

SENATE BILL No. 44

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-9.

Synopsis: Fair pay in employment. Provides that: (1) it is an unlawful employment practice to pay wages that discriminate based on sex, race, or national origin for the same or equivalent jobs; and (2) the civil rights commission has jurisdiction for investigation and resolution of complaints of these employment actions.

Effective: July 1, 2015.

Breaux

January 6, 2015, read first time and referred to Committee on Pensions & Labor.



First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 44



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, AS AMENDED BY P.L.136-2014,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 2. (a) It is the public policy of the state to provide
4 all of its citizens equal opportunity for education, employment, access
5 to public conveniences and accommodations, and acquisition through
6 purchase or rental of real property, including but not limited to housing,
7 and to eliminate segregation or separation based solely on race,
8 religion, color, sex, disability, national origin, or ancestry, since such
9 segregation is an impediment to equal opportunity. Equal education
10 and employment opportunities and equal access to and use of public
11 accommodations and equal opportunity for acquisition of real property
12 are hereby declared to be civil rights.

13 (b) The practice of denying these rights to properly qualified
14 persons by reason of the race, religion, color, sex, disability, national
15 origin, or ancestry of such person is contrary to the principles of
16 freedom and equality of opportunity and is a burden to the objectives



1 of the public policy of this state and shall be considered as
 2 discriminatory practices. The promotion of equal opportunity without
 3 regard to race, religion, color, sex, disability, national origin, or
 4 ancestry through reasonable methods is the 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) It is against the public policy of the state and a discriminatory
 29 practice for an employer to discriminate against a prospective
 30 employee on the basis of status as a veteran by:

- 31 (1) refusing to employ an applicant for employment on the basis
 32 that the applicant is a veteran of the armed forces of the United
 33 States; or
 34 (2) refusing to employ an applicant for employment on the basis
 35 that the applicant is a member of the Indiana National Guard or
 36 member of a reserve component.

37 **(g) After June 30, 2016, it is against the public policy of the state**
 38 **and an unlawful employment practice for an employer to**
 39 **discriminate against an employee on the basis of sex, race, or**
 40 **national origin by:**

- 41 **(1) paying wages to an employee at a rate less than the rate**
 42 **paid to an employee of:**



1 (A) the opposite sex; or
2 (B) a different race or national origin;
3 for work in an equivalent job; or
4 (2) paying wages to an employee in an employment position
5 that is dominated by employees of a particular sex, race, or
6 national origin at a rate less than the rate at which the
7 employer pays to employees in another employment position
8 that is dominated by employees of:
9 (A) the opposite sex; or
10 (B) a different race or national origin;
11 for work on equivalent jobs.
12 ~~(g)~~ (h) This chapter shall be construed broadly to effectuate its
13 purpose.
14 SECTION 2. IC 22-9-1-1 IS ADDED TO THE INDIANA CODE AS
15 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
16 1, 2015]:
17 **Chapter 11. Fair Pay in Employment**
18 **Sec. 1. This chapter applies after June 30, 2016.**
19 **Sec. 2. As used in this chapter, "commission" means the civil**
20 **rights commission created by IC 22-9-1-4.**
21 **Sec. 3. As used in this chapter, "complaint" has the meaning set**
22 **forth in IC 22-9-1-3(o).**
23 **Sec. 4. As used in this chapter, "employ" means to suffer or**
24 **permit to work.**
25 **Sec. 5. As used in this chapter, "employee" has the meaning set**
26 **forth in IC 22-9-1-3(i).**
27 **Sec. 6. As used in this chapter, "employer" has the meaning set**
28 **forth in IC 22-9-1-3(h).**
29 **Sec. 7. As used in this chapter, "equivalent jobs" means jobs or**
30 **occupations that are equal within the meaning of the federal Equal**
31 **Pay Act of 1963, (29 U.S.C. 206(d)), or jobs or occupations that are**
32 **dissimilar but whose requirements are equivalent, when viewed as**
33 **a composite of skills, effort, responsibility, and working conditions.**
34 **Sec. 8. As used in this chapter, "labor organization" has the**
35 **meaning set forth in IC 22-9-1-3(j).**
36 **Sec. 9. As used in this chapter, "market rates" means the rates**
37 **that employers within a prescribed geographic area actually pay**
38 **or are reported to pay for specific jobs, as determined by formal or**
39 **informal surveys, wage studies, or other means.**
40 **Sec. 10. As used in this chapter, "person" means an individual,**
41 **a partnership, an association, a corporation, a limited liability**
42 **company, a legal representative, a trustee, a trustee in bankruptcy,**



1 a receiver, the state, and a municipal corporation (as defined in
2 IC 36-1-2-10).

3 **Sec. 11. As used in this chapter, "wages" or "wage rates"**
4 **includes all compensation of any kind that an employer provides to**
5 **an employee in payment for work done or services rendered,**
6 **including:**

- 7 (1) base pay;
8 (2) bonuses;
9 (3) commissions;
10 (4) awards;
11 (5) tips; or
12 (6) any form of nonmonetary compensation if provided
13 instead of or in addition to monetary compensation and that
14 has economic value to an employee.

