

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

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

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

(q) In lieu of investigating a complaint and holding a hearing under this section, the commission may issue an order based on findings and determinations by the federal Department of Housing and Urban Development or the federal Equal Employment Opportunity Commission concerning a complaint that has been filed with one (1) of these federal agencies and with the commission. The commission shall

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1 adopt by rule standards under which the commission may issue such an  
2 order.

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

7 SECTION 3. IC 22-9-1-11 IS AMENDED TO READ AS  
8 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11. (a) In addition to  
9 its power to investigate the discriminatory practices referred to in this  
10 chapter, the commission may **do the following:**

11 (1) Receive written complaints of ~~violation~~ **violations** of this  
12 chapter or other discriminatory practices based upon:

- 13 (A) race;
- 14 (B) religion;
- 15 (C) color;
- 16 (D) sex;
- 17 (E) **disability;**
- 18 (F) national origin; or
- 19 (G) ancestry. ~~and to~~

20 (2) **Receive written complaints of violations of IC 22-9-2.1**  
21 **concerning age discrimination in employment.**

22 (3) Investigate ~~such~~ complaints ~~as received under subdivisions~~  
23 **(1) and (2) that it deems meritorious. or to**

24 (4) Conduct ~~such an~~ investigation of a violation referred to in  
25 **subdivision (1) or (2)** in the absence of ~~complaints~~ **a complaint**  
26 **whenever it the commission deems it the investigation to be in**  
27 **the public interest. It**

28 (b) **The commission** may transmit to the general assembly its  
29 recommendations for legislation designed to aid in the removing of  
30 ~~such~~ discrimination **referred to in subsection (a)(1) and (a)(2).**

31 SECTION 4. IC 22-9-2.1 IS ADDED TO THE INDIANA CODE  
32 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
33 JULY 1, 2008]:

34 **Chapter 2.1. Age Discrimination**

35 **Sec. 1. As used in this chapter, "commission" refers to the civil**  
36 **rights commission created by IC 22-9-1-4.**

37 **Sec. 2. As used in this chapter, "covered entity" means an**  
38 **employer, an employment agency, or a labor organization.**

39 **Sec. 3. As used in this chapter, "defined benefit plan" has the**  
40 **meaning set forth in 29 U.S.C. 1002(35).**

41 **Sec. 4. As used in this chapter, "employee" has the meaning set**  
42 **forth in IC 22-9-1-3(i).**

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1           **Sec. 5. As used in this chapter, "employee pension benefit plan"**  
 2 **has the meaning set forth in 29 U.S.C. 1002(2).**  
 3           **Sec. 6. As used in this chapter, "employer" has the meaning set**  
 4 **forth in IC 22-9-1-3(h).**  
 5           **Sec. 7. As used in this chapter, "employment agency" has the**  
 6 **meaning set forth in IC 22-9-1-3(k).**  
 7           **Sec. 8. As used in this chapter, "labor organization" has the**  
 8 **meaning set forth in IC 22-9-1-3(j).**  
 9           **Sec. 9. As used in this chapter, "person" has the meaning set**  
 10 **forth in IC 22-9-1-3(a).**  
 11           **Sec. 10. (a) This subsection applies to an individual who is at**  
 12 **least forty (40) years of age. An employer shall not:**  
 13           **(1) discharge an individual;**  
 14           **(2) fail or refuse to hire an individual;**  
 15           **(3) otherwise discriminate against an individual with respect**  
 16 **to the individual's compensation, terms, conditions, or**  
 17 **privileges of employment;**  
 18           **(4) limit, segregate, or classify employees in any way that**  
 19 **would deprive or tend to deprive an individual of employment**  
 20 **opportunities; or**  
 21           **(5) otherwise adversely affect the individual's status as an**  
 22 **employee;**  
 23 **because of the individual's age.**  
 24           **(b) An employer shall not reduce the wage rate of an employee**  
 25 **to comply with this chapter.**  
 26           **Sec. 11. This section applies to an individual who is at least forty**  
 27 **(40) years of age. An employment agency shall not:**  
 28           **(1) fail or refuse to refer for employment or otherwise**  
 29 **discriminate against an individual because of the individual's**  
 30 **age; or**  
 31           **(2) classify or refer for employment an individual on the basis**  
 32 **of the individual's age.**  
 33           **Sec. 12. (a) This section applies to an individual who is at least**  
 34 **forty (40) years of age.**  
 35           **(b) A labor organization shall not:**  
 36           **(1) exclude or expel an individual from membership in the**  
 37 **labor organization; or**  
 38           **(2) otherwise discriminate against an individual;**  
 39 **because of the individual's age.**  
 40           **(c) A labor organization shall not limit, segregate, or classify the**  
 41 **membership of the labor organization or classify or fail or refuse**  
 42 **to refer for employment an individual in any way that would:**

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- 1 (1) deprive or tend to deprive an individual of employment
- 2 opportunities;
- 3 (2) limit an individual's employment opportunities; or
- 4 (3) otherwise adversely affect an individual's status as an
- 5 employee or applicant for employment;
- 6 because of the individual's age.

