

SENATE BILL No. 205

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-5-7.

Synopsis: Employment status of employment applicants. Provides: (1) that an employer may not publish an advertisement for an employment vacancy that states that qualification for the employment position includes current employment by the applicant; and (2) for civil penalty enforcement by the department of labor. Provides that: (1) an employer may not discriminate against an applicant or a prospective applicant (applicant) for employment based on the currently unemployed status of the applicant; and (2) an aggrieved applicant may bring a civil action against the employer for enforcement.

Effective: July 1, 2012.

**Breaux, Simpson, Arnold, Broden,
Hume, Lanane, Mrvan, Randolph,
Rogers, Skinner, Tallian, Taylor,
Young R**

January 4, 2012, read first time and referred to Committee on Pensions and Labor.

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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 2011 Regular Session of the General Assembly.

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SENATE BILL No. 205



A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

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

1 SECTION 1. IC 22-5-7 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2012]:

4 **Chapter 7. Prohibition of Consideration of Employment Status**
5 **of Employment Applicants**

6 **Sec. 1. As used in this chapter, "agent of an employer" means a:**

- 7 (1) **manager having management authority or enforcement**
- 8 **powers with respect to hiring and termination of employees,**
- 9 **other personnel decisions, or both;**
- 10 (2) **corporate officer; or**
- 11 (3) **member of the board of directors;**

12 **of the employer.**

13 **Sec. 2. As used in this chapter, "department" means the**
14 **department of labor created under IC 22-1-1-1.**

15 **Sec. 3. (a) Unless permitted by any other law, rule, or**
16 **regulation, an employer or an agent of an employer may not**
17 **knowingly or purposefully publish, in print or on the Internet, an**



1 advertisement for an employment vacancy for a position in Indiana
2 that contains any of the following:

3 (1) A provision stating that qualification for the employment
4 position includes current employment.

5 (2) A provision that the employer or agent of the employer
6 will not consider or review an application for employment
7 submitted by a job applicant who is currently unemployed.

8 (3) A provision that the employer or agent of the employer
9 will consider or review only applications for employment
10 submitted by a job applicant who is currently employed.

11 (b) Subsection (a) may not be construed to prohibit an employer
12 or agent of an employer from publishing, in print or on the
13 Internet, an advertisement for a job vacancy in Indiana that
14 contains a provision setting forth any other qualifications for a job
15 as permitted by law, including:

16 (1) the holding of a current and valid professional or
17 occupational license, certificate, registration, permit, or other
18 credential; or

19 (2) a minimum level of education, training, or professional,
20 occupational, or field experience.

21 (c) Subsection (a) does not prohibit an employer or agent of an
22 employer from publishing, in print or on the Internet, an
23 advertisement for a job vacancy in Indiana that contains a
24 provision stating that only applicants who are currently employed
25 by the employer will be considered.

26 Sec. 4. An employer may not discriminate against an applicant
27 or a prospective applicant for employment based on the currently
28 unemployed status of the applicant or prospective applicant.

29 Sec. 5. If, after notice and a hearing, the department finds that
30 an employer has violated section 3(a) of this chapter, the
31 department may assess a civil penalty as follows:

32 (1) For the employer's first violation of section 3(a) of this
33 chapter, the department may assess a civil penalty not to
34 exceed one thousand dollars (\$1,000).

35 (2) For a second violation by the employer of section 3(a) of
36 this chapter, the department may assess a civil penalty not to
37 exceed five thousand dollars (\$5,000).

38 (3) For a third or subsequent violation by the employer of
39 section 3(a) of this chapter, the department may assess a civil
40 penalty not to exceed ten thousand dollars (\$10,000).

41 Sec. 6. (a) An applicant or prospective applicant may bring a
42 civil action against an employer to enforce section 4 of this chapter.

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1 **(b) If an employer violates section 4 of this chapter, the court**
2 **may do the following:**
3 **(1) Award:**
4 **(A) actual damages; and**
5 **(B) court costs and reasonable attorney's fees;**
6 **to the prevailing applicant or prospective applicant.**
7 **(2) Enjoin the employer from further violation of this chapter.**
8 **Sec. 7. This chapter does not limit an applicant's or prospective**
9 **applicant's rights or remedies under any other state or federal law.**

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