

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1207 be amended to read as follows:

1 Page 29, between lines 34 and 35, begin a new paragraph and insert:
2 "SECTION 59. IC 22-9-1-2 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) It is the public
4 policy of the state to provide all of its citizens equal opportunity for
5 education, employment, access to public conveniences and
6 accommodations, and acquisition through purchase or rental of real
7 property, including but not limited to housing, and to eliminate
8 segregation or separation based solely on race, religion, color, sex, **age**,
9 disability, national origin or ancestry, since such segregation is an
10 impediment to equal opportunity. Equal education and employment
11 opportunities and equal access to and use of public accommodations
12 and equal opportunity for acquisition of real property are hereby
13 declared to be civil rights.
14 (b) The practice of denying these rights to properly qualified
15 persons by reason of the race, religion, color, sex, **age**, disability,
16 national origin, or ancestry of such person is contrary to the principles
17 of freedom and equality of opportunity and is a burden to the objectives
18 of the public policy of this state and shall be considered as
19 discriminatory practices. The promotion of equal opportunity without
20 regard to race, religion, color, sex, **age**, disability, national origin, or
21 ancestry through reasonable methods is the purpose of this chapter.
22 (c) It is also the public policy of this state to protect employers,
23 labor organizations, employment agencies, property owners, real estate
24 brokers, builders, and lending institutions from unfounded charges of
25 discrimination.
26 (d) It is hereby declared to be contrary to the public policy of the
27 state and an unlawful practice for any person, for profit, to induce or
28 attempt to induce any person to sell or rent any dwelling by
29 representations regarding the entry or prospective entry into the

1 neighborhood of a person or persons of a particular race, religion,
2 color, sex, **age**, disability, national origin, or ancestry.

3 (e) The general assembly recognizes that on February 16, 1972,
4 there are institutions of learning in Indiana presently and traditionally
5 following the practice of limiting admission of students to males or to
6 females. It is further recognized that it would be unreasonable to
7 impose upon these institutions the expense of remodeling facilities to
8 accommodate students of both sexes, and that educational facilities of
9 similar quality and type are available in coeducational institutions for
10 those students desiring such facilities. It is further recognized that this
11 chapter is susceptible of interpretation to prevent these institutions
12 from continuing their traditional policies, a result not intended by the
13 general assembly. Therefore, the amendment effected by Acts 1972,
14 P.L.176, is desirable to permit the continuation of the policies
15 described.

16 (f) This chapter shall be construed broadly to effectuate its purpose.

17 SECTION 60. IC 22-9-1-3, AS AMENDED BY P.L.35-2010,
18 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2012]: Sec. 3. As used in this chapter:

20 (a) "Person" means one (1) or more individuals, partnerships,
21 associations, organizations, limited liability companies, corporations,
22 labor organizations, cooperatives, legal representatives, trustees,
23 trustees in bankruptcy, receivers, and other organized groups of
24 persons.

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

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

28 (d) "Deputy director" means the deputy director of the civil rights
29 commission.

30 (e) "Commission attorney" means the deputy attorney general, such
31 assistants of the attorney general as may be assigned to the
32 commission, or such other attorney as may be engaged by the
33 commission.

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

36 (g) "Affirmative action" means those acts that the commission
37 determines necessary to assure compliance with the Indiana civil rights
38 law.

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

42 (1) any nonprofit corporation or association organized exclusively
43 for fraternal or religious purposes;

44 (2) any school, educational, or charitable religious institution
45 owned or conducted by or affiliated with a church or religious
46 institution; or

