

# SENATE BILL No. 395

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-9; IC 35-52-22-17.5.

**Synopsis:** Fair pay in employment. Provides that it is an unlawful employment practice to: (1) pay wages that discriminate on the basis of sex for substantially similar work; (2) provide less favorable employment opportunities to an employee on the basis of sex; (3) take an adverse employment action against an employee or other person because the employee inquired about, disclosed, compared, or otherwise discussed the employee's wages; and (4) require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the employee's wage information. Provides that an employer may, under certain circumstances, limit discussion of employee wages. Provides that the civil rights commission has jurisdiction for the investigation and resolution of complaints of these employment actions.

**Effective:** July 1, 2019.

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January 10, 2019, read first time and referred to Committee on Pensions and Labor.

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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.

## SENATE BILL No. 395

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, 2019]: 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  
17 of the public policy of this state and shall be considered as



1 discriminatory practices. The promotion of equal opportunity without  
 2 regard to race, religion, color, sex, disability, national origin, or  
 3 ancestry through reasonable methods is the purpose of this chapter.

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

8 (d) It is hereby declared to be contrary to the public policy of the  
 9 state and an unlawful practice for any person, for profit, to induce or  
 10 attempt to induce any person to sell or rent any dwelling by  
 11 representations regarding the entry or prospective entry into the  
 12 neighborhood of a person or persons of a particular race, religion,  
 13 color, sex, disability, national origin, or ancestry.

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

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

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

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

36 **(g) The definitions set forth in IC 22-9-12 apply to this**  
 37 **subsection. After June 30, 2019, it is against the public policy of the**  
 38 **state and an unlawful employment practice for an employer to**  
 39 **discriminate against an employee on the basis of sex by paying**  
 40 **wages to an employee at a rate less than the rate paid to an**  
 41 **employee of the opposite sex for substantially similar work.**

42 ~~(g)~~ (h) This chapter shall be construed broadly to effectuate its



1 purpose.

2 SECTION 2. IC 22-9-12 IS ADDED TO THE INDIANA CODE AS  
3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
4 1, 2019]:

5 **Chapter 12. Equal Pay and Wage Disclosure Protection**

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

8 **Sec. 2. As used in this chapter, "complaint" has the meaning set**  
9 **forth in IC 22-9-1-3(o).**

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

12 **Sec. 4. As used in this chapter, "employer" means:**

- 13 (1) a person engaged in a business, industry, profession, trade,  
14 or other enterprise in Indiana; and  
15 (2) the state or any political or civil subdivision of the state.

16 **Sec. 5. As used in this chapter, "wages" or "wage rates" include**  
17 **all compensation of any kind that an employer provides to an**  
18 **employee in payment for work done or services rendered,**  
19 **including:**

- 20 (1) base pay;  
21 (2) bonuses;  
22 (3) commissions;  
23 (4) awards;  
24 (5) tips; or  
25 (6) any form of nonmonetary compensation:  
26 (A) if provided instead of or in addition to monetary  
27 compensation; and  
28 (B) that has economic value to an employee;  
29 including board, lodging, or another advantage provided to an  
30 employee for the convenience of the employer.

31 **Sec. 6. (a) It is an unlawful employment practice for an**  
32 **employer to discriminate between employees on the basis of sex by:**

- 33 (1) paying a wage to employees of one (1) sex at a rate less  
34 than the rate paid to employees of another sex if both  
35 employees work in the same establishment and perform work  
36 of comparable character or work on the same operation, in  
37 the same business, or of the same type; or  
38 (2) providing less favorable employment opportunities based  
39 on sex or gender identity, including:

- 40 (A) assigning or directing the employee into a less  
41 favorable position or career track, if career tracks are  
42 offered;



1 (B) failing to provide information about promotions or  
 2 advancement in the full range of career tracks offered by  
 3 the employer; or

4 (C) limiting or depriving an employee of employment  
 5 opportunities that would otherwise be available to the  
 6 employee but for the employee's sex.

7 (b) For purposes of subsection (a)(1), an employee works at the  
 8 same establishment as another employee if the employees work for  
 9 the same employer at workplaces located in the same county of the  
 10 state.

