



February 25, 1999

# HOUSE BILL No. 1585

DIGEST OF HB 1585 (Updated February 24, 1999 3:27 pm - DI 51)

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

**Synopsis:** Indiana civil rights commission. 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. Allows the Indiana civil rights commission to impose reasonable attorney's fees and costs against a person who has been found to have engaged in an unlawful discriminatory practice. Allows a complainant or a respondent to elect to commence a civil action concerning a discriminatory practice in a state court under certain circumstances. Limits the time in which a civil action may be brought. Allows the Indiana civil rights  
(Continued next page)

**Effective:** July 1, 1999.

## Smith V, Dvorak

January 21, 1999, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.  
February 24, 1999, amended, reported — Do Pass.

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Digest Continued

commission to bring a civil action concerning a discriminatory practice in a state court. Allows the Indiana civil rights commission to intervene as a party in a civil action concerning a discriminatory practice. Makes other changes.

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February 25, 1999

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

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## HOUSE BILL No. 1585

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, 1999]: 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

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1 of the public policy of this state and shall be considered as  
 2 discriminatory practices. The promotion of equal opportunity without  
 3 regard to race, religion, color, sex, **age**, disability, national origin, or  
 4 ancestry through reasonable methods is the purpose of this chapter.

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

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

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

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

29 SECTION 2. IC 22-9-1-3 IS AMENDED TO READ AS FOLLOWS  
 30 [EFFECTIVE JULY 1, 1999]: Sec. 3. As used in this chapter:

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

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

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

39 (d) "Deputy director" means the deputy director of the civil rights  
 40 commission.

41 (e) "Commission attorney" means the deputy attorney general, such  
 42 assistants of the attorney general as may be assigned to the

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- 1 commission, or such other attorney as may be engaged by the  
2 commission.
- 3 (f) "Consent agreement" means a formal agreement entered into in  
4 lieu of adjudication.
- 5 (g) "Affirmative action" means those acts that the commission  
6 determines necessary to assure compliance with the Indiana civil rights  
7 law.
- 8 (h) "Employer" means the state or any political or civil subdivision  
9 thereof and any person employing six (6) or more persons within the  
10 state, except that the term "employer" does not include:
- 11 (1) any nonprofit corporation or association organized exclusively  
12 for fraternal or religious purposes;
- 13 (2) any school, educational, or charitable religious institution  
14 owned or conducted by or affiliated with a church or religious  
15 institution; or
- 16 (3) any exclusively social club, corporation, or association that is  
17 not organized for profit.
- 18 (i) "Employee" means any person employed by another for wages or  
19 salary. However, the term does not include any individual employed:  
20 (1) by his parents, spouse, or child; or  
21 (2) in the domestic service of any person.
- 22 (j) "Labor organization" means any organization that exists for the  
23 purpose in whole or in part of collective bargaining or of dealing with  
24 employers concerning grievances, terms, or conditions of employment  
25 or for other mutual aid or protection in relation to employment.
- 26 (k) "Employment agency" means any person undertaking with or  
27 without compensation to procure, recruit, refer, or place employees.
- 28 (l) "Discriminatory practice" means:
- 29 (1) the exclusion of a person from equal opportunities because of  
30 race, religion, color, sex, disability, national origin, ~~or~~ ancestry,  
31 **or, in relation to employment only, age;**
- 32 (2) a system that excludes persons from equal opportunities  
33 because of race, religion, color, sex, disability, national origin, ~~or~~  
34 ancestry, **or, in relation to employment only, age;**
- 35 (3) the promotion of racial segregation or separation in any  
36 manner, including but not limited to the inducing of or the  
37 attempting to induce for profit any person to sell or rent any  
38 dwelling by representations regarding the entry or prospective  
39 entry in the neighborhood of a person or persons of a particular  
40 race, religion, color, sex, disability, national origin, or ancestry;  
41 or
- 42 (4) a violation of IC 22-9-5 that occurs after July 25, 1992, and is

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1 committed by a covered entity (as defined in IC 22-9-5-4).  
 2 Every discriminatory practice relating to the acquisition or sale of real  
 3 estate, education, public accommodations, employment, or the  
 4 extending of credit (as defined in IC 24-4.5-1-301) shall be considered  
 5 unlawful unless it is specifically exempted by this chapter.