- 1 (3) any exclusively social club, corporation, or association that is
 2 not organized for profit.
- 3 (i) "Employee" means any person employed by another for wages or
 4 salary. However, the term does not include any individual employed:
 5 (1) by the individual's parents, spouse, or child; or
 6 (2) in the domestic service of any person.
- 7 (j) "Labor organization" means any organization that exists for the
 8 purpose in whole or in part of collective bargaining or of dealing with
 9 employers concerning grievances, terms, or conditions of employment
 10 or for other mutual aid or protection in relation to employment.
- 11 (k) "Employment agency" means any person undertaking with or
 12 without compensation to procure, recruit, refer, or place employees.
- 13 (l) "Discriminatory practice" means:
 14 (1) the exclusion of a person from equal opportunities because of
 15 race, religion, color, sex, **age**, disability, national origin, or
 16 ancestry;
 17 (2) a system that excludes persons from equal opportunities
 18 because of race, religion, color, sex, **age**, disability, national
 19 origin, or ancestry;
 20 (3) the promotion of racial segregation or separation in any
 21 manner, including but not limited to the inducing of or the
 22 attempting to induce for profit any person to sell or rent any
 23 dwelling by representations regarding the entry or prospective
 24 entry in the neighborhood of a person or persons of a particular
 25 race, religion, color, sex, **age**, disability, national origin, or
 26 ancestry; **or**
 27 (4) a violation of IC 22-9-5 that occurs after July 25, 1992, and is
 28 committed by a covered entity (as defined in IC 22-9-5-4); **or**
 29 **(5) a violation of IC 22-9-2.1.**
- 30 Every discriminatory practice relating to the acquisition or sale of real
 31 estate, education, public accommodations, employment, or the
 32 extending of credit (as defined in IC 24-4.5-1-301.5) shall be
 33 considered unlawful unless it is specifically exempted by this chapter.
- 34 (m) "Public accommodation" means any establishment that caters
 35 or offers its services or facilities or goods to the general public.
- 36 (n) "Complainant" means:
 37 (1) any individual charging on the individual's own behalf to have
 38 been personally aggrieved by a discriminatory practice; or
 39 (2) the director or deputy director of the commission charging that
 40 a discriminatory practice was committed against a person other
 41 than **himself the director or deputy director of the commission**
 42 or a class of people, in order to vindicate the public policy of the
 43 state (as defined in section 2 of this chapter).
- 44 (o) "Complaint" means any written grievance that is:
 45 (1) sufficiently complete and filed by a complainant with the
 46 commission; or

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

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

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

- 7 (1) the full name and address of the complainant;
- 8 (2) the name and address of the respondent against whom the
9 complaint is made;
- 10 (3) the alleged discriminatory practice and a statement of
11 particulars thereof;
- 12 (4) the date or dates and places of the alleged discriminatory
13 practice and if the alleged discriminatory practice is of a
14 continuing nature the dates between which continuing acts of
15 discrimination are alleged to have occurred; and
- 16 (5) a statement as to any other action, civil or criminal, instituted
17 in any other form based upon the same grievance alleged in the
18 complaint, together with a statement as to the status or disposition
19 of the other action.

20 **Except as provided in IC 22-9-2.1**, no complaint shall be valid unless
21 filed within one hundred eighty (180) days from the date of the
22 occurrence of the alleged discriminatory practice.

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

- 26 (1) it shall not be a discriminatory practice to maintain separate
27 restrooms;
- 28 (2) it shall not be an unlawful employment practice for an
29 employer to hire and employ employees, for an employment
30 agency to classify or refer for employment any individual, for a
31 labor organization to classify its membership or to classify or refer
32 for employment any individual, or for an employer, labor
33 organization, or joint labor management committee controlling
34 apprenticeship or other training or retraining programs to admit
35 or employ any other individual in any program on the basis of sex
36 in those certain instances where sex is a bona fide occupational
37 qualification reasonably necessary to the normal operation of that
38 particular business or enterprise; and
- 39 (3) it shall not be a discriminatory practice for a private or
40 religious educational institution to continue to maintain and
41 enforce a policy of admitting students of one (1) sex only.

42 (r) "Disabled" or "disability" means the physical or mental condition
43 of a person that constitutes a substantial disability. In reference to
44 employment, under this chapter, "disabled or disability" also means the
45 physical or mental condition of a person that constitutes a substantial
46 disability unrelated to the person's ability to engage in a particular

