

# SENATE BILL No. 128

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-9.

**Synopsis:** Prohibited discrimination in civil rights statutes. Extends certain antidiscrimination and civil rights statutes to prohibit discrimination based on sexual orientation, gender identity, and veteran status. Provides that every discriminatory practice relating to the acquisition or sale of real estate, education, public accommodations, employment, or the extending of credit is considered unlawful unless it is specifically exempted.

**Effective:** July 1, 2022.

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January 4, 2022, read first time and referred to Committee on Judiciary.

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Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

# SENATE BILL No. 128

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, 2022]: 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, **sexual orientation**,  
9 **gender identity, veteran status**, or ancestry, since such segregation is  
10 an impediment to equal opportunity. Equal education and employment  
11 opportunities and equal access to and use of public accommodations  
12 and equal opportunity for acquisition of real property are hereby  
13 declared to be civil rights.

14 (b) The practice of denying these rights to properly qualified  
15 persons by reason of the race, religion, color, sex, disability, national  
16 origin, **sexual orientation, gender identity, veteran status**, or  
17 ancestry of such person is contrary to the principles of freedom and



1 equality of opportunity and is a burden to the objectives of the public  
 2 policy of this state and shall be considered as discriminatory practices.  
 3 The promotion of equal opportunity without regard to race, religion,  
 4 color, sex, disability, national origin, **sexual orientation, gender**  
 5 **identity, veteran status**, or ancestry through reasonable methods is the  
 6 purpose of this chapter.

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

11 (d) It is hereby declared to be contrary to the public policy of the  
 12 state and an unlawful practice for any person, for profit, to induce or  
 13 attempt to induce any person to sell or rent any dwelling by  
 14 representations regarding the entry or prospective entry into the  
 15 neighborhood of a person or persons of a particular race, religion,  
 16 color, sex, disability, national origin, **sexual orientation, gender**  
 17 **identity, veteran status**, or ancestry.

18 (e) The general assembly recognizes that on February 16, 1972,  
 19 there are institutions of learning in Indiana presently and traditionally  
 20 following the practice of limiting admission of students to males or to  
 21 females. It is further recognized that it would be unreasonable to  
 22 impose upon these institutions the expense of remodeling facilities to  
 23 accommodate students of both sexes, and that educational facilities of  
 24 similar quality and type are available in coeducational institutions for  
 25 those students desiring such facilities. It is further recognized that this  
 26 chapter is susceptible of interpretation to prevent these institutions  
 27 from continuing their traditional policies, a result not intended by the  
 28 general assembly. Therefore, the amendment effected by Acts 1972,  
 29 P.L.176, is desirable to permit the continuation of the policies  
 30 described.

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

34 (1) refusing to employ an applicant for employment on the basis  
 35 that the applicant is a veteran of the armed forces of the United  
 36 States; or

37 (2) refusing to employ an applicant for employment on the basis  
 38 that the applicant is a member of the Indiana National Guard or  
 39 member of a reserve component.

40 (g) This chapter shall be construed broadly to effectuate its purpose.

41 SECTION 2. IC 22-9-1-3, AS AMENDED BY P.L.213-2016,  
 42 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



- 1 JULY 1, 2022]: Sec. 3. As used in this chapter:  
 2 (a) "Person" means one (1) or more individuals, partnerships,  
 3 associations, organizations, limited liability companies, corporations,  
 4 labor organizations, cooperatives, legal representatives, trustees,  
 5 trustees in bankruptcy, receivers, and other organized groups of  
 6 persons.  
 7 (b) "Commission" means the civil rights commission created under  
 8 section 4 of this chapter.  
 9 (c) "Director" means the director of the civil rights commission.  
 10 (d) "Deputy director" means the deputy director of the civil rights  
 11 commission.  
 12 (e) "Commission attorney" means the deputy attorney general, such  
 13 assistants of the attorney general as may be assigned to the  
 14 commission, or such other attorney as may be engaged by the  
 15 commission.  
 16 (f) "Consent agreement" means a formal agreement entered into in  
 17 lieu of adjudication.  
 18 (g) "Affirmative action" means those acts that the commission  
 19 determines necessary to assure compliance with the Indiana civil rights  
 20 law.  
 21 (h) "Employer" means the state or any political or civil subdivision  
 22 thereof and any person employing six (6) or more persons within the  
 23 state, except that the term "employer" does not include:  
 24 (1) any nonprofit corporation or association organized exclusively  
 25 for fraternal or religious purposes;  
 26 (2) any school, educational, or charitable religious institution  
 27 owned or conducted by or affiliated with a church or religious  
 28 institution; or  
 29 (3) any exclusively social club, corporation, or association that is  
 30 not organized for profit.  
 31 (i) "Employee" means any person employed by another for wages or  
 32 salary. However, the term does not include any individual employed:  
 33 (1) by the individual's parents, spouse, or child; or  
 34 (2) in the domestic service of any person.  
 35 (j) "Labor organization" means any organization that exists for the  
 36 purpose in whole or in part of collective bargaining or of dealing with  
 37 employers concerning grievances, terms, or conditions of employment  
 38 or for other mutual aid or protection in relation to employment.  
 39 (k) "Employment agency" means any person undertaking with or  
 40 without compensation to procure, recruit, refer, or place employees.  
 41 (l) "Discriminatory practice" means:  
 42 (1) the exclusion of a person from equal opportunities because of



