

HOUSE BILL No. 1302

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-9-1.

Synopsis: Employment discrimination claims in state court. 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.) 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, 2021.

Smith V

January 14, 2021, read first time and referred to Committee on Judiciary.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1302

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, 2021]: 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 22-9-1-16 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 16. (a) A respondent or
34 a complainant may elect to ~~have the claims that are the basis for a~~
35 ~~finding of probable cause decided in~~ **enforce the rights granted under**
36 **section 2 of this chapter by filing** a civil action as provided by section
37 17 of this chapter. ~~However, both the respondent and the complainant~~
38 ~~must agree in writing to have the claims decided in a court of law. The~~
39 ~~agreement must be on a form provided by the commission.~~

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



1 SECTION 3. IC 22-9-1-17, AS AMENDED BY P.L.100-2012,
2 SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 17. (a) If a timely election is made under section
4 16 of this chapter, the complainant may file a civil action in a circuit or
5 superior court having jurisdiction in the county in which a
6 discriminatory practice allegedly occurred.
7 (b) If the court finds that a discriminatory practice has occurred the
8 court may grant the relief allowed under IC 22-9-1-6(j), **including**
9 **attorney's fees and costs of prosecution.**
10 (c) A civil action filed under this section ~~must~~ **may** be tried by ~~the~~
11 ~~court without benefit~~ of a jury.

