SENATE BILL No. 329

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-9-1; IC 22-9-2.

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. Allows the Indiana civil rights commission to impose a civil penalty, punitive damages, 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 without the consent of the other party. Limits the time in which a civil action may be brought. Allows the Indiana civil rights commission to bring a civil action concerning a discriminatory practice in a state court. Allows the Indiana civil rights

(Continued next page)

Effective: July 1, 1999.

Simpson

January 8, 1999, read first time and referred to Committee on Judiciary.

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Digest Continued

commission to intervene as a party in a civil action concerning a discriminatory practice. Makes other changes.

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Introduced

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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SENATE BILL No. 329

A BILL FOR AN ACT to amend the Indiana Code concerning civil law and procedure.

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

SECTION 1. IC 22-9-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) It is the public policy of the state to provide all of its citizens equal opportunity for education, employment, access to public conveniences and accommodations, and acquisition through purchase or rental of real property, including but not limited to housing, and to eliminate segregation or separation based solely on race, religion, color, sex, **age,** disability, national origin or ancestry, since such segregation is an impediment to equal opportunity. Equal education and employment opportunities and equal access to and use of public accommodations and equal opportunity for acquisition of real property are hereby declared to be civil rights.

(b) The practice of denying these rights to properly qualified persons by reason of the race, religion, color, sex, **age,** disability, national origin, or ancestry of such person is contrary to the principles of freedom and equality of opportunity and is a burden to the objectives

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

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

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

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

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

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

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

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

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

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

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

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commission, or such other attorney as may be engaged by the commission.

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

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

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

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

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

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

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

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

(2) in the domestic service of any person.

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

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

(l) "Discriminatory practice" means:

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

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

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

(4) a violation of IC 22-9-5 that occurs after July 25, 1992, and is

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committed by a covered entity (as defined in IC 22-9-5-4).

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

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

(n) "Complainant" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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IC 4-15-2. The reasonable and necessary traveling expenses of each employee of the commission while actually engaged in the performance of duties in behalf of the commission shall be paid in accordance with the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

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

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

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

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

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

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

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

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

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

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

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

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

(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~~ **the commission may:**

(1) award preventive relief, including but not limited to issuing a restraining order, a 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,~~ **order, or a temporary or permanent injunction to be served on the person; and**

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

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

(i) punitive damages;

(ii) reasonable attorney's fees; and

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(iii) court costs;

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 impose a civil penalty under subsection (s);**

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

~~(D)~~ **(E)** 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.

(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

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

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

(s) To vindicate the public interest, the commission may assess against the respondent a civil penalty that does not exceed the following:

(1) Twenty-five thousand dollars ($25,000), in the case of a respondent that has at least six (6) and less than fourteen (14) employees in each of at least twenty (20) calendar weeks in the twenty-four (24) month period immediately preceding the date that the violation occurred.

(2) Fifty thousand dollars ($50,000), in the case of a respondent that has at least fourteen (14) employees and less than one hundred one (101) employees in each of at least twenty (20) calendar weeks in the twenty-four (24) month period immediately preceding the date that the violation occurred.

(3) One hundred thousand dollars ($100,000), in the case of a respondent that has at least one hundred one (101) employees and less than two hundred one (201) employees in each of at least twenty (20) calendar weeks in the twenty-four (24) month period immediately preceding the date that the violation occurred.

(4) Two hundred thousand dollars ($200,000), in the case of a

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respondent that has at least two hundred one (201) employees and less than five hundred one (501) employees in each of at least twenty (20) calendar weeks in the twenty-four (24) month period immediately preceding the date that the violation occurred.

(5) Three hundred thousand dollars ($300,000), in the case of a respondent that has at least five hundred one (501) employees in each of at least twenty (20) calendar weeks in the twenty-four (24) month period immediately preceding the date that the violation occurred.

(6) Zero dollars ($0), if subdivisions (1) through (5) do not apply.

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

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

SECTION 6. IC 22-9-1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16. (a) **This section shall not be construed to limit the application of IC 22-9.5-4.**

(b) 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~~

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~~agree in writing to have the claims decided in a court of law. The agreement must be on a form provided by the commission.~~

~~(b) The election may not be made~~ **(c) The complainant may not file a civil action under this section with respect to an alleged discriminatory practice that forms a basis of probable cause issued by the commission** if the commission has begun a hearing on the record ~~under this chapter~~ with ~~regard to a finding of probable cause.~~ **respect to the finding of probable cause.**

(d) If the commission has obtained a conciliation agreement with the consent of a complainant, the complainant may not file an action under this section with respect to the alleged discriminatory practice that forms the basis of the complaint, except to enforce the terms of the agreement. A civil action to enforce a conciliation agreement must be brought within one (1) year after the occurrence of the breach of the conciliation agreement.

(e) This subsection does not apply to a civil action brought to enforce a conciliation agreement entered under this article. Except as provided in subsection (f), an action under this section must be brought within one (1) year after the occurrence of the termination of the alleged discriminatory practice. The one (1) year period in which to file a civil action does not include any time during which an administrative proceeding under this article is pending with respect to a complaint or finding of probable cause under this article based on a discriminatory practice.

(f) If:

(1) a charge filed with the commission is dismissed by the commission; or

(2) the commission has not filed a civil action under subsection (g) and the complainant and respondent have not entered into a conciliation agreement under this article;

the commission shall give written notice to the parties that a civil action may be brought against the respondent by the complainant not later than ninety (90) days after the notification.

(g) The commission may bring a civil action against a respondent in a circuit or superior court on behalf of the complainant if the commission determines that the case is of general public importance.

SECTION 7. IC 22-9-1-19 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 19. The director or deputy director, in the director's or deputy director's official capacity, may intervene as a matter of right as a complainant in a civil action concerning a discriminatory**

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practice. Intervention under this section shall be considered timely if the complaint initiating the civil action:

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

(2) is sufficiently complete to state a cause of action;

regardless of the date that the director or deputy director exercises the right of intervention. However, the director or deputy director must intervene in the civil action before the commencement of a hearing on the record.

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

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

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

(2) a proceeding pending before the commissioner under IC 22-9-2 before its repeal is transferred to the civil rights commission on July 1, 1999, and shall be treated after June 30, 1999, as if the proceeding had been properly filed with the civil rights commission.

The commissioner of labor shall arrange for the transfer to the civil rights commission of records and other property needed to carry out this SECTION.

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