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

8 (n) "Complainant" means:

9 (1) any individual charging on his own behalf to have been  
 10 personally aggrieved by a discriminatory practice; or

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

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

16 (1) sufficiently complete and filed by a complainant with the  
 17 commission; or

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

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

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

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

25 (2) the name and address of the respondent against whom the  
 26 complaint is made;

27 (3) the alleged discriminatory practice and a statement of  
 28 particulars thereof;

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

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

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

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



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- 1 (1) it shall not be a discriminatory practice to maintain separate  
 2 rest rooms;
- 3 (2) it shall not be an unlawful employment practice for an  
 4 employer to hire and employ employees, for an employment  
 5 agency to classify or refer for employment any individual, for a  
 6 labor organization to classify its membership or to classify or refer  
 7 for employment any individual, or for an employer, labor  
 8 organization, or joint labor management committee controlling  
 9 apprenticeship or other training or retraining programs to admit  
 10 or employ any other individual in any program on the basis of sex  
 11 in those certain instances where sex is a bona fide occupational  
 12 qualification reasonably necessary to the normal operation of that  
 13 particular business or enterprise; and
- 14 (3) it shall not be a discriminatory practice for a private or  
 15 religious educational institution to continue to maintain and  
 16 enforce a policy of admitting students of one (1) sex only.

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

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

25 SECTION 3. IC 22-9-1-6 IS AMENDED TO READ AS FOLLOWS  
 26 [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) The commission shall  
 27 establish and maintain a permanent office in the city of Indianapolis.

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

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

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

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

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

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

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

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

37 (g) The commission may issue such publications and such results of  
 38 investigations and research as in its judgment will tend to promote  
 39 good will and minimize or eliminate discrimination because of race,  
 40 religion, color, sex, **age**, handicap, national origin, or 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 filed a complaint, testified in any hearing before this commission,  
 2 or in any way assisted the commission in any matter under its  
 3 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 the commission may:~~

28 **(1) award preventive relief, including but not limited to**  
 29 **issuing a restraining order, a cease and desist from the unlawful**  
 30 **discriminatory practice and requiring the person to take further**  
 31 **affirmative action as will effectuate the purposes of this chapter;**  
 32 **order, or a temporary or permanent injunction to be served**  
 33 **on the person; and**

34 **(2) require the person to take the further affirmative action or**  
 35 **actions that the commission determines are needed to**  
 36 **effectuate the purpose of this chapter, including but not limited**  
 37 **to the power:**

38 (A) to restore complainant's losses award actual damages  
 39 incurred as a result of discriminatory treatment **and to award**  
 40 **other appropriate relief, including:**

41 (i) reasonable attorney's fees; and

42 (ii) court costs;

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- 1 as the commission may deem necessary to assure justice;  
 2 ~~however, this specific provision when applied to orders~~  
 3 ~~pertaining to employment shall include only wages, salary, or~~  
 4 ~~commissions;~~  
 5 (B) to require the posting of notice setting forth the public  
 6 policy of Indiana concerning civil rights and respondent's  
 7 compliance with the policy in places of public  
 8 accommodations;  
 9 (C) to require proof of compliance to be filed by respondent at  
 10 periodic intervals; and  
 11 (D) to require a person who has been found to be in violation  
 12 of this chapter and who is licensed by a state agency  
 13 authorized to grant a license to show cause to the licensing  
 14 agency why his license should not be revoked or suspended.
- 15 (l) Judicial review of a cease and desist order or other affirmative  
 16 action as referred to in this chapter may be obtained under IC 22-9-8.  
 17 If no proceeding to obtain judicial review is instituted within thirty (30)  
 18 days from receipt of notice by a person that an order has been made by  
 19 the commission, the commission, if it determines that the person upon  
 20 whom the cease and desist order has been served is not complying or  
 21 is making no effort to comply, may obtain a decree of a court for the  
 22 enforcement of the order in circuit or superior court upon showing that  
 23 the person is subject to the commission's jurisdiction and resides or  
 24 transacts business within the county in which the petition for  
 25 enforcement is brought.
- 26 (m) If, upon all the evidence, the commission shall find that a  
 27 person has not engaged in any unlawful practice or violation of this  
 28 chapter, the commission shall state its findings of facts and shall issue  
 29 and cause to be served on the complainant an order dismissing the  
 30 complaint as to the person.
- 31 (n) The commission may furnish technical assistance requested by  
 32 persons subject to this chapter to further compliance with this chapter  
 33 or with an order issued thereunder.
- 34 (o) The commission shall promote the creation of local civil rights  
 35 agencies to cooperate with individuals, neighborhood associations, and  
 36 state, local, and other agencies, both public and private, including  
 37 agencies of the federal government and of other states.
- 38 (p) The commission may reduce the terms of conciliation agreed to  
 39 by the parties to writing (to be called a consent agreement) that the  
 40 parties and a majority of the commissioners shall sign. When signed,  
 41 the consent agreement shall have the same effect as a cease and desist  
 42 order issued under subsection (k). If the commission determines that a

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1 party to the consent agreement is not complying with it, the  
 2 commission may obtain enforcement of the consent agreement in a  
 3 circuit or superior court upon showing that the party is not complying  
 4 with the consent agreement and the party is subject to the commission's  
 5 jurisdiction and resides or transacts business within the county in  
 6 which the petition for enforcement is brought.

