

# HOUSE BILL No. 1242

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 10-17-1-6; IC 22-9.

**Synopsis:** Employment discrimination against veterans. Provides that it is an unlawful employment practice (practice) for an employer to discriminate against a prospective employee on the basis of status as a veteran by: (1) refusing to employ an applicant for employment on the basis that the applicant is a veteran of the armed forces of the United States; or (2) refusing to employ an applicant for employment on the basis that the applicant is a member of the Indiana national guard or member of a reserve component. Requires the Indiana civil rights commission to enforce alleged violations of the practice. Requires the Indiana department of veterans' affairs to disseminate information necessary to inform veterans of the practice. Makes technical corrections.

**Effective:** July 1, 2014.

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## Carbaugh, Macer, Morris, Ober

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January 14, 2014, read first time and referred to Committee on Employment, Labor and Pensions.

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Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

# HOUSE BILL No. 1242



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 10-17-1-6, AS AMENDED BY P.L.100-2012,  
2 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2014]: Sec. 6. (a) The director of veterans' affairs:  
4 (1) is the executive and administrative head of the Indiana  
5 department of veterans' affairs; and  
6 (2) shall direct and supervise the administrative and technical  
7 activities of the department;  
8 subject to the general supervision of the commission.  
9 (b) The duties of the director include the following:  
10 (1) To attend all meetings of the commission and to act as  
11 secretary and keep minutes of the commission's proceedings.  
12 (2) To appoint the employees of the department necessary to carry  
13 out this chapter and to fix the compensation of the employees.  
14 Employees of the department must qualify for the job concerned.  
15 (3) To carry out the program for veterans' affairs as directed by  
16 the governor and the commission.



1 (4) To carry on field direction, inspection, and coordination of  
2 county and city service officers as provided in this chapter.

3 (5) To prepare and conduct service officer training schools with  
4 the voluntary aid and assistance of the service staffs of the major  
5 veterans' organizations.

6 (6) To maintain an information bulletin service to county and city  
7 service officers for the necessary dissemination of material  
8 pertaining to all phases of veterans' rehabilitation and service  
9 work, **including information necessary to inform veterans of  
10 the provisions of IC 22-9-10.**

11 (7) To perform the duties described in IC 10-17-11 for the Indiana  
12 state veterans' cemetery.

13 (8) To perform the duties described in IC 10-17-12 for the  
14 military family relief fund.

15 (9) To establish a program and set guidelines under which a  
16 medal of honor awardee may receive compensation when  
17 attending and participating in official ceremonies.

18 SECTION 2. IC 22-9-1-2 IS AMENDED TO READ AS FOLLOWS  
19 [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) It is the public policy of the  
20 state to provide all of its citizens equal opportunity for education,  
21 employment, access to public conveniences and accommodations, and  
22 acquisition through purchase or rental of real property, including but  
23 not limited to housing, and to eliminate segregation or separation based  
24 solely on race, religion, color, sex, disability, national origin, or  
25 ancestry, since such segregation is an impediment to equal opportunity.  
26 Equal education and employment opportunities and equal access to and  
27 use of public accommodations and equal opportunity for acquisition of  
28 real property are hereby declared to be civil rights.

29 (b) The practice of denying these rights to properly qualified  
30 persons by reason of the race, religion, color, sex, disability, national  
31 origin, or ancestry of such person is contrary to the principles of  
32 freedom and equality of opportunity and is a burden to the objectives  
33 of the public policy of this state and shall be considered as  
34 discriminatory practices. The promotion of equal opportunity without  
35 regard to race, religion, color, sex, disability, national origin, or  
36 ancestry through reasonable methods is the purpose of this chapter.

37 (c) It is also the public policy of this state to protect employers,  
38 labor organizations, employment agencies, property owners, real estate  
39 brokers, builders, and lending institutions from unfounded charges of  
40 discrimination.