15 **Sec. 12. It is an unlawful employment practice for an employer**
16 **to discriminate between employees on the basis of sex, race, or**
17 **national origin by:**

- 18 (1) paying wages to an employee at a rate less than the rate
19 paid to an employee of:
20 (A) the opposite sex; or
21 (B) a different race or national origin;
22 for work in an equivalent job; or
23 (2) paying wages to an employee in an employment position
24 that is dominated by employees of a particular sex, race, or
25 national origin at a rate less than the rate at which the
26 employer pays to employees in another employment position
27 that is dominated by employees of:
28 (A) the opposite sex; or
29 (B) a different race or national origin;
30 for work on equivalent jobs.

31 **Sec. 13. Notwithstanding the provisions of section 12 of this**
32 **chapter, it is not an unlawful employment practice for an employer**
33 **to pay different wage rates to employees when the payments are**
34 **made under:**

- 35 (1) a bona fide seniority or merit system;
36 (2) a bona fide system:
37 (A) that measures earnings by quantity or quality of
38 production; or
39 (B) based on geographic differentials; or
40 (3) a bona fide factor other than sex, race, or national origin,
41 provided that the factor:
42 (A) does not result in discrimination based on sex, race, or



1 national origin; and

2 (B) is not the result of varying market rates attached to
3 historically undervalued traditionally female or minority
4 job classifications.

5 **Sec. 14. It is an unlawful employment practice for an employer:**

6 (1) to reduce the wages of any employee in order to comply
7 with the provisions of this chapter when the employer is
8 paying wages in violation of this chapter;

9 (2) to take adverse action or otherwise discriminate against an
10 individual because the individual has:

11 (A) opposed an act or practice deemed unlawful by this
12 chapter;

13 (B) sought to enforce rights protected under this chapter;
14 or

15 (C) testified, assisted, or participated in any manner in an
16 investigation, hearing, or other proceeding to enforce this
17 chapter; or

18 (3) to discharge, or in any other manner discriminate against,
19 coerce, intimidate, threaten, or interfere with an employee or
20 another person because the employee inquired about,
21 disclosed, compared, or otherwise discussed the employee's
22 wages or the wages of another employee, or because the
23 employee exercised, enjoyed, aided, or encouraged another
24 person to exercise or enjoy a right granted or protected by
25 this chapter.

26 **Sec. 15. A labor organization or agents of the labor organization**
27 **that represents employees of an employer with employees subject**
28 **to a provision of this chapter may not cause or attempt to cause the**
29 **employer to discriminate against an employee in violation of**
30 **section 12 or 14 of this chapter.**

31 **Sec. 16. An agreement by an employee to work for less than the**
32 **compensation to which the employee is entitled to work under this**
33 **chapter is not a bar to an action to which the employee would**
34 **otherwise be entitled in order to enforce the provisions of this**
35 **chapter.**

36 **Sec. 17. Nothing in this chapter shall be construed to impede,**
37 **infringe, or diminish the rights and benefits which accrue to an**
38 **employee through a bona fide collective bargaining agreement or**
39 **otherwise diminish the integrity of a existing collective bargaining**
40 **relationship.**

41 **Sec. 18. The commission shall adopt rules under IC 4-22-2**
42 **specifying the criteria for determining whether a job is dominated**



1 by employees of a particular sex, race, or national origin. The
2 criteria used shall include factors such as:

3 (1) whether the job has ever been formally classified or
4 traditionally considered to be a male, female, Caucasian, or
5 minority job;

6 (2) whether there is a history of discrimination against women
7 or people of color with respect to wages, assignment to, or
8 access to jobs or other terms and conditions of employment;
9 and

10 (3) the demographic composition of the workforce in
11 equivalent jobs, which includes numbers or percentages of
12 males, females, Caucasians, and people of color.

13 The rules may not include a list of jobs.

14 Sec. 19. In addition to the rules adopted under section 18 of this
15 chapter, the commission shall adopt rules under IC 4-22-2
16 specifying the methodology for determining equivalent skill, effort,
17 responsibility, and working conditions. A methodology prescribed
18 by the commission shall ensure that comparison systems do not
19 ignore or undervalue the worth of jobs where women and
20 minorities are disproportionately represented. The equivalence of
21 jobs dominated by employees of a particular sex, race, or national
22 origin relative to jobs dominated by employees of the opposite sex
23 or of a different race or national origin will be established through
24 the application of a single job comparison system that does not
25 systematically ignore or undervalue the job content of traditionally
26 female and minority jobs.

27 Sec. 20. In addition to the rules required to be adopted under
28 sections 18 and 19 of this chapter, the commission may adopt and
29 enforce rules under IC 4-22-2 that are necessary to carry out this
30 chapter.

31 Sec. 21. (a) The commission shall receive, investigate, and
32 attempt to resolve complaints of violations of this chapter in the
33 manner provided by IC 22-9-1-6.

34 (b) IC 22-9-1-16, IC 22-9-1-17, and IC 22-9-1-18 apply to
35 complaints filed in accordance with this chapter.

