

HOUSE BILL No. 1344

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-9.

Synopsis: Pregnancy and childbirth discrimination. Prohibits an employer from discriminating against an employee who has a condition related to pregnancy or childbirth. Requires an employer to provide reasonable employment accommodations for an employee who has a condition related to pregnancy or childbirth. Requires the civil rights commission to investigate complaints and attempt to resolve complaints. Provides a right of action. Makes technical corrections.

Effective: July 1, 2018.

Shackleford

January 16, 2018, read first time and referred to Committee on Employment, Labor and Pensions.



Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1344

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 22-9-1-6, AS AMENDED BY P.L.136-2014,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 6. (a) The commission shall establish and
4 maintain a permanent office in the city of Indianapolis.
5 (b) Except as it concerns judicial review, the commission may adopt
6 rules under IC 4-22-2 to implement this chapter.
7 (c) The commission shall formulate policies to effectuate the
8 purposes of this chapter and make recommendations to agencies and
9 officers of the state or local subdivisions ~~thereof~~ to effectuate such
10 policies. The several departments, commissions, divisions, authorities,
11 boards, bureaus, agencies, and officers of the state or any political
12 subdivision or agency ~~thereof~~ shall furnish the commission, upon its
13 request, all records, papers, and information in their possession relating
14 to any matter before the commission.
15 (d) The commission shall receive and investigate complaints
16 alleging discriminatory practices. The commission shall not hold
17 hearings in the absence of a complaint. All investigations of complaints



1 shall be conducted by staff members of the civil rights commission or
2 their agents.

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

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

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

12 These agencies and councils may make recommendation to the
13 commission for the development of policies and procedures in general.
14 Advisory agencies and conciliation councils created by the commission
15 shall be composed of representative citizens serving without pay, but
16 with reimbursement for reasonable and necessary actual expenses.

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

21 (g) The commission shall prevent any person from discharging,
22 expelling, or otherwise discriminating against any other person because
23 the person filed a complaint, testified in any hearing before this
24 commission, or in any way assisted the commission in any matter under
25 its investigation.

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

38 (i) The commission may appoint administrative law judges other
39 than commissioners, when an appointment is deemed necessary by a
40 majority of the commission. The administrative law judges shall be
41 members in good standing before the bar of Indiana and shall be
42 appointed by the chairman of the commission. An administrative law



1 judge appointed under this subsection shall have the same powers and
 2 duties as a commissioner sitting as an administrative law judge.
 3 However, the administrative law judge may not issue subpoenas.

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

11 (1) to restore complainant's losses incurred as a result of
 12 discriminatory treatment, as the commission may deem necessary
 13 to assure justice; however, except in discriminatory practices
 14 involving veterans **and discriminatory practices involving job**
 15 **applicants or employees who are affected by pregnancy,**
 16 **childbirth, or a related medical condition (as defined by**
 17 **IC 22-9-12-6) under IC 22-9-12,** this specific provision when
 18 applied to orders pertaining to employment shall include only
 19 wages, salary, or commissions;

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

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

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

29 When an employer has been found to have committed a discriminatory
 30 practice in employment by failing to employ an applicant on the basis
 31 that the applicant is a veteran, the order to restore the veteran's losses
 32 may include placing the veteran in the employment position with the
 33 employer for which the veteran applied.

34 (k) Judicial review of a cease and desist order or other affirmative
 35 action as referred to in this chapter may be obtained under IC 22-9-8.
 36 If no proceeding to obtain judicial review is instituted within thirty (30)
 37 days from receipt of notice by a person that an order has been made by
 38 the commission, the commission, if it determines that the person upon
 39 whom the cease and desist order has been served is not complying or
 40 is making no effort to comply, may obtain a decree of a court for the
 41 enforcement of the order in circuit or superior court upon showing that
 42 the person is subject to the commission's jurisdiction and resides or



1 transacts business within the county in which the petition for
2 enforcement is brought.

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

8 (m) The commission may furnish technical assistance requested by
9 persons subject to this chapter to further compliance with this chapter
10 or with an order issued. ~~thereunder.~~

11 (n) The commission shall promote the creation of local civil rights
12 agencies to cooperate with individuals, neighborhood associations, and
13 state, local, and other agencies, both public and private, including
14 agencies of the federal government and of other states.

15 (o) The commission may reduce the terms of conciliation agreed to
16 by the parties to writing (to be called a consent agreement) that the
17 parties and a majority of the commissioners shall sign. When signed,
18 the consent agreement shall have the same effect as a cease and desist
19 order issued under subsection (j). If the commission determines that a
20 party to the consent agreement is not complying with it, the
21 commission may obtain enforcement of the consent agreement in a
22 circuit or superior court upon showing that the party is not complying
23 with the consent agreement and the party is subject to the commission's
24 jurisdiction and resides or transacts business within the county in
25 which the petition for enforcement is brought.