41 (d) It is hereby declared to be contrary to the public policy of the  
42 state and an unlawful practice for any person, for profit, to induce or



1 attempt to induce any person to sell or rent any dwelling by  
 2 representations regarding the entry or prospective entry into the  
 3 neighborhood of a person or persons of a particular race, religion,  
 4 color, sex, disability, national origin, or ancestry.

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

18 **(f) It is against the public policy of the state and a**  
 19 **discriminatory practice for an employer to discriminate against a**  
 20 **prospective employee on the basis of status as a veteran by:**

21 **(1) refusing to employ an applicant for employment on the**  
 22 **basis that the applicant is a veteran of the armed forces of the**  
 23 **United States; or**

24 **(2) refusing to employ an applicant for employment on the**  
 25 **basis that the applicant is a member of the Indiana National**  
 26 **Guard or member of a reserve component.**

27 **(g)** This chapter shall be construed broadly to effectuate its  
 28 purpose.

29 SECTION 3. IC 22-9-1-3, AS AMENDED BY P.L.35-2010,  
 30 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 31 JULY 1, 2014]: Sec. 3. As used in this chapter:

32 (a) "Person" means one (1) or more individuals, partnerships,  
 33 associations, organizations, limited liability companies, corporations,  
 34 labor organizations, cooperatives, legal representatives, trustees,  
 35 trustees in bankruptcy, receivers, and other organized groups of  
 36 persons.

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

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

40 (d) "Deputy director" means the deputy director of the civil rights  
 41 commission.

42 (e) "Commission attorney" means the deputy attorney general, such



1 assistants of the attorney general as may be assigned to the  
 2 commission, or such other attorney as may be engaged by the  
 3 commission.

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

6 (g) "Affirmative action" means those acts that the commission  
 7 determines necessary to assure compliance with the Indiana civil rights  
 8 law.

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

12 (1) any nonprofit corporation or association organized exclusively  
 13 for fraternal or religious purposes;

14 (2) any school, educational, or charitable religious institution  
 15 owned or conducted by or affiliated with a church or religious  
 16 institution; or

17 (3) any exclusively social club, corporation, or association that is  
 18 not organized for profit.

19 (i) "Employee" means any person employed by another for wages or  
 20 salary. However, the term does not include any individual employed:

21 (1) by the individual's parents, spouse, or child; or

22 (2) in the domestic service of any person.

23 (j) "Labor organization" means any organization that exists for the  
 24 purpose in whole or in part of collective bargaining or of dealing with  
 25 employers concerning grievances, terms, or conditions of employment  
 26 or for other mutual aid or protection in relation to employment.

27 (k) "Employment agency" means any person undertaking with or  
 28 without compensation to procure, recruit, refer, or place employees.

29 (l) "Discriminatory practice" means:

30 (1) the exclusion of a person from equal opportunities because of  
 31 race, religion, color, sex, disability, national origin, ~~or~~ ancestry,  
 32 **or status as a veteran;**

33 (2) a system that excludes persons from equal opportunities  
 34 because of race, religion, color, sex, disability, national origin, ~~or~~  
 35 ancestry, **or status as a veteran;**

36 (3) the promotion of racial segregation or separation in any  
 37 manner, including but not limited to the inducing of or the  
 38 attempting to induce for profit any person to sell or rent any  
 39 dwelling by representations regarding the entry or prospective  
 40 entry in the neighborhood of a person or persons of a particular  
 41 race, religion, color, sex, disability, national origin, or ancestry;  
 42 or



1 (4) a violation of IC 22-9-5 that occurs after July 25, 1992, and is  
2 committed by a covered entity (as defined in IC 22-9-5-4).

3 Every discriminatory practice relating to the acquisition or sale of real  
4 estate, education, public accommodations, employment, or the  
5 extending of credit (as defined in IC 24-4.5-1-301.5) shall be  
6 considered unlawful unless it is specifically exempted by this chapter.

