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# HOUSE BILL No. 1161

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-9-1.

**Synopsis:** Employment status of job applicants. Provides that, for purposes of Indiana civil rights law, "discriminatory practice" includes the exclusion of a person from equal opportunity for employment because of the person's employment status at the time the person applies for or inquires about employment. Provides that a contract to which the state or a political or civil subdivision is a party must contain a provision requiring the contractor and any subcontractor not to discriminate against an applicant or prospective applicant for employment with respect to the employment status of the applicant or prospective applicant. Authorizes the civil rights commission to: (1) study problems of discrimination that are, with regard to employment, based on a person's employment status; and (2) receive and investigate written complaints concerning discriminatory practices related to the employment status of applicants or prospective applicants for employment. Makes technical corrections.

**Effective:** July 1, 2012.

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January 9, 2012, read first time and referred to Committee on Employment, Labor and Pensions.

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Second Regular Session 117th General Assembly (2012)

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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# HOUSE BILL No. 1161



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 22-9-1-2 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2012]: 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, 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, disability, national  
14 origin, ~~or~~ ancestry, **or, with regard to employment, employment**  
15 **status** of such person is contrary to the principles of freedom and  
16 equality of opportunity and is a burden to the objectives of the public  
17 policy of this state and shall be considered as discriminatory practices.



1 The promotion of equal opportunity without regard to race, religion,  
 2 color, sex, disability, national origin, ~~or~~ ancestry, **or, with regard to**  
 3 **employment, employment status** through reasonable methods is the  
 4 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, 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, AS AMENDED BY P.L.35-2010,  
 30 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 31 JULY 1, 2012]: Sec. 3. As used in this chapter:

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

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

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

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

42 (e) "Commission attorney" means the deputy attorney general, such

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1 assistants of the attorney general as may be assigned to the  
 2 commission, or such other attorney as may be engaged by the  
 3 commission.

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

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

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

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

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

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

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

21 (1) by the individual's parents, spouse, or child; or

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

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

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

29 (l) "Discriminatory practice" means:

30 (1) the exclusion of a person:

31 (A) from equal opportunities because of race, religion, color,  
 32 sex, disability, national origin, or ancestry; **or**

33 (B) **from equal employment opportunity because of the**  
 34 **employment status of the person when the person applies**  
 35 **for or inquires about employment;**

36 (2) a system that excludes persons from equal opportunities  
 37 because of race, religion, color, sex, disability, national origin, **or**  
 38 ancestry, **or, with regard to employment, employment status;**

39 (3) the promotion of racial segregation or separation in any  
 40 manner, including but not limited to the inducing of or the  
 41 attempting to induce for profit any person to sell or rent any  
 42 dwelling by representations regarding the entry or prospective

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1 entry in the neighborhood of a person or persons of a particular  
 2 race, religion, color, sex, disability, national origin, or ancestry;  
 3 or

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

6 Every discriminatory practice relating to the acquisition or sale of real  
 7 estate, education, public accommodations, employment, or the  
 8 extending of credit (as defined in IC 24-4.5-1-301.5) shall be  
 9 considered unlawful unless it is specifically exempted by this chapter.

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

12 (n) "Complainant" means:

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

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

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

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

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

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

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

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

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

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

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

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

42 No complaint shall be valid unless filed within one hundred eighty

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1 (180) days from the date of the occurrence of the alleged  
2 discriminatory practice.

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

6 (1) it shall not be a discriminatory practice to maintain separate  
7 restrooms;

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

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

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

28 SECTION 3. IC 22-9-1-6 IS AMENDED TO READ AS FOLLOWS  
29 [EFFECTIVE JULY 1, 2012]: Sec. 6. (a) The commission shall  
30 establish and maintain a permanent office in the city of Indianapolis.

31 (b) The commission may appoint such attorneys and other  
32 employees and agents as it considers necessary, fix their compensation  
33 within the limitation provided by law, and prescribe their duties. All  
34 these employees, with the exception of the executive director and  
35 attorneys, shall be appointed by the commission from eligible lists to  
36 be promulgated by the department of personnel as the result of a  
37 competitive examination held under IC 4-15-2 (**repealed**) and rules of  
38 the department and on the basis of training, practical experience,  
39 education, and character. However, special consideration and due  
40 weight shall be given to the practical experience and training that a  
41 person may have for the particular position involved regardless of ~~his~~  
42 **the person's** academic training. Promotions, suspensions, and removal

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1 of persons appointed from such lists shall be in accordance with  
 2 IC 4-15-2 (**repealed**). The reasonable and necessary traveling expenses  
 3 of each employee of the commission while actually engaged in the  
 4 performance of duties in behalf of the commission shall be paid in  
 5 accordance with the state travel policies and procedures established by  
 6 the Indiana department of administration and approved by the budget  
 7 agency.