- 1 occupation.
- 2 (s) "Age" refers to the age of a person who is at least forty (40)
- 3 years of age."
- 4 Page 30, line 16, strike "chapter." and insert "article."
- 5 Page 30, line 29, after "agents." insert "All duties performed by an
- 6 employee or agent employed by the commission shall be performed
- 7 in the public interest."
- 8 Page 30, line 36, strike "handicap," and insert "age, disability,"
- 9 Page 30, line 39, strike "recommendation" and insert
- 10 "recommendations".
- 11 Page 31, line 5, strike "handicap," and insert "age, disability,"
- 12 Page 31, line 38, strike "(A)" and insert "(1)".
- 13 Page 31, line 38, after "restore" insert "the".
- 14 Page 32, line 1, strike "(B)" and insert "(2)".
- 15 Page 32, line 4, strike "(C)" and insert "(3)".
- 16 Page 32, line 4, after "filed by" insert "the".
- 17 Page 32, line 6, strike "(D)" and insert "(4)".
- 18 Page 32, line 8, strike "his" and insert "the".
- 19 Page 33, between lines 14 and 15, begin a new paragraph and insert:
- 20 "SECTION 62. IC 22-9-1-10 IS AMENDED TO READ AS
- 21 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 10. Every contract to
- 22 which the state or any of its political or civil subdivisions is a party,
- 23 including franchises granted to public utilities, shall contain a provision
- 24 requiring the contractor and ~~his~~ **the contractor's** subcontractors not to
- 25 discriminate against any employee or applicant for employment to be
- 26 employed in the performance of such contract, with respect to ~~his~~ **the**
- 27 **employee's** hire, tenure, terms, conditions or privileges of employment
- 28 or any matter directly or indirectly related to employment, because of
- 29 ~~his~~ **the employee's or applicant's** race, religion, color, sex, **age,**
- 30 disability, national origin, or ancestry. Breach of this covenant may be
- 31 regarded as a material breach of the contract.
- 32 SECTION 63. IC 22-9-1-11 IS AMENDED TO READ AS
- 33 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 11. (a) In addition to
- 34 its power to investigate the discriminatory practices referred to in this
- 35 chapter, the commission may **do the following:**
- 36 (1) Receive written complaints of ~~violation~~ **violations** of this
- 37 chapter or other discriminatory practices based upon:
- 38 (A) race;
- 39 (B) religion;
- 40 (C) color;
- 41 (D) sex;
- 42 (E) **age;**
- 43 (F) **disability;**
- 44 (G) national origin; or
- 45 (H) ancestry. ~~and to~~
- 46 (2) Receive written complaints of violations of IC 22-9-2.1

1 **concerning age discrimination in employment.**

2 **(3) Investigate such complaints as received under subdivisions**
 3 **(1) and (2) that it deems meritorious. or to**

4 **(4) Conduct such an investigation of a violation referred to in**
 5 **subdivision (1) or (2) in the absence of complaints a complaint**
 6 **whenever it the commission deems it the investigation to be in**
 7 **the public interest. ‡**

8 **(b) The commission** may transmit to the general assembly its
 9 recommendations for legislation designed to aid in the removing of
 10 **such discrimination referred to in subsection (a)(1) and (a)(2).".**

11 Page 33, between lines 24 and 25, begin a new paragraph and insert:
 12 "SECTION 65. IC 22-9-2 IS REPEALED [EFFECTIVE JULY 1,
 13 2012]. (Age Discrimination).

14 SECTION 66. IC 22-9-2.1 IS ADDED TO THE INDIANA CODE
 15 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2012]:

17 **Chapter 2.1. Age Discrimination**

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

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

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

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

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

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

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

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

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

36 **Sec. 10. (a) This subsection applies to an individual who is at**
 37 **least forty (40) years of age. An employer shall not:**

38 **(1) discharge an individual;**

39 **(2) fail or refuse to hire an individual;**

40 **(3) otherwise discriminate against an individual with respect**
 41 **to the individual's compensation, terms, conditions, or**
 42 **privileges of employment;**

43 **(4) limit, segregate, or classify employees in any way that**
 44 **would deprive or tend to deprive an individual of employment**
 45 **opportunities; or**