26 (p) In lieu of investigating a complaint and holding a hearing under
27 this section, the commission may issue an order based on findings and
28 determinations by the federal Department of Housing and Urban
29 Development or the federal Equal Employment Opportunity
30 Commission concerning a complaint that has been filed with one (1) of
31 these federal agencies and with the commission. The commission shall
32 adopt by rule standards under which the commission may issue such an
33 order.

34 (q) Upon notice that a complaint is the subject of an action in a
35 federal court, the commission shall immediately cease investigation of
36 the complaint and may not conduct hearings or issue findings of fact or
37 orders concerning that complaint.

38 SECTION 2. IC 22-9-1-16 IS AMENDED TO READ AS
39 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 16. **(a) This section**
40 **does not apply to a claim under IC 22-9-12.**

41 ~~(a)~~ **(b)** A respondent or a complainant may elect to have the claims
42 that are the basis for a finding of probable cause decided in a civil



1 action as provided by section 17 of this chapter. However, both the
 2 respondent and the complainant must agree in writing to have the
 3 claims decided in a court of law. The agreement must be on a form
 4 provided by the commission.

5 ~~(b)~~ (c) The election may not be made if the commission has begun
 6 a hearing on the record under this chapter with regard to a finding of
 7 probable cause.

8 SECTION 3. IC 22-9-12 IS ADDED TO THE INDIANA CODE AS
 9 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 10 1, 2018]:

11 **Chapter 12. Pregnancy and Childbirth Discrimination**

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

14 **Sec. 2. As used in this chapter, "complaint" has the meaning set**
 15 **forth in IC 22-9-1-3(o).**

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

18 **Sec. 4. As used in this chapter, "healthcare professional"**
 19 **includes:**

- 20 (1) a physician;
- 21 (2) a psychiatrist;
- 22 (3) a psychologist;
- 23 (4) a nurse;
- 24 (5) a physical therapist;
- 25 (6) an occupational therapist;
- 26 (7) a speech therapist;
- 27 (8) a vocational rehabilitation specialist;
- 28 (9) a midwife;
- 29 (10) a lactation consultant; and
- 30 (11) a licensed medical health professional.

31 **Sec. 5. As used in this chapter, "reasonable accommodation"**
 32 **includes the following:**

- 33 (1) More frequent or longer breaks.
- 34 (2) Modification of uniforms.
- 35 (3) Time off work to recover from childbirth.
- 36 (4) Acquisition or modification of equipment.
- 37 (5) Seating.
- 38 (6) Temporary transfer to a less strenuous or less hazardous
- 39 position.
- 40 (7) Job restructuring.
- 41 (8) Light duty.
- 42 (9) Work break time for expressing breast milk.



- 1 **(10) Private nonbathroom space for expressing breast milk.**
 2 **(11) Assistance with manual labor.**
 3 **(12) Modified work schedules.**
 4 **Sec. 6. As used in this chapter, "related medical condition"**
 5 **means a medical condition related to pregnancy or childbirth.**
 6 **Sec. 7. As used in this chapter, "undue hardship" has the**
 7 **meaning set forth in IC 22-9-5-18(a).**
 8 **Sec. 8. It is the policy of the state to prohibit discrimination**
 9 **against an employee or applicant for employment due to the**
 10 **employee or applicant being pregnant or having conditions related**
 11 **to pregnancy, conditions related to childbirth, or related medical**
 12 **conditions.**
 13 **Sec. 9. (a) It is an unlawful employment practice for an**
 14 **employer to discriminate against an employee or an applicant for**
 15 **employment on the basis of the employee or applicant having a**
 16 **condition related to pregnancy, condition related to child birth, or**
 17 **related medical condition.**
 18 **(b) It is unlawful discrimination for an employer:**
 19 **(1) to not make a reasonable accommodation for an employee**
 20 **or applicant for employment related to the employee or**
 21 **applicant having a:**
 22 **(A) condition related to pregnancy;**
 23 **(B) condition related to childbirth; or**
 24 **(C) related medical condition;**
 25 **if the employer knew about the condition, unless the employer**
 26 **can demonstrate that the accommodation would impose an**
 27 **undue hardship on the employer;**
 28 **(2) to take adverse action against an employee who has**
 29 **requested or used an accommodation for her:**
 30 **(A) condition related to pregnancy;**
 31 **(B) condition related to childbirth; or**
 32 **(C) related medical condition;**
 33 **after her need for a reasonable accommodation ceases,**
 34 **including by failing to reinstate the employee to her original**
 35 **job or an equivalent position with equivalent pay,**
 36 **accumulated seniority, retirement, fringe benefits, and**
 37 **applicable service credits;**
 38 **(3) to deny an employment opportunity to a qualified**
 39 **employee or applicant for employment if the denial is the**
 40 **result of the employer making a reasonable accommodation**
 41 **for the employee's or applicant's:**
 42 **(A) condition related to pregnancy;**



