

# HOUSE BILL No. 1082

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## DIGEST OF INTRODUCED BILL

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

**Synopsis:** Civil rights enforcement. Expands the definition of "employer", for purposes of civil rights enforcement, to include any person employing one or more persons within the state. (Current law defines "employer" to include any person employing six or more persons within the state.) Expands the remedies available to a complainant if the civil rights commission (commission) finds that a person engaged in an unlawful discriminatory practice. Requires the commission to issue a right to sue letter if requested by the complainant, in lieu of an investigation and hearing. Permits a civil rights action to be tried by a jury. Removes the requirement that both parties must consent before a civil rights claim is heard as a civil cause of action.

**Effective:** July 1, 2019.

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January 3, 2019, read first time and referred to Committee on Employment, Labor and Pensions.

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First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

## HOUSE BILL No. 1082

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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 22-9-1-3, AS AMENDED BY P.L.213-2016,  
2 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2019]: Sec. 3. As used in this chapter:  
4 (a) "Person" means one (1) or more individuals, partnerships,  
5 associations, organizations, limited liability companies, corporations,  
6 labor organizations, cooperatives, legal representatives, trustees,  
7 trustees in bankruptcy, receivers, and other organized groups of  
8 persons.  
9 (b) "Commission" means the civil rights commission created under  
10 section 4 of this chapter.  
11 (c) "Director" means the director of the civil rights commission.  
12 (d) "Deputy director" means the deputy director of the civil rights  
13 commission.  
14 (e) "Commission attorney" means the deputy attorney general, such  
15 assistants of the attorney general as may be assigned to the  
16 commission, or such other attorney as may be engaged by the  
17 commission.



- 1 (f) "Consent agreement" means a formal agreement entered into in  
 2 lieu of adjudication.
- 3 (g) "Affirmative action" means those acts that the commission  
 4 determines necessary to assure compliance with the Indiana civil rights  
 5 law.
- 6 (h) "Employer" means the state or any political or civil subdivision  
 7 thereof and any person employing ~~six (6)~~ **one (1)** or more persons  
 8 within the state, except that the term "employer" does not include:  
 9 (1) any nonprofit corporation or association organized exclusively  
 10 for fraternal or religious purposes;  
 11 (2) any school, educational, or charitable religious institution  
 12 owned or conducted by or affiliated with a church or religious  
 13 institution; or  
 14 (3) any exclusively social club, corporation, or association that is  
 15 not organized for profit.
- 16 (i) "Employee" means any person employed by another for wages or  
 17 salary. However, the term does not include any individual employed:  
 18 (1) by the individual's parents, spouse, or child; or  
 19 (2) in the domestic service of any person.
- 20 (j) "Labor organization" means any organization that exists for the  
 21 purpose in whole or in part of collective bargaining or of dealing with  
 22 employers concerning grievances, terms, or conditions of employment  
 23 or for other mutual aid or protection in relation to employment.
- 24 (k) "Employment agency" means any person undertaking with or  
 25 without compensation to procure, recruit, refer, or place employees.
- 26 (l) "Discriminatory practice" means:  
 27 (1) the exclusion of a person from equal opportunities because of  
 28 race, religion, color, sex, disability, national origin, ancestry, or  
 29 status as a veteran;  
 30 (2) a system that excludes persons from equal opportunities  
 31 because of race, religion, color, sex, disability, national origin,  
 32 ancestry, or status as a veteran;  
 33 (3) the promotion of racial segregation or separation in any  
 34 manner, including but not limited to the inducing of or the  
 35 attempting to induce for profit any person to sell or rent any  
 36 dwelling by representations regarding the entry or prospective  
 37 entry in the neighborhood of a person or persons of a particular  
 38 race, religion, color, sex, disability, national origin, or ancestry;  
 39 (4) a violation of IC 22-9-5 that occurs after July 25, 1992, and is  
 40 committed by a covered entity (as defined in IC 22-9-5-4);  
 41 (5) the performance of an abortion solely because of the race,  
 42 color, sex, disability, national origin, or ancestry of the fetus; or



1 (6) a violation of any of the following statutes protecting the right  
2 of conscience regarding abortion:

3 (A) IC 16-34-1-4.

4 (B) IC 16-34-1-5.

5 (C) IC 16-34-1-6.

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 the director or deputy director) or a class of people, in order  
18 to vindicate the public policy of the state (as defined in section 2  
19 of this 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



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 (s) "Veteran" means:

29 (1) a veteran of the armed forces of the United States;

30 (2) a member of the Indiana National Guard; or

31 (3) a member of a reserve component.

32 SECTION 2. IC 22-9-1-6, AS AMENDED BY P.L.136-2018,  
33 SECTION 126, IS AMENDED TO READ AS FOLLOWS  
34 [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) The commission shall  
35 establish and maintain a permanent office in the city of Indianapolis.

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

38 (c) The commission shall formulate policies to effectuate the  
39 purposes of this chapter and make recommendations to agencies and  
40 officers of the state or local subdivisions thereof to effectuate such  
41 policies. The several departments, commissions, divisions, authorities,  
42 boards, bureaus, agencies, and officers of the state or any political



1 subdivision or agency thereof shall furnish the commission, upon its  
2 request, all records, papers, and information in their possession relating  
3 to any matter before the commission.

4 (d) The commission shall receive and investigate complaints  
5 alleging discriminatory practices. The commission shall not hold  
6 hearings in the absence of a complaint. All investigations of complaints  
7 shall be conducted by staff members of the civil rights commission or  
8 their agents.

