
HOUSE BILL No. 1266

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-9.

Synopsis: Age discrimination. Transfers jurisdiction over age discrimination proceedings from the commissioner of labor to the civil rights commission. Establishes that certain actions by an employer, a labor organization, or an employment agency relating to employment are unlawful when the actions involve an individual at least 40 years of age. Provides for exemptions: (1) for actions where age is a bona fide occupational qualification; (2) for pension and benefit plans; (3) for a bona fide seniority system; (4) for discipline or discharge for good cause; (5) for public safety officers; and (6) for bona fide executive or high policy making positions. Provides that all duties performed by an employee or agent employed by the commission shall be performed in the public interest. Repeals age discrimination provisions administered by the commissioner of labor.

Effective: July 1, 2002.

Smith V, Dillon

January 14, 2002, read first time and referred to Committee on Judiciary.

C
O
P
Y



Second Regular Session 112th General Assembly (2002)

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 2001 General Assembly.

C
o
p
y

HOUSE BILL No. 1266



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 22-9-1-3 IS AMENDED TO READ AS FOLLOWS
- 2 [EFFECTIVE JULY 1, 2002]: Sec. 3. As used in this chapter:
- 3 (a) "Person" means one (1) or more individuals, partnerships,
- 4 associations, organizations, limited liability companies, corporations,
- 5 labor organizations, cooperatives, legal representatives, trustees,
- 6 trustees in bankruptcy, receivers, and other organized groups of
- 7 persons.
- 8 (b) "Commission" means the civil rights commission created under
- 9 section 4 of this chapter.
- 10 (c) "Director" means the director of the civil rights commission.
- 11 (d) "Deputy director" means the deputy director of the civil rights
- 12 commission.
- 13 (e) "Commission attorney" means the deputy attorney general, such
- 14 assistants of the attorney general as may be assigned to the
- 15 commission, or such other attorney as may be engaged by the
- 16 commission.
- 17 (f) "Consent agreement" means a formal agreement entered into in



1 lieu of adjudication.

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

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

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

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

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

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

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

18 (2) in the domestic service of any person.

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

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

25 (l) "Discriminatory practice" means:

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

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

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

37 **or**

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

40 **(5) a violation of IC 22-9-7.**

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

C
o
p
y



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

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

5 (n) "Complainant" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (2) it shall not be an unlawful employment practice for an

C
O
P
Y



1 employer to hire and employ employees, for an employment
 2 agency to classify or refer for employment any individual, for a
 3 labor organization to classify its membership or to classify or refer
 4 for employment any individual, or for an employer, labor
 5 organization, or joint labor management committee controlling
 6 apprenticeship or other training or retraining programs to admit
 7 or employ any other individual in any program on the basis of sex
 8 in those certain instances where sex is a bona fide occupational
 9 qualification reasonably necessary to the normal operation of that
 10 particular business or enterprise; and

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

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

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

22 SECTION 2. IC 22-9-1-6 IS AMENDED TO READ AS FOLLOWS
 23 [EFFECTIVE JULY 1, 2002]: Sec. 6. (a) The commission shall
 24 establish and maintain a permanent office in the city of Indianapolis.

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

C
o
p
y



1 the state travel policies and procedures established by the Indiana
2 department of administration and approved by the budget agency.

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

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

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

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

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

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

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

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

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



C
o
p
y

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

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

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

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

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

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

38 ~~(D)~~ **(4)** to require a person who has been found to be in violation
 39 of this chapter and who is licensed by a state agency authorized
 40 to grant a license to show cause to the licensing agency why **his**
 41 **the** license should not be revoked or suspended.

42 (l) Judicial review of a cease and desist order or other affirmative

C
o
p
y



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

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

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

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

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

34 (q) In lieu of investigating a complaint and holding a hearing under
35 this section, the commission may issue an order based on findings and
36 determinations by the federal Department of Housing and Urban
37 Development or the federal Equal Employment Opportunity
38 Commission concerning a complaint that has been filed with one (1) of
39 these federal agencies and with the commission. The commission shall
40 adopt by rule standards under which the commission may issue such an
41 order.

42 (r) Upon notice that a complaint is the subject of an action in a

C
O
P
Y



1 federal court, the commission shall immediately cease investigation of
 2 the complaint and may not conduct hearings or issue findings of fact or
 3 orders concerning that complaint.

4 SECTION 3. IC 22-9-1-11 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 11. In addition to its
 6 power to investigate the discriminatory practices referred to in this
 7 chapter, the commission may receive written complaints of violation of
 8 this chapter or other discriminatory practices based upon race, religion,
 9 color, sex, **disability**, national origin, **or** ancestry, **or in relation to**
 10 **employment only, age**, and to investigate such complaints as it deems
 11 meritorious, or to conduct such investigation in the absence of
 12 complaints whenever it deems it in the public interest. It may transmit
 13 to the general assembly its recommendations for legislation designed
 14 to aid in the removing of such discrimination.