7 (q) In lieu of investigating a complaint and holding a hearing under  
 8 this section, the commission may issue an order based on findings and  
 9 determinations by the federal Department of Housing and Urban  
 10 Development or the federal Equal Employment Opportunity  
 11 Commission concerning a complaint that has been filed with one (1) of  
 12 these federal agencies and with the commission. The commission shall  
 13 adopt by rule standards under which the commission may issue such an  
 14 order.

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

19 SECTION 4. IC 22-9-1-10 IS AMENDED TO READ AS  
 20 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. Every contract to  
 21 which the state or any of its political or civil subdivisions is a party,  
 22 including franchises granted to public utilities, shall contain a provision  
 23 requiring the contractor and his subcontractors not to discriminate  
 24 against any employee or applicant for employment to be employed in  
 25 the performance of such contract, with respect to his hire, tenure,  
 26 terms, conditions or privileges of employment or any matter directly or  
 27 indirectly related to employment, because of his race, religion, color,  
 28 sex, **age**, disability, national origin, or ancestry. Breach of this covenant  
 29 may be regarded as a material breach of the contract.

30 SECTION 5. IC 22-9-1-11 IS AMENDED TO READ AS  
 31 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. In addition to its  
 32 power to investigate the discriminatory practices referred to in this  
 33 chapter, the commission may receive written complaints of violation of  
 34 this chapter or other discriminatory practices based upon race, religion,  
 35 color, sex, **age**, **disability**, national origin, or ancestry and to  
 36 investigate such complaints as it deems meritorious, or to conduct such  
 37 investigation in the absence of complaints whenever it deems it in the  
 38 public interest. It may transmit to the general assembly its  
 39 recommendations for legislation designed to aid in the removing of  
 40 such discrimination.

41 SECTION 6. IC 22-9-1-16 IS AMENDED TO READ AS  
 42 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16. (a) **This section**



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1 does not limit the application of IC 22-9.5-6-12, IC 22-9.5-6-13,  
2 IC 22-9.5-6-14, IC 22-9.5-7, or IC 22-9.5-8.1.

3 (b) The following apply after the commission makes a finding of  
4 probable cause:

5 (1) Except as provided in this section, a respondent or a  
6 complainant may elect to have the claims that are the basis for a  
7 finding of probable cause decided in a civil action as provided by  
8 section 17 of this chapter. However, both the respondent and the  
9 complainant must agree in writing to have the claims decided in  
10 a court of law. The agreement must be on a form provided by the  
11 commission.

12 (2) The person making the election shall provide written  
13 notice of election to the commission and to all other  
14 complainants and respondents to whom the finding of  
15 probable cause relates.

16 (b) (3) The election may not shall be made if the commission has  
17 begun before the commencement of a hearing on the record  
18 under this chapter before the commission with regard to a  
19 finding of probable cause.

20 (4) If a timely election is made, the complainant shall file a  
21 civil action not later than ninety (90) days after notice of the  
22 election is served on:

23 (A) the complainant, if the election is made by another  
24 party; or

25 (B) the commission, if the election is made by the  
26 complainant.

27 (c) If a majority of the commissioners have signed a consent  
28 agreement, the complainant may not file an action under this  
29 section with respect to the alleged discriminatory act or practice  
30 that forms the basis for the complaint except to enforce the terms  
31 of the agreement.

32 (d) If:

33 (1) a complaint filed with the commission under section 3 of  
34 this chapter is dismissed by the commission; or

35 (2) upon the expiration of one hundred eighty (180) days after  
36 the filing of a complaint with the commission, the complainant  
37 files with the commission a written request that the  
38 commission issue written notice that the complainant may file  
39 a civil action;

40 the commission shall issue written notice to the parties to the  
41 complaint that, within ninety (90) days after the date of the written  
42 notice from the commission, a civil action on the allegations

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1 contained in the complaint filed with the commission may be  
 2 brought in a circuit or superior court having jurisdiction in the  
 3 county in which a discriminatory practice allegedly occurred. The  
 4 civil action may not include allegations of discriminatory practices  
 5 not included in the complaint that is the subject of the written  
 6 notice provided by the commission under this subsection, unless  
 7 otherwise provided by this article. Issuance by the commission of  
 8 a notice described in this subsection shall terminate further  
 9 proceedings on any complaint that is the subject of the notice  
 10 unless the director or the deputy director determines at the time of  
 11 the issuance of the notice, or at a later time, that it would effectuate  
 12 the public policy of the state to further process the complaint.  
 13 Issuance of a notice by the commission under this subsection does  
 14 not preclude the commission from offering the assistance to a  
 15 person issued the notice that the commission determines necessary  
 16 and appropriate.