46 **(5) otherwise adversely affect the individual's status as an**

- 1 employee;
2 because of the individual's age.
- 3 **(b) An employer shall not reduce the wage rate of an employee**
4 **to comply with this chapter.**
- 5 **Sec. 11. This section applies to an individual who is at least forty**
6 **(40) years of age. An employment agency shall not:**
- 7 **(1) fail or refuse to refer for employment or otherwise**
8 **discriminate against an individual because of the individual's**
9 **age; or**
- 10 **(2) classify or refer for employment an individual on the basis**
11 **of the individual's age.**
- 12 **Sec. 12. (a) This section applies to an individual who is at least**
13 **forty (40) years of age.**
- 14 **(b) A labor organization shall not:**
- 15 **(1) exclude or expel an individual from membership in the**
16 **labor organization; or**
- 17 **(2) otherwise discriminate against an individual;**
18 **because of the individual's age.**
- 19 **(c) A labor organization shall not limit, segregate, or classify the**
20 **membership of the labor organization or classify or fail or refuse**
21 **to refer for employment an individual in any way that would:**
- 22 **(1) deprive or tend to deprive an individual of employment**
23 **opportunities;**
- 24 **(2) limit an individual's employment opportunities; or**
25 **(3) otherwise adversely affect an individual's status as an**
26 **employee or applicant for employment;**
- 27 **because of the individual's age.**
- 28 **(d) A labor organization shall not cause or attempt to cause an**
29 **employer to discriminate against an individual because of the**
30 **individual's age.**
- 31 **Sec. 13. (a) It is unlawful for:**
- 32 **(1) an employer to discriminate against an employee or**
33 **applicant for employment;**
- 34 **(2) an employment agency to discriminate against an**
35 **individual; or**
- 36 **(3) a labor organization to discriminate against a member of**
37 **or an applicant for membership in the labor organization;**
- 38 **because the employee, applicant for employment, individual,**
39 **member, or applicant for membership has opposed a practice that**
40 **is prohibited by this chapter.**
- 41 **(b) It is unlawful for:**
- 42 **(1) an employer to discriminate against an employee or**
43 **applicant for employment;**
- 44 **(2) an employment agency to discriminate against an**
45 **individual; or**
- 46 **(3) a labor organization to discriminate against a member of**
47 **or an applicant for membership in the labor organization;**

1 because the employee, applicant for employment, individual,
2 member, or applicant for membership has filed a complaint with
3 the commission or testified, assisted, or participated in an
4 investigation or a proceeding or litigation under this chapter.

5 **Sec. 14. A covered entity shall not print or publish or cause to
6 be printed or published any notice or advertisement relating to:**

7 **(1) employment; or**

8 **(2) a classification or referral for employment;**

9 **indicating any preference, limitation, specification, or
10 discrimination based on age.**

11 **Sec. 15. Notwithstanding any of the prohibitions contained in
12 this chapter, a covered entity may do any of the following:**

13 **(1) Take any action otherwise prohibited under this chapter
14 if:**

15 **(A) age is a bona fide occupational qualification reasonably
16 necessary to the normal operation of the particular
17 covered entity; or**

18 **(B) the differentiation is based on reasonable factors other
19 than age.**

20 **(2) If not prohibited by federal antidiscrimination law,
21 establish, maintain, observe the terms of, or comply with an
22 employee pension benefit plan, a defined benefit plan, a bona
23 fide employee benefit plan, or other pension, benefit, or
24 retirement plan.**

25 **(3) Observe the terms of a bona fide seniority system that is
26 not intended to evade the purposes of this chapter, except that
27 a bona fide seniority system must not require or permit the
28 involuntary retirement of an individual who is at least forty
29 (40) years of age because of the age of the individual.**

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

32 **Sec. 16. (a) An individual may file a complaint under
33 IC 22-9-1-6 with the commission alleging a violation of this
34 chapter.**

35 **(b) A complaint filed under subsection (a) alleging a
36 discriminatory practice in violation of this chapter must be filed
37 not more than one (1) year after the alleged discriminatory
38 practice ceases.**

39 **(c) An individual who has been injured by an action in violation
40 of this chapter is eligible for remedies under IC 22-9-1-6(j)."**

41 Page 37, after line 32, begin a new paragraph and insert:

42 **"SECTION 75. [EFFECTIVE JULY 1, 2012] A proceeding
43 properly filed with and pending before the commissioner of labor
44 under IC 22-9-2 before its repeal by this act shall be adjudicated by
45 the commissioner of labor."**

46 Renumber all SECTIONS consecutively.

(Reference is to EHB 1207 as printed February 17, 2012.)

Senator BRODEN