- 1 race, religion, color, sex, **sexual orientation, gender identity,**  
 2 disability, national origin, ancestry, or status as a veteran;  
 3 (2) a system that excludes persons from equal opportunities  
 4 because of race, religion, color, sex, **sexual orientation, gender**  
 5 **identity,** disability, national origin, ancestry, or status as a  
 6 veteran;  
 7 (3) the promotion of racial segregation or separation in any  
 8 manner, including but not limited to the inducing of or the  
 9 attempting to induce for profit any person to sell or rent any  
 10 dwelling by representations regarding the entry or prospective  
 11 entry in the neighborhood of a person or persons of a particular  
 12 race, religion, color, sex, **sexual orientation, gender identity,**  
 13 disability, national origin, ~~or~~ ancestry, **or status as a veteran;**  
 14 (4) a violation of IC 22-9-5 that occurs after July 25, 1992, and is  
 15 committed by a covered entity (as defined in IC 22-9-5-4);  
 16 (5) the performance of an abortion solely because of the race,  
 17 color, sex, disability, national origin, or ancestry of the fetus; or  
 18 (6) a violation of any of the following statutes protecting the right  
 19 of conscience regarding abortion:  
 20 (A) IC 16-34-1-4.  
 21 (B) IC 16-34-1-5.  
 22 (C) IC 16-34-1-6.
- 23 Every discriminatory practice relating to the acquisition or sale of real  
 24 estate, education, public accommodations, employment, or the  
 25 extending of credit (as defined in IC 24-4.5-1-301.5) shall be  
 26 considered unlawful unless it is specifically exempted by this chapter.
- 27 (m) "Public accommodation" means any establishment that caters  
 28 or offers its services or facilities or goods to the general public.
- 29 (n) "Complainant" means:  
 30 (1) any individual charging on the individual's own behalf to have  
 31 been personally aggrieved by a discriminatory practice; or  
 32 (2) the director or deputy director of the commission charging that  
 33 a discriminatory practice was committed against a person (other  
 34 than the director or deputy director) or a class of people, in order  
 35 to vindicate the public policy of the state (as defined in section 2  
 36 of this chapter).
- 37 (o) "Complaint" means any written grievance that is:  
 38 (1) sufficiently complete and filed by a complainant with the  
 39 commission; or  
 40 (2) filed by a complainant as a civil action in the circuit or  
 41 superior court having jurisdiction in the county in which the  
 42 alleged discriminatory practice occurred.



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

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

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

5 (2) the name and address of the respondent against whom the  
6 complaint is made;

7 (3) the alleged discriminatory practice and a statement of  
8 particulars thereof;

9 (4) the date or dates and places of the alleged discriminatory  
10 practice and if the alleged discriminatory practice is of a  
11 continuing nature the dates between which continuing acts of  
12 discrimination are alleged to have occurred; and

13 (5) a statement as to any other action, civil or criminal, instituted  
14 in any other form based upon the same grievance alleged in the  
15 complaint, together with a statement as to the status or disposition  
16 of the other action.

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

20 (q) "Sex" as it applies to segregation or separation in this chapter  
21 applies to all types of employment, education, public accommodations,  
22 and housing. However:

23 (1) it shall not be a discriminatory practice to maintain separate  
24 restrooms;

25 (2) it shall not be an unlawful employment practice for an  
26 employer to hire and employ employees, for an employment  
27 agency to classify or refer for employment any individual, for a  
28 labor organization to classify its membership or to classify or refer  
29 for employment any individual, or for an employer, labor  
30 organization, or joint labor management committee controlling  
31 apprenticeship or other training or retraining programs to admit  
32 or employ any other individual in any program on the basis of sex  
33 in those certain instances where sex is a bona fide occupational  
34 qualification reasonably necessary to the normal operation of that  
35 particular business or enterprise; and

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

39 (r) "Disabled" or "disability" means the physical or mental condition  
40 of a person that constitutes a substantial disability. In reference to  
41 employment under this chapter, "disabled" or "disability" also means  
42 the physical or mental condition of a person that constitutes a



1 substantial disability unrelated to the person's ability to engage in a  
2 particular occupation.