15 SECTION 4. IC 22-9-7 IS ADDED TO THE INDIANA CODE AS
 16 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 17 1, 2002]:

18 **Chapter 7. Age Discrimination**

19 **Sec. 1. As used in this chapter, "commission" means the civil**
 20 **rights commission created by IC 22-9-1-4.**

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

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

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

27 **Sec. 5. As used in this chapter, "employee pension benefit plan"**
 28 **has the meaning set forth in 29 U.S.C. 1002(2).**

29 **Sec. 6. As used in this chapter, "employer" has the meaning set**
 30 **forth in IC 22-9-1-3(h).**

31 **Sec. 7. As used in this chapter, "employment agency" has the**
 32 **meaning set forth in IC 22-9-1-3(k).**

33 **Sec. 8. As used in this chapter, "labor organization" has the**
 34 **meaning set forth in IC 22-9-1-3(j).**

35 **Sec. 9. As used in this chapter, "person" has the meaning set**
 36 **forth in IC 22-9-1-3(a).**

37 **Sec. 10. As used in this chapter, "public safety employee" means**
 38 **an individual who is or applies to be any of the following:**

- 39 (1) A member of a fire department (as defined in IC 36-8-1-8).
 40 (2) A member of a police department (as defined in
 41 IC 36-8-1-9).
 42 (3) A state police officer.



C
o
p
y

- 1 (4) A county police officer.
 2 (5) A correctional officer (as defined in IC 5-10-10-1.5).
 3 (6) An excise police officer.
 4 (7) A county police reserve officer.
 5 (8) A city police reserve officer.
 6 (9) A conservation enforcement officer.
 7 (10) A town marshal.
 8 (11) A deputy town marshal.
 9 (12) A state university police officer appointed under
 10 IC 20-12-3.5.

11 **Sec. 11. (a) It is unlawful for an employer to:**

- 12 (1) fail or refuse to hire or to discharge any individual or
 13 otherwise discriminate against any individual with respect to
 14 the individual's compensation, terms, conditions, or privileges
 15 of employment because of the individual's age;
 16 (2) limit, segregate, or classify employees in any way that
 17 would deprive or tend to deprive any individual of
 18 employment opportunities or otherwise adversely affect the
 19 individual's status as an employee because of the individual's
 20 age; or
 21 (3) reduce the wage rate of any employee in order to comply
 22 with this chapter.

23 **(b) It is unlawful for an employment agency to:**

- 24 (1) fail or refuse to refer for employment or otherwise
 25 discriminate against any individual because of the individual's
 26 age; or
 27 (2) classify or refer for employment any individual on the
 28 basis of the individual's age.

29 **(c) It is unlawful for a labor organization to:**

- 30 (1) exclude or expel from the labor organization's
 31 membership or otherwise discriminate against any individual
 32 because of the individual's age;
 33 (2) limit, segregate, or classify the labor organization's
 34 membership or classify or fail or refuse to refer for
 35 employment any individual in any way that would deprive or
 36 tend to deprive any individual of employment opportunities
 37 or would limit employment opportunities or otherwise
 38 adversely affect the individual's status as an employee or as
 39 an applicant for employment because of the individual's age;
 40 or
 41 (3) cause or attempt to cause an employer to discriminate
 42 against an individual in violation of this subsection.

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

(d) It is unlawful for:

- (1) an employer to discriminate against any of the employer's employees or applicants for employment;**
 - (2) an employment agency to discriminate against any individual; or**
 - (3) a labor organization to discriminate against any member of or applicant for membership in the labor organization;**
- because the employee, applicant for employment, individual, member, or applicant for membership has opposed any practice made unlawful by this chapter or because the employee, applicant for employment, individual, member, or applicant for membership has filed a complaint with the commission, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.**

(e) It is unlawful for an employer, a labor organization, or an employment agency to print or publish or cause to be printed or published any notice or advertisement relating to:

- (1) employment by the labor organization; or**
 - (2) any classification or referral for employment by the employment agency;**
- indicating any preference, limitation, specification, or discrimination based on age.**

Sec. 12. Notwithstanding any of the prohibitions contained in this chapter, it is not unlawful for an employer, an employment agency, or a labor organization to do any of the following:

- (1) Take any action otherwise prohibited under this chapter if:**
 - (A) age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business; or**
 - (B) the differentiation is based on reasonable factors other than age.**
- (2) If not prohibited by federal antidiscrimination law, establish, maintain, observe the terms of, or comply with an employee pension benefit plan, a defined benefit plan, a bona fide employee benefit plan, or other pension, benefit, or retirement plan.**
- (3) Observe the terms of a bona fide seniority system that is not intended to evade the purposes of this chapter, except that a bona fide seniority system must not require or permit the involuntary retirement of an individual at least forty (40) years of age because of the age of the individual.**

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

(4) Discharge or otherwise discipline an individual for good cause.

Sec. 13. Notwithstanding any of the prohibitions contained in this chapter, it is not unlawful for the state, a political subdivision of the state, or an agency or instrumentality of the state or a political subdivision of the state to:

- (1) fail or refuse to hire an individual as a public safety employee; or
 - (2) discharge an individual from employment as a public safety employee;
- because of the individual's age.

Sec. 14. Notwithstanding any of the prohibitions of this chapter, it is not a discriminatory practice to require the retirement of any employee who:

- (1) becomes sixty-five (65) years of age; and
- (2) for the two (2) year period immediately before retirement, is employed in a bona fide executive or high policy making position;

where the compulsory retirement is not prohibited by federal antidiscrimination law.

Sec. 15. The remedies available regarding complaints directed against a covered entity under this chapter are limited to the remedies provided under IC 22-9-1-6(k).

Sec. 16. The prohibitions of this chapter are limited to individuals who are at least forty (40) years of age.

SECTION 5. IC 22-9-2 IS REPEALED [EFFECTIVE JULY 1, 2002].

SECTION 6. [EFFECTIVE JULY 1, 2002] (a) A proceeding pending before the commissioner of labor under IC 22-9-2 before its repeal by this act is transferred to the civil rights commission on July 1, 2002, and shall be treated after June 30, 2002, as if the proceeding had been properly filed with the civil rights commission.

(b) 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.

C
O
P
Y