17 SECTION 7. IC 22-9-1-19 IS ADDED TO THE INDIANA CODE  
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 19 1, 1999]: **Sec. 19. The director or deputy director, in the director's  
 20 or deputy director's official capacity, may intervene as a matter of  
 21 right as a complainant in a civil action concerning a discriminatory  
 22 practice. Intervention under this section shall be considered timely  
 23 if the complaint initiating the civil action:**

24 (1) was filed with the commission before the lapse of one  
 25 hundred eighty (180) days after the occurrence of the alleged  
 26 discriminatory practice; and

27 (2) is sufficiently complete to state a cause of action;  
 28 regardless of the date that the director or deputy director exercises  
 29 the right of intervention. However, the director or deputy director  
 30 must intervene in the civil action before the commencement of a  
 31 hearing on the record.

32 SECTION 8. IC 22-9-2 IS REPEALED [EFFECTIVE JULY 1,  
 33 1999].

34 SECTION 9. [EFFECTIVE JULY 1, 1999] IC 22-9-1-6 and  
 35 IC 22-9-1-16, both as amended by this act, and IC 22-9-1-19, as  
 36 added by this act, apply only to a cause of action that accrues after  
 37 June 30, 1999. However:

38 (1) a cause of action concerning age discrimination that  
 39 accrued under IC 22-9-2 before July 1, 1999, is actionable  
 40 under IC 22-9-1 as it existed on June 30, 1999; and

41 (2) a proceeding pending before the commissioner under  
 42 IC 22-9-2 before its repeal is transferred to the civil rights

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1           **commission on July 1, 1999, and shall be treated after June**  
2           **30, 1999, as if the proceeding had been properly filed with the**  
3           **civil rights commission.**  
4           **The commissioner of labor shall arrange for the transfer to the**  
5           **civil rights commission of records and other property needed to**  
6           **carry out this SECTION.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, Ethics and Veterans Affairs, to which was referred House Bill 1585, 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, line 38, delete "to award actual damages".

Page 7, line 38, strike "restore complainant's losses".

Page 7, line 38, after "losses" insert "**award actual damages**".

Page 9, delete lines 41 through 42, begin a new paragraph and insert:

"SECTION 6. IC 22-9-1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16. (a) **This section does not limit the application of IC 22-9.5-6-12, IC 22-9.5-6-13, IC 22-9.5-6-14, IC 22-9.5-7, or IC 22-9.5-8.1.**

**(b) The following apply after the commission makes a finding of probable cause:**

**(1) Except as provided in this section,** a respondent or a complainant may elect to have the claims that are the basis for a finding of probable cause decided in a civil action as provided by section 17 of this chapter. ~~However, both the respondent and the complainant must agree in writing to have the claims decided in a court of law. The agreement must be on a form provided by the commission.~~

**(2) The person making the election shall provide written notice of election to the commission and to all other complainants and respondents to whom the finding of probable cause relates.**

~~(b) (3) The election may not shall be made if the commission has begun before the commencement of a hearing on the record under this chapter before the commission with regard to a finding of probable cause.~~

**(4) If a timely election is made, the complainant shall file a civil action not later than ninety (90) days after notice of the election is served on:**

**(A) the complainant, if the election is made by another party; or**

**(B) the commission, if the election is made by the complainant.**

**(c) If a majority of the commissioners have signed a consent agreement, the complainant may not file an action under this section with respect to the alleged discriminatory act or practice that forms the basis for the complaint except to enforce the terms**



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of the agreement.

(d) If:

- (1) a complaint filed with the commission under section 3 of this chapter is dismissed by the commission; or
- (2) upon the expiration of one hundred eighty (180) days after the filing of a complaint with the commission, the complainant files with the commission a written request that the commission issue written notice that the complainant may file a civil action;

the commission shall issue written notice to the parties to the complaint that, within ninety (90) days after the date of the written notice from the commission, a civil action on the allegations contained in the complaint filed with the commission may be brought in a circuit or superior court having jurisdiction in the county in which a discriminatory practice allegedly occurred. The civil action may not include allegations of discriminatory practices not included in the complaint that is the subject of the written notice provided by the commission under this subsection, unless otherwise provided by this article. Issuance by the commission of a notice described in this subsection shall terminate further proceedings on any complaint that is the subject of the notice unless the director or the deputy director determines at the time of the issuance of the notice, or at a later time, that it would effectuate the public policy of the state to further process the complaint. Issuance of a notice by the commission under this subsection does not preclude the commission from offering the assistance to a person issued the notice that the commission determines necessary and appropriate."

Delete page 10.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1585 as introduced.)

KUZMAN, Chair

Committee Vote: yeas 8, nays 4.



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