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

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

18 (e) The commission shall receive and investigate complaints  
 19 alleging discriminatory practices. The commission shall not hold  
 20 hearings in the absence of a complaint. All investigations of complaints  
 21 shall be conducted by staff members of the civil rights commission or  
 22 their agents.

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 handicap, national origin, ~~or~~ ancestry, **or, with regard to**  
 30 **employment, employment status;** and

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

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

38 (g) The commission may issue such publications and such results of  
 39 investigations and research as in its judgment will tend to promote  
 40 good will and minimize or eliminate discrimination because of race,  
 41 religion, color, sex, handicap, national origin, ~~or~~ ancestry, **or, with**  
 42 **regard to employment, employment status.**



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1 (h) The commission shall prevent any person from discharging,  
2 expelling, or otherwise discriminating against any other person because  
3 **he the other person has** filed a complaint, testified in any hearing  
4 before this commission, or in any way assisted the commission in any  
5 matter under its investigation.

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

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

26 (k) The commission shall state its findings of fact after a hearing  
27 and, if the commission finds a person has engaged in an unlawful  
28 discriminatory practice, shall cause to be served on **this the** person an  
29 order requiring the person to 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 including but not limited to the power:

33 (A) to restore complainant's losses incurred as a result of  
34 discriminatory treatment, as the commission may deem necessary  
35 to assure justice; however, this specific provision when applied to  
36 orders pertaining to employment shall include only wages, salary,  
37 or commissions;

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

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

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

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

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

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

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

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

39 (q) In lieu of investigating a complaint and holding a hearing under  
40 this section, the commission may issue an order based on findings and  
41 determinations by the federal Department of Housing and Urban  
42 Development or the federal Equal Employment Opportunity

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1 Commission concerning a complaint that has been filed with one (1) of  
 2 these federal agencies and with the commission. The commission shall  
 3 adopt by rule standards under which the commission may issue such an  
 4 order.

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

9 SECTION 4. IC 22-9-1-10 IS AMENDED TO READ AS  
 10 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 10. Every contract to  
 11 which the state or any of its political or civil subdivisions is a party,  
 12 including franchises granted to public utilities, shall contain a provision  
 13 requiring the contractor and ~~his~~ **the subcontractors of the contractor**  
 14 not to discriminate against:

15 (1) any employee or applicant for employment to be employed in  
 16 the performance of such contract, with respect to ~~his~~ **the**  
 17 **employee's or employment applicant's** hire, tenure, terms,  
 18 conditions or privileges of employment or any matter directly or  
 19 indirectly related to employment, because of ~~his~~ **the employee's**  
 20 **or employment applicant's** race, religion, color, sex, disability,  
 21 national origin, or ancestry; **or**

22 (2) **an applicant or prospective applicant for employment with**  
 23 **respect to the employment status of the applicant or**  
 24 **prospective applicant.**

25 Breach of this covenant may be regarded as a material breach of the  
 26 contract.

27 SECTION 5. IC 22-9-1-11 IS AMENDED TO READ AS  
 28 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 11. In addition to its  
 29 power to investigate the discriminatory practices referred to in this  
 30 chapter, the commission may:

31 (1) receive written complaints of violation of this chapter or other  
 32 discriminatory practices based upon race, religion, color, sex,  
 33 national origin, ~~or~~ **ancestry, or employment status; and to**

34 (2) investigate such complaints as ~~it~~ **the commission** deems  
 35 meritorious; ~~or to~~

36 (3) conduct such investigation in the absence of complaints  
 37 whenever ~~it~~ **the commission** deems ~~it~~ **investigation** in the public  
 38 interest.

39 ~~It~~ **The commission** may transmit to the general assembly its  
 40 recommendations **of the commission** for legislation designed to aid in  
 41 the removing of such discrimination.

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