7 (d) A labor organization shall not cause or attempt to cause an  
 8 employer to discriminate against an individual because of the  
 9 individual's age.

10 Sec. 13. (a) It is unlawful for:

- 11 (1) an employer to discriminate against an employee or
- 12 applicant for employment;
- 13 (2) an employment agency to discriminate against an
- 14 individual; or
- 15 (3) a labor organization to discriminate against a member of
- 16 or an applicant for membership in the labor organization;
- 17 because the employee, applicant for employment, individual,
- 18 member, or applicant for membership has opposed a practice that
- 19 is prohibited by this chapter.

20 (b) It is unlawful for:

- 21 (1) an employer to discriminate against an employee or
- 22 applicant for employment;
- 23 (2) an employment agency to discriminate against an
- 24 individual; or
- 25 (3) a labor organization to discriminate against a member of
- 26 or an applicant for membership in the labor organization;
- 27 because the employee, applicant for employment, individual,
- 28 member, or applicant for membership has filed a complaint with
- 29 the commission or testified, assisted, or participated in an
- 30 investigation or a proceeding or litigation under this chapter.

31 Sec. 14. A covered entity shall not print or publish or cause to  
 32 be printed or published any notice or advertisement relating to:

- 33 (1) employment; or
- 34 (2) a classification or referral for employment;
- 35 indicating any preference, limitation, specification, or
- 36 discrimination based on age.

37 Sec. 15. Notwithstanding any of the prohibitions contained in  
 38 this chapter, a covered entity may do any of the following:

- 39 (1) Take any action otherwise prohibited under this chapter
- 40 if:
- 41 (A) age is a bona fide occupational qualification reasonably
- 42 necessary to the normal operation of the particular

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1 covered entity; or  
 2 (B) the differentiation is based on reasonable factors other  
 3 than age.  
 4 (2) If not prohibited by federal antidiscrimination law,  
 5 establish, maintain, observe the terms of, or comply with an  
 6 employee pension benefit plan, a defined benefit plan, a bona  
 7 fide employee benefit plan, or other pension, benefit, or  
 8 retirement plan.  
 9 (3) Observe the terms of a bona fide seniority system that is  
 10 not intended to evade the purposes of this chapter, except that  
 11 a bona fide seniority system must not require or permit the  
 12 involuntary retirement of an individual who is at least forty  
 13 (40) years of age because of the age of the individual.  
 14 (4) Discharge or otherwise discipline an individual for good  
 15 cause.  
 16 **Sec. 16. (a) An individual may file:**  
 17 (1) a complaint under IC 22-9-1-6 with the commission; or  
 18 (2) a complaint in circuit court;  
 19 alleging a violation of this chapter.  
 20 (b) A complaint filed under subsection (a) alleging a  
 21 discriminatory practice in violation of this chapter must be filed  
 22 not more than one (1) year after the alleged discriminatory  
 23 practice ceases.  
 24 (c) An individual who has been injured by an action in violation  
 25 of this chapter is eligible for:  
 26 (1) remedies under IC 22-9-1-6(k) if the claim is filed with the  
 27 commission; or  
 28 (2) remedies including:  
 29 (A) a permanent or temporary injunction;  
 30 (B) a temporary restraining order;  
 31 (C) actual damages;  
 32 (D) punitive damages; and  
 33 (E) costs of the lawsuit, including reasonable attorney's  
 34 fees;  
 35 if the claim is filed in a circuit court.  
 36 (d) A complaint filed in a circuit court under this chapter  
 37 supersedes a complaint filed with the commission if both  
 38 complaints allege the same violation. If an individual first files a  
 39 complaint with the commission and later files a complaint in circuit  
 40 court, the individual shall file a notice with the commission stating  
 41 that the individual is withdrawing the complaint filed with the  
 42 commission.

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1 SECTION 5. IC 22-9-2 IS REPEALED [EFFECTIVE JULY 1,  
2 2008].  
3 SECTION 6. [EFFECTIVE JULY 1, 2008] (a) A proceeding  
4 properly filed with and pending before the commissioner of labor  
5 under IC 22-9-2 before its repeal by this act is transferred to the  
6 civil rights commission on July 1, 2008, and shall be treated after  
7 June 30, 2008, as if the proceeding had been properly filed with the  
8 civil rights commission.  
9 (b) The commissioner of labor shall arrange for the transfer to  
10 the civil rights commission of records and other property needed  
11 to carry out this SECTION.

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