

HOUSE BILL No. 1073

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-9.

Synopsis: Pregnancy and childbirth discrimination. Prohibits an employer from discriminating against a pregnant job applicant or employee. Requires an employer to provide reasonable employment accommodations for a pregnant employee. Requires the civil rights commission to investigate complaints and attempt to resolve complaints.

Effective: July 1, 2019.

Engleman, Negele, Shackelford

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



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. 1073

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.136-2018,
2 SECTION 126, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) The commission shall
4 establish and 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, this specific provision when applied to orders
 15 pertaining to employment shall include only wages, salary, or
 16 commissions;

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

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

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

26 When an employer has been found to have committed a discriminatory
 27 practice in employment by failing to employ an applicant on the basis
 28 that the applicant is a veteran, the order to restore the veteran's losses
 29 may include placing the veteran in the employment position with the
 30 employer for which the veteran applied. **When an employer is found
 31 to have committed a discriminatory practice in employment by
 32 failing to accommodate an applicant or employee who is affected
 33 by pregnancy (as defined in IC 22-9-12-5), the commission may, in
 34 addition to the other relief provided in this subsection, order the
 35 employer to provide the reasonable accommodation or place the
 36 applicant in the employment position with the employer for which
 37 the applicant applied.**

38 (k) Judicial review of a cease and desist order or other affirmative
 39 action as referred to in this chapter may be obtained under IC 22-9-8.
 40 If no proceeding to obtain judicial review is instituted within thirty (30)
 41 days from receipt of notice by a person that an order has been made by
 42 the commission, the commission, if it determines that the person upon



1 whom the cease and desist order has been served is not complying or
 2 is making no effort to comply, may obtain a decree of a court for the
 3 enforcement of the order in circuit or superior court upon showing that
 4 the person is subject to the commission's jurisdiction and resides or
 5 transacts business within the county in which the petition for
 6 enforcement is brought.

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

12 (m) The commission may furnish technical assistance requested by
 13 persons subject to this chapter to further compliance with this chapter
 14 or with an order issued under this chapter.

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

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

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

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

42 SECTION 2. IC 22-9-12 IS ADDED TO THE INDIANA CODE AS



1 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2019]:

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

4 **Sec. 1. "Commission" means the civil rights commission created**
5 **by IC 22-9-1-4.**

6 **Sec. 2. "Complaint" has the meaning set forth in IC 22-9-1-3(o).**

7 **Sec. 3. "Employer" has the meaning set forth in IC 22-9-1-3(h).**

8 **Sec. 4. "Health care professional" includes:**

- 9 (1) a physician;
10 (2) a psychiatrist;
11 (3) a psychologist;
12 (4) a nurse;
13 (5) a physical therapist;
14 (6) an occupational therapist;
15 (7) a speech therapist;
16 (8) a vocational rehabilitation specialist;
17 (9) a midwife;
18 (10) a lactation consultant; and
19 (11) a licensed medical health professional.

20 **Sec. 5. "Pregnancy" or "pregnant" includes pregnancy,**
21 **childbirth, or related medical conditions.**

22 **Sec. 6. (a) "Reasonable accommodation" means a modification**
23 **or adjustment to address medical needs related to pregnancy.**

24 **(b) Reasonable accommodations may include, but are not**
25 **limited to, the following:**

- 26 (1) More frequent or longer breaks.
27 (2) Modification of uniforms.
28 (3) Time off work to recover from childbirth.
29 (4) Acquisition or modification of equipment.
30 (5) Seating.
31 (6) Temporary transfer to a less strenuous or less hazardous
32 position.
33 (7) Job restructuring.
34 (8) Light duty.
35 (9) Work break time for expressing breast milk.
36 (10) Private nonbathroom space for expressing breast milk.
37 (11) Assistance with physical or manual labor.
38 (12) Modified work schedules.

39 **Sec. 7. "Undue hardship" has the meaning set forth in**
40 **IC 22-9-5-18(a).**

41 **Sec. 8. It is the policy of the state to prohibit discrimination**
42 **against an employee or applicant for employment due to the**



1 pregnancy of the employee or applicant.

2 **Sec. 9. (a) It is an unlawful employment practice for an**
3 **employer to discriminate against an employee or an applicant for**
4 **employment on the basis of the pregnancy of the employee or**
5 **applicant.**

6 **(b) It is unlawful discrimination for an employer to:**

7 **(1) fail to make a reasonable accommodation for the known**
8 **limitations of an employee or applicant for employment**
9 **related to the pregnancy of the employee or applicant, unless**
10 **the employer can demonstrate that the accommodation would**
11 **impose an undue hardship on the employer;**

12 **(2) take adverse action against an employee because the**
13 **employee has requested or used an accommodation for the**
14 **employee's pregnancy, including but not limited to failing to**
15 **reinstate the employee to the employee's original job or an**
16 **equivalent position with equivalent pay, accumulated**
17 **seniority, retirement fringe benefits, and applicable service**
18 **credits when the employee's need for a reasonable**
19 **accommodation ends;**

20 **(3) deny an employment opportunity to a qualified employee**
21 **or applicant for employment if the denial is the result of the**
22 **employee having requested a reasonable accommodation or**
23 **an employer having made a reasonable accommodation for**
24 **the pregnancy of the employee or applicant;**

25 **(4) require an employee to accept an accommodation the**
26 **employee does not want to accept with respect to the**
27 **employee's pregnancy, if that accommodation is unnecessary**
28 **to enable the employee to perform the employee's job;**

29 **(5) require an employee to take leave if another reasonable**
30 **accommodation can be provided for the employee's**
31 **pregnancy; or**

32 **(6) fail to engage with good faith in a timely and interactive**
33 **process with an employee who the employer knows has**
34 **limitations related to pregnancy to determine effective and**
35 **reasonable accommodations.**

36 **Sec. 10. An employer may request an employee to obtain**
37 **medical documentation from a health care professional explaining**
38 **the need for a reasonable accommodation for the employee with**
39 **respect to the employee's pregnancy.**

40 **Sec. 11. (a) An employer shall provide written notice to:**

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

42 **(2) an existing employee, before November 1, 2019; and**



1 (3) an employee who notifies her employer that she is
2 pregnant, not later than ten (10) days after the employee
3 notifies the employer of the employee's pregnancy;
4 that the employee has the right to be free from discrimination
5 based on the employee's pregnancy, and that the employer must
6 make reasonable accommodations for the employee's pregnancy
7 unless doing so would impose an undue hardship on the employer.

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

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

13 (1) employee and applicant rights; and

14 (2) duties of employers;

15 under this chapter.

16 Sec. 12. (a) The commission shall receive, investigate, and
17 attempt to resolve complaints of violations of this chapter from
18 complainants in the manner provided by IC 22-9-1-6.

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

21 (c) If, at any time following the filing of a complaint, the
22 commission or an administrative law judge concludes that prompt
23 action is necessary to carry out the purposes of this chapter, the
24 commission or administrative law judge may order appropriate
25 temporary or preliminary relief, including an order that an
26 employer immediately provide the requested reasonable
27 accommodation, pending final disposition of the complaint.

28 Sec. 13. This chapter does not preempt, limit, diminish, or affect
29 other state or federal laws concerning sex discrimination,
30 pregnancy discrimination, or childbirth discrimination.