- 1 **(B) condition related to childbirth; or**
 2 **(C) related medical condition;**
 3 **that the employer knows of;**
 4 **(4) to require an employee to accept an accommodation the**
 5 **employee does not want to accept with respect to the**
 6 **employee's:**
 7 **(A) condition related to pregnancy;**
 8 **(B) condition related to childbirth; or**
 9 **(C) related medical condition;**
 10 **that the employer knows of, if that accommodation is**
 11 **unnecessary to enable the employee to perform the employee's**
 12 **job;**
 13 **(5) to require an employee to take leave if another reasonable**
 14 **accommodation can be provided for the employee with**
 15 **respect to the employee's:**
 16 **(A) condition related to pregnancy;**
 17 **(B) condition related to childbirth; or**
 18 **(C) related medical condition;**
 19 **that the employer knows of; or**
 20 **(6) to fail to engage with good faith in a timely and interactive**
 21 **process with an employee who the employer knows has a**
 22 **condition related to pregnancy, a condition related to**
 23 **childbirth, or a related medical condition, to determine**
 24 **effective and reasonable accommodations.**
- 25 **Sec. 10. (a) An employer may request an employee to obtain**
 26 **medical documentation from an appropriate healthcare**
 27 **professional explaining the need for a reasonable accommodation**
 28 **for the employee with respect to the employee's condition related**
 29 **to pregnancy, condition related to childbirth, or related medical**
 30 **condition if:**
 31 **(1) the employee is requesting time away from work,**
 32 **including for medical appointments, outside of maternity**
 33 **leave and the employer requests documentation from other**
 34 **employees for the other employees' time off for medical care;**
 35 **or**
 36 **(2) the employee is requesting to work from home, on an**
 37 **intermittent basis or long term basis.**
- 38 **(b) If an employer believes that documentation provided under**
 39 **subsection (a) is insufficient, the employer may request:**
 40 **(1) that the employee obtain additional documentation; or**
 41 **(2) permission from the employee to speak to the healthcare**
 42 **professional;**



1 before the employer approves or denies the accommodation
2 request.

3 (c) An employee may submit additional written documentation
4 if the employee does not want the employer to speak with the
5 healthcare professional under subsection (b).

6 **Sec. 11. An employer is not required to:**

7 (1) create an additional position for an employee who has a:

8 (A) condition related to pregnancy;

9 (B) condition related to childbirth; or

10 (C) related medical condition;

11 that the employer knows of, unless the employer has created
12 a position to accommodate another employee who is in
13 another class;

14 (2) discharge an employee in order to accommodate an
15 employee who the employer knows has a condition related to
16 pregnancy, a condition related to childbirth, or a related
17 medical condition, unless the employer has previously
18 discharged an employee to accommodate another employee
19 who is in another class; or

20 (3) transfer an employee in order to accommodate an
21 employee who the employer knows has a condition related to
22 pregnancy, a condition related to childbirth, or a related
23 medical condition, unless the employer has previously
24 transferred an employee to accommodate another employee
25 who is in another class.

26 **Sec. 12. (a) An employer shall provide written notice to:**

27 (1) a new employee, at the commencement of employment;

28 (2) an existing employee, by November 1, 2018; and

29 (3) an employee who notifies her employer that she is
30 pregnant, not later than ten (10) days after the employee
31 notifies the employer of her pregnancy;

32 that the employee has the right to be free from discrimination
33 based on the employee being pregnant or having a condition
34 related to pregnancy, a condition related to childbirth, or a related
35 medical condition.

36 (b) Notice under this section must be conspicuously posted at the
37 employer's place of business in an area accessible to employees.

38 (c) The commission shall develop educational materials and
39 make public education efforts to inform employers, employees,
40 employment agencies, and job applicants of:

41 (1) employee and applicant rights; and

42 (2) duties of employers;



1 under this chapter.

2 Sec. 13. (a) The commission shall receive, investigate, and
3 attempt to resolve complaints of violations of this chapter from
4 complainants in the manner provided by IC 22-9-1-6.

5 (b) At the conclusion of an investigation, the commission shall
6 determine if a violation of this chapter exists.

7 (c) If the commission determines that a violation of this chapter
8 exists and the complaint has not been resolved, the complainant
9 may file an action for injunctive relief in a circuit or superior court
10 in the county where the allegations occurred.

11 Sec. 14. This chapter does not preempt, limit, diminish, or affect
12 other statutes concerning sex discrimination, pregnancy
13 discrimination, or childbirth discrimination.