7 (m) "Public accommodation" means any establishment that caters  
8 or offers its services or facilities or goods to the general public.

9 (n) "Complainant" means:

10 (1) any individual charging on the individual's own behalf to have  
11 been personally aggrieved by a discriminatory practice; or

12 (2) the director or deputy director of the commission charging that  
13 a discriminatory practice was committed against a person (other  
14 than ~~himself~~ **the director or deputy director**) or a class of  
15 people, in order to vindicate the public policy of the state (as  
16 defined in section 2 of this chapter).

17 (o) "Complaint" means any written grievance that is:

18 (1) sufficiently complete and filed by a complainant with the  
19 commission; or

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

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

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

26 (1) the full name and address of the complainant;

27 (2) the name and address of the respondent against whom the  
28 complaint is made;

29 (3) the alleged discriminatory practice and a statement of  
30 particulars thereof;

31 (4) the date or dates and places of the alleged discriminatory  
32 practice and if the alleged discriminatory practice is of a  
33 continuing nature the dates between which continuing acts of  
34 discrimination are alleged to have occurred; and

35 (5) a statement as to any other action, civil or criminal, instituted  
36 in any other form based upon the same grievance alleged in the  
37 complaint, together with a statement as to the status or disposition  
38 of the other action.

39 No complaint shall be valid unless filed within one hundred eighty  
40 (180) days from the date of the occurrence of the alleged  
41 discriminatory practice.

42 (q) "Sex" as it applies to segregation or separation in this chapter



1 applies to all types of employment, education, public accommodations,  
2 and housing. However:

3 (1) it shall not be a discriminatory practice to maintain separate  
4 restrooms;

5 (2) it shall not be an unlawful employment practice for an  
6 employer to hire and employ employees, for an employment  
7 agency to classify or refer for employment any individual, for a  
8 labor organization to classify its membership or to classify or refer  
9 for employment any individual, or for an employer, labor  
10 organization, or joint labor management committee controlling  
11 apprenticeship or other training or retraining programs to admit  
12 or employ any other individual in any program on the basis of sex  
13 in those certain instances where sex is a bona fide occupational  
14 qualification reasonably necessary to the normal operation of that  
15 particular business or enterprise; and

16 (3) it shall not be a discriminatory practice for a private or  
17 religious educational institution to continue to maintain and  
18 enforce a policy of admitting students of one (1) sex only.

19 (r) "Disabled" or "disability" means the physical or mental condition  
20 of a person that constitutes a substantial disability. In reference to  
21 employment under this chapter, "disabled or disability" also means the  
22 physical or mental condition of a person that constitutes a substantial  
23 disability unrelated to the person's ability to engage in a particular  
24 occupation.

25 (s) "Veteran" means:

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

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

28 (3) a member of a reserve component.

29 SECTION 4. IC 22-9-1-6, AS AMENDED BY P.L.100-2012,  
30 SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
31 JULY 1, 2014]: Sec. 6. (a) The commission shall establish and  
32 maintain a permanent office in the city of Indianapolis.

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

35 (c) The commission shall formulate policies to effectuate the  
36 purposes of this chapter and make recommendations to agencies and  
37 officers of the state or local subdivisions thereof to effectuate such  
38 policies. The several departments, commissions, divisions, authorities,  
39 boards, bureaus, agencies, and officers of the state or any political  
40 subdivision or agency thereof shall furnish the commission, upon its  
41 request, all records, papers, and information in their possession relating  
42 to any matter before the commission.



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

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

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

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

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

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

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

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

41 (i) The commission may appoint administrative law judges other  
42 than commissioners, when an appointment is deemed necessary by a





1 majority of the commission. The administrative law judges shall be  
 2 members in good standing before the bar of Indiana and shall be  
 3 appointed by the chairman of the commission. An administrative law  
 4 judge appointed under this subsection shall have the same powers and  
 5 duties as a commissioner sitting as an administrative law judge.  
 6 However, the administrative law judge may not issue subpoenas.