9 (e) The commission may create such advisory agencies and  
10 conciliation councils, local or statewide, as will aid in effectuating the  
11 purposes of this chapter. The commission may itself, or it may  
12 empower these agencies and councils to:

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

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

18 These agencies and councils may make recommendation to the  
19 commission for the development of policies and procedures in general.  
20 Advisory agencies and conciliation councils created by the commission  
21 shall be composed of representative citizens serving without pay, but  
22 with reimbursement for reasonable and necessary actual expenses.

23 (f) The commission may issue such publications and such results of  
24 investigations and research as in its judgment will tend to promote  
25 good will and minimize or eliminate discrimination because of race,  
26 religion, color, sex, handicap, national origin, or ancestry.

27 (g) The commission shall prevent any person from discharging,  
28 expelling, or otherwise discriminating against any other person because  
29 the person filed a complaint, testified in any hearing before this  
30 commission, or in any way assisted the commission in any matter under  
31 its investigation.

32 (h) The commission may hold hearings, subpoena witnesses, compel  
33 their attendance, administer oaths, take the testimony of any person  
34 under oath, and require the production for examination of any books  
35 and papers relating to any matter under investigation or in question  
36 before the commission. The commission may make rules as to the  
37 issuance of subpoenas by individual commissioners. Contumacy or  
38 refusal to obey a subpoena issued under this section shall constitute a  
39 contempt. All hearings shall be held within Indiana at a location  
40 determined by the commission. A citation of contempt may be issued  
41 upon application by the commission to the circuit or superior court in  
42 the county in which the hearing is held or in which the witness resides



1 or transacts business.

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

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

17 (1) to restore complainant's losses incurred as a result of  
18 discriminatory treatment, as the commission may deem necessary  
19 to assure justice, **including:**

20 **(A) lost wages, salary, or commissions;**

21 **(B) prospective economic losses;**

22 **(C) compensatory damages;**

23 **(D) attorney fees and costs of prosecution; and**

24 **(E) punitive damages;**

25 ~~however, except in discriminatory practices involving veterans, this~~  
26 ~~specific provision when applied to orders pertaining to employment~~  
27 ~~shall include only wages, salary, or commissions;~~

28 (2) to require the posting of notice setting forth the public policy  
29 of Indiana concerning civil rights and respondent's compliance  
30 with the policy in places of public accommodations;

31 (3) to require proof of compliance to be filed by respondent at  
32 periodic intervals; and

33 (4) to require a person who has been found to be in violation of  
34 this chapter and who is licensed by a state agency authorized to  
35 grant a license to show cause to the licensing agency why the  
36 person's license should not be revoked or suspended.

37 When an employer has been found to have committed a discriminatory  
38 practice in employment by failing to employ an applicant on the basis  
39 that the applicant is a veteran, the order to restore the veteran's losses  
40 may include placing the veteran in the employment position with the  
41 employer for which the veteran applied.

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



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

16 (m) 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 under this chapter.

19 (n) 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 (o) 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 (j). 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 (p) In lieu of investigating a complaint and holding a hearing under  
 35 this section, the commission ~~may~~, **shall, upon request of the**  
 36 **complainant**, ~~issue an order based on findings and determinations by~~  
 37 ~~the federal Department of Housing and Urban Development or the~~  
 38 ~~federal Equal Employment Opportunity Commission concerning a~~  
 39 ~~complaint that has been filed with one (1) of these federal agencies and~~  
 40 ~~with the commission. The commission shall adopt by rule standards~~  
 41 ~~under which the commission may issue such an order: a right to sue~~  
 42 **notice. This notice shall indicate that the complainant may bring a**





1 **civil action against the respondent within one (1) year from the**  
 2 **date of the notice. If the complaint does not request a right to sue**  
 3 **notice, the commission shall issue the notice upon completion of its**  
 4 **investigation, and not later than one (1) year after the filing of the**  
 5 **complaint.**

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

10 SECTION 3. IC 22-9-1-16 IS AMENDED TO READ AS  
 11 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 16. (a) A respondent or  
 12 a complainant may elect to ~~have the claims that are the basis for a~~  
 13 ~~finding of probable cause decided in~~ **enforce the rights granted under**  
 14 **IC 22-9-1-2 by filing** a civil action as provided by section 17 of this  
 15 chapter. ~~However, both the respondent and the complainant must agree~~  
 16 ~~in writing to have the claims decided in a court of law. The agreement~~  
 17 ~~must be on a form provided by the commission.~~

18 (b) The election may not be made if the commission has begun a  
 19 hearing on the record under this chapter with regard to a finding of  
 20 probable cause.

21 SECTION 4. IC 22-9-1-17, AS AMENDED BY P.L.100-2012,  
 22 SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 23 JULY 1, 2019]: Sec. 17. (a) If a timely election is made under section  
 24 16 of this chapter, the complainant may file a civil action in a circuit or  
 25 superior court having jurisdiction in the county in which a  
 26 discriminatory practice allegedly occurred.

27 (b) If the court finds that a discriminatory practice has occurred the  
 28 court may grant the relief allowed under IC 22-9-1-6(j), **including**  
 29 **attorney's fees and costs of prosecution.**

30 (c) A civil action filed under this section ~~must~~ **may** be tried by ~~the~~  
 31 ~~court~~ **without benefit** of a jury.