3 (s) "Veteran" means:

- 4 (1) a veteran of the armed forces of the United States;  
5 (2) a member of the Indiana National Guard; or  
6 (3) a member of a reserve component.

7 (t) **"Gender identity" means a gender related identity,**  
8 **appearance, expression, or behavior whether or not the gender**  
9 **related identity, appearance, expression, or behavior is different**  
10 **from that traditionally associated with a person's assigned sex at**  
11 **birth.**

12 (u) **"Sexual orientation" means actual or perceived bisexuality,**  
13 **heterosexuality, or homosexuality.**

14 SECTION 3. IC 22-9-1-6, AS AMENDED BY P.L.205-2019,  
15 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
16 JULY 1, 2022]: Sec. 6. (a) The commission shall establish and  
17 maintain a permanent office in the city of Indianapolis.

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

20 (c) The commission shall formulate policies to effectuate the  
21 purposes of this chapter and make recommendations to agencies and  
22 officers of the state or local subdivisions thereof to effectuate such  
23 policies. The several departments, commissions, divisions, authorities,  
24 boards, bureaus, agencies, and officers of the state or any political  
25 subdivision or agency thereof shall furnish the commission, upon its  
26 request, all records, papers, and information in their possession relating  
27 to any matter before the commission.

28 (d) The commission shall receive and investigate complaints  
29 alleging discriminatory practices. The commission shall not hold  
30 hearings in the absence of a complaint. All investigations of complaints  
31 shall be conducted by staff members of the civil rights commission or  
32 their agents.

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

- 37 (1) study the problems of discrimination in the areas covered by  
38 section 2 of this chapter when based on race, religion, color, sex,  
39 ~~handicap~~, **sexual orientation, gender identity, disability,**  
40 national origin, **veteran status**, or ancestry; and  
41 (2) foster through community effort, or otherwise, good will  
42 among the groups and elements of the population of the state.



1 These agencies and councils may make ~~recommendation~~  
2 **recommendations** to the commission for the development of policies  
3 and procedures in general. Advisory agencies and conciliation councils  
4 created by the commission shall be composed of representative citizens  
5 serving without pay, but with reimbursement for reasonable and  
6 necessary actual expenses.

7 (f) The commission may issue such publications and such results of  
8 investigations and research as in its judgment will tend to promote  
9 good will and minimize or eliminate discrimination because of race,  
10 religion, color, sex, ~~handicap~~, **sexual orientation, gender identity,**  
11 **disability**, national origin, **veteran status**, or ancestry.

12 (g) The commission shall prevent any person from discharging,  
13 expelling, or otherwise discriminating against any other person because  
14 the person filed a complaint, testified in any hearing before ~~this the~~  
15 the commission, or in any way assisted the commission in any matter under  
16 its investigation.

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

29 (i) The commission may:

30 (1) before July 1, 2020, appoint administrative law judges other  
31 than commissioners; and

32 (2) after June 30, 2020, request assignment of an administrative  
33 law judge (as defined in IC 4-21.5-1-2);

34 when an appointment is deemed necessary by a majority of the  
35 commission. The administrative law judges shall be members in good  
36 standing before the bar of Indiana and shall be appointed by the  
37 chairman of the commission. An administrative law judge appointed  
38 under this subsection shall have the same powers and duties as a  
39 commissioner sitting as an administrative law judge. However, the  
40 administrative law judge may not issue subpoenas.

41 (j) The commission shall state its findings of fact after a hearing  
42 and, if the commission finds a person has engaged in an unlawful





1 discriminatory practice, shall cause to be served on this person an order  
 2 requiring the person to cease and desist from the unlawful  
 3 discriminatory practice and requiring the person to take further  
 4 affirmative action as will effectuate the purposes of this chapter,  
 5 including but not limited to the power:

6 (1) to restore the complainant's losses incurred as a result of  
 7 discriminatory treatment, as the commission may deem necessary  
 8 to assure justice; however, except in discriminatory practices  
 9 involving veterans, this specific provision when applied to orders  
 10 pertaining to employment shall include only wages, salary, or  
 11 commissions;

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

15 (3) to require proof of compliance to be filed by the respondent at  
 16 periodic intervals; and

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

21 When an employer has been found to have committed a discriminatory  
 22 practice in employment by failing to employ an applicant on the basis  
 23 that the applicant is a veteran, the order to restore the veteran's losses  
 24 may include placing the veteran in the employment position with the  
 25 employer for which the veteran applied.

