

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 360 be amended to read as follows:

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

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

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

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

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

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

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

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

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

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

39 (i) The commission may hold hearings, subpoena witnesses, compel  
40 their attendance, administer oaths, take the testimony of any person  
41 under oath, and require the production for examination of any books  
42 and papers relating to any matter under investigation or in question  
43 before the commission. The commission may make rules as to the  
44 issuance of subpoenas by individual commissioners. Contumacy or  
45 refusal to obey a subpoena issued under this section shall constitute a  
46 contempt. All hearings shall be held within Indiana at a location

1 determined by the commission. A citation of contempt may be issued  
 2 upon application by the commission to the circuit or superior court in  
 3 the county in which the hearing is held or in which the witness resides  
 4 or transacts business.

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

13 (k) The commission shall state its findings of fact after a hearing  
 14 and, if the commission finds a person has engaged in an unlawful  
 15 discriminatory practice, shall cause to be served on this person an order  
 16 requiring the person to cease and desist from the unlawful  
 17 discriminatory practice and requiring the person to take further  
 18 affirmative action as will effectuate the purposes of this chapter,  
 19 including but not limited to the power:

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

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

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

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

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

45 (m) If, upon all the evidence, the commission shall find that a  
 46 person has not engaged in any unlawful practice or violation of this

1 chapter, the commission shall state its findings of facts and shall issue  
2 and cause to be served on the complainant an order dismissing the  
3 complaint as to the person.

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

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

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

22 (q) In lieu of investigating a complaint and holding a hearing under  
23 this section, the commission may issue an order based on findings and  
24 determinations by the federal Department of Housing and Urban  
25 Development or the federal Equal Employment Opportunity  
26 Commission concerning a complaint that has been filed with one (1) of  
27 these federal agencies and with the commission. The commission shall  
28 adopt by rule standards under which the commission may issue such an  
29 order.

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

34 Renumber all SECTIONS consecutively.

(Reference is to ESB 360 as printed February 22, 2002.)

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Representative Brown C