11 Sec. 7. (a) Notwithstanding section 6 of this chapter, it is not an  
 12 unlawful employment practice for an employer to pay different  
 13 wage rates to employees when the employer demonstrates that the  
 14 wage differential is based upon one (1) or more of the following  
 15 factors:

16 (1) A bona fide seniority system that does not discriminate on  
 17 the basis of sex.

18 (2) A bona fide merit system that does not discriminate on the  
 19 basis of sex.

20 (3) A bona fide system that measures earnings by quantity or  
 21 quality of production.

22 (4) A bona fide factor such as education, training, or  
 23 experience that:

24 (A) is not based on or derived from a gender-based  
 25 differential in compensation;

26 (B) is job related with respect to the position and consistent  
 27 with a business necessity; and

28 (C) accounts for the entire differential.

29 (5) Work that is performed on different shifts at different  
 30 times of day.

31 (6) Jobs that require the regular performance of different  
 32 duties or services.

33 (b) This section does not preclude an employee from  
 34 demonstrating that an employer's reliance on an exception listed  
 35 in subsection (a) is a pretext for discrimination on the basis of sex.

36 Sec. 8. It is an unlawful employment practice for an employer  
 37 to do any of the following:

38 (1) Prohibit an employee from:

39 (A) inquiring about, discussing, or disclosing the wages of  
 40 the employee or another employee; or

41 (B) requesting that the employer provide a reason for why  
 42 the employee's wages are a condition of employment.



1           (2) Require an employee to sign a waiver or any other  
2 document that purports to deny the employee the right to  
3 disclose or discuss the employee's wages.

4           (3) Take an adverse employment action against an employee  
5 for:

6               (A) inquiring about another employee's wages;

7               (B) disclosing the employee's own wages;

8               (C) discussing another employee's wages if those wages  
9 have been disclosed voluntarily;

10              (D) asking the employer to provide a reason for the  
11 employee's wages; or

12              (E) aiding or encouraging another employee's exercise of  
13 rights under this section.

14           Sec. 9. (a) Except as provided in subsection (b), an employer  
15 may, in a written policy provided to each employee, establish  
16 reasonable workday limitations on the time, place, and manner for  
17 inquiries about or the discussion or disclosure of employee wages.

18           (b) A limitation established under subsection (a) shall be  
19 consistent with standards adopted by the commission and all other  
20 state and federal laws.

21           Sec. 10. Except as provided in section 12 of this chapter, a  
22 limitation under section 9 of this chapter may include prohibiting  
23 an employee from discussing or disclosing wages of another  
24 employee without that employee's prior permission.

25           Sec. 11. Except as provided in section 12 of this chapter, the  
26 failure of an employee to adhere to a reasonable limitation  
27 included in a written policy under section 9 of this chapter shall be  
28 an affirmative defense to a claim made against an employer by the  
29 employee under this section if the adverse employment action  
30 taken by the employer was for failure to adhere to the reasonable  
31 limitation and not for an inquiry, a discussion, or a disclosure of  
32 wages in accordance with the limitation.

33           Sec. 12. (a) A prohibition established under section 10 of this  
34 chapter may not apply to instances in which an employee who has  
35 access to the wage information of other employees as part of the  
36 employee's essential job functions if the discussion or disclosure is  
37 in response to a complaint or charge, or in furtherance of an  
38 investigation, a proceeding, a hearing, or an action under this  
39 chapter, including an investigation conducted by the employer.

40           (b) If an employee who has access to wage information as part  
41 of the essential functions of the employee's job discloses the  
42 employee's own wage or wage information about another employee



1 obtained outside the performance of the essential functions of the  
 2 employee's job, the employee shall be entitled to all the protections  
 3 afforded under this chapter.

4 **Sec. 13. Nothing in this chapter shall be construed to:**

- 5 (1) require an employee to disclose the employee's wages;
- 6 (2) diminish an employee's rights to negotiate terms and  
 7 conditions of employment under federal, state, or local law;
- 8 (3) limit the rights of an employee provided under any other  
 9 provision of law or collective bargaining agreement;
- 10 (4) create an obligation on any employer or employee to  
 11 disclose wages;
- 12