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

14 ~~(A)~~ **(1)** to restore complainant's losses incurred as a result of  
 15 discriminatory treatment, as the commission may deem necessary  
 16 to assure justice; however, **except in discriminatory practices**  
 17 **involving veterans**, this specific provision when applied to orders  
 18 pertaining to employment shall include only wages, salary, or  
 19 commissions;

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

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

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

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

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



1 the person is subject to the commission's jurisdiction and resides or  
 2 transacts business within the county in which the petition for  
 3 enforcement is brought.

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

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

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

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

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

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

39 SECTION 5. IC 22-9-10 IS ADDED TO THE INDIANA CODE AS  
 40 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
 41 1, 2014]:

42 **Chapter 10. Employment Opportunities for Veterans and**



1 **Indiana National Guard and Reserve Members**

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

4 **Sec. 2. As used in this chapter, "complainant" has the meaning**  
5 **set forth in IC 22-9-1-3(n).**

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

8 **Sec. 4. As used in this chapter, "department" means the Indiana**  
9 **department of veterans' affairs established by IC 10-17-1-2.**

10 **Sec. 5. As used in this chapter, "employ" means to suffer or**  
11 **permit to work.**

12 **Sec. 6. As used in this chapter, "employee" has the meaning set**  
13 **forth in IC 22-9-1-3(i).**

14 **Sec. 7. As used in this chapter, "employer" has the meaning set**  
15 **forth in IC 22-9-1-3(h).**

16 **Sec. 8. As used in this chapter, "veteran" means:**

- 17 (1) a veteran of the armed forces of the United States;  
18 (2) a member of the Indiana National Guard; or  
19 (3) a member of a reserve component.

20 **Sec. 9. It is an unlawful employment practice for an employer**  
21 **to discriminate against a prospective employee on the basis of**  
22 **status as a veteran by:**

- 23 (1) refusing to employ an applicant for employment on the  
24 basis that the applicant is a veteran of the armed forces of the  
25 United States; or  
26 (2) refusing to employ an applicant for employment on the  
27 basis that the applicant is a member of the Indiana National  
28 Guard or a member of a reserve component.

29 **Sec. 10. Notwithstanding section 9 of this chapter, it may be a**  
30 **defense to a charge of discrimination under this chapter that an**  
31 **alleged application of qualification standards, tests, or selection**  
32 **criteria that screen out or tend to screen out or otherwise deny a**  
33 **job or a benefit to a veteran with a disability has been shown to be**  
34 **job related and consistent with business necessity, and**  
35 **performance cannot be accomplished by reasonable**  
36 **accommodation, as required under IC 22-9-5-21.**

37 **Sec. 11. IC 22-9-5-22 applies to an employer that gives**  
38 **preference in employment to individuals of a particular religion.**

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

42 **(b) IC 22-9-1-16, IC 22-9-1-17, and IC 22-9-1-18 apply to**



1       complaints filed in accordance with this chapter.  
2       **Sec. 13.** The commission may adopt and enforce rules under  
3       **IC 4-22-2** that are necessary to carry out this chapter. These rules  
4       must not be in conflict with the federal rules adopted under the  
5       employment discrimination provisions of the federal Uniformed  
6       Services Employment and Reemployment Rights Act (USERRA),  
7       P.L.103-353 (38 U.S.C. 4301 et seq.).  
8       **Sec. 14.** This chapter may not be construed to limit any of the  
9       preferences for the hiring of, employment of, or benefits for  
10      veterans that are contained in any other provision of the Indiana  
11      Code.  
12      **Sec. 15.** Each employer subject to this chapter shall provide  
13      notice of this chapter in a format accessible to applicants,  
14      describing the applicable provisions of this chapter. The  
15      department shall assist the commission in devising language for the  
16      use of an employer that complies with this chapter and any rules  
17      adopted under section 13 of this chapter.

