

HOUSE BILL No. 1585

DIGEST OF INTRODUCED BILL

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

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 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
(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.

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Digest Continued

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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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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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



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 award actual damages** to restore complainant's losses
 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 shall not be construed to limit the application of IC 22-9.5-4.

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

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

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

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

30 (f) If:

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

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

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

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



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1 SECTION 7. IC 22-9-1-19 IS ADDED TO THE INDIANA CODE
 2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 1999]: **Sec. 19. The director or deputy director, in the director's
 4 or deputy director's official capacity, may intervene as a matter of
 5 right as a complainant in a civil action concerning a discriminatory
 6 practice. Intervention under this section shall be considered timely
 7 if the complaint initiating the civil action:**

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

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

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

16 SECTION 8. IC 22-9-2 IS REPEALED [EFFECTIVE JULY 1,
 17 1999].

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

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

25 (2) a proceeding pending before the commissioner under
 26 IC 22-9-2 before its repeal is transferred to the civil rights
 27 commission on July 1, 1999, and shall be treated after June
 28 30, 1999, as if the proceeding had been properly filed with the
 29 civil rights commission.

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

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