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

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

42 (m) The commission may furnish technical assistance requested by



1 persons subject to this chapter to further compliance with this chapter  
2 or with an order issued under this chapter.

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

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

18 (p) In lieu of investigating a complaint and holding a hearing under  
19 this section, the commission may issue an order based on findings and  
20 determinations by the federal Department of Housing and Urban  
21 Development or the federal Equal Employment Opportunity  
22 Commission concerning a complaint that has been filed with one (1) of  
23 these federal agencies and with the commission. The commission shall  
24 adopt by rule standards under which the commission may issue such an  
25 order.

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

30 SECTION 4. IC 22-9-1-9.5 IS ADDED TO THE INDIANA CODE  
31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
32 1, 2022]: **Sec. 9.5. (a) Every discriminatory practice relating to the  
33 acquisition or sale of real estate, education, public  
34 accommodations, employment, or the extending of credit (as  
35 defined in IC 24-4.5-1-301.5) shall be considered unlawful unless it  
36 is specifically exempted by this chapter.**

37 **(b) A complaint must be filed within one hundred eighty (180)  
38 days from the date of the occurrence of the alleged discriminatory  
39 practice.**

40 **(c) An original complaint filed with the commission shall be  
41 signed and verified by the complainant.**

42 SECTION 5. IC 22-9-1-10 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 10. Every contract to  
 2 which the state or any of its political or civil subdivisions is a party,  
 3 including franchises granted to public utilities, shall contain a provision  
 4 requiring the contractor and ~~his~~ **the contractor's** subcontractors not to  
 5 discriminate against any employee or applicant for employment to be  
 6 employed in the performance of such contract, with respect to ~~his~~ **the**  
 7 **employee's or applicant's** hire, tenure, terms, conditions, or privileges  
 8 of employment or any matter directly or indirectly related to  
 9 employment, because of ~~his~~ **the employee's or applicant's** race,  
 10 religion, color, sex, **sexual orientation, gender identity**, disability,  
 11 national origin, **veteran status**, or ancestry. Breach of this covenant  
 12 may be regarded as a material breach of the contract.

13 SECTION 6. IC 22-9-1-11 IS AMENDED TO READ AS  
 14 FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 11. In addition to its  
 15 power to investigate the discriminatory practices referred to in this  
 16 chapter, the commission may receive written complaints of violation of  
 17 this chapter or other discriminatory practices based upon race, religion,  
 18 color, sex, **sexual orientation, gender identity, disability**, national  
 19 origin, **veteran status**, or ancestry and ~~to~~ investigate such complaints  
 20 as it deems meritorious, or ~~to~~ conduct such investigation in the absence  
 21 of complaints whenever it deems it in the public interest. ~~It~~ **The**  
 22 **commission** may transmit to the general assembly its recommendations  
 23 for legislation designed to aid in the removing of such discrimination.

24 SECTION 7. IC 22-9-2-11, AS AMENDED BY P.L.166-2009,  
 25 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 26 JULY 1, 2022]: Sec. 11. Nothing contained herein shall be deemed to  
 27 repeal any of the provisions of any law of this state relating to  
 28 discrimination because of age, race, ~~or~~ color, religion, **sex, sexual**  
 29 **orientation, gender identity, disability, veteran status**, or country of  
 30 ancestral origin. Nothing herein shall be deemed to limit, restrict or  
 31 affect the freedom of any employer in regard to:

- 32 (a) **(1)** fixing compulsory retirement requirements for any class of  
 33 employees at an age or ages less than seventy-five (75) years **of**  
 34 **age;**  
 35 (b) **(2)** fixing eligibility requirements for participation in, or  
 36 enjoyment by employees of, benefits under any annuity plan or  
 37 pension or retirement plan on the basis that any employee may be  
 38 excluded from eligibility therefor who, at the time ~~he~~ **the**  
 39 **employee** would otherwise become eligible for such benefits, is  
 40 older than the age fixed in such eligibility requirements; or  
 41 (c) **(3)** keeping age records for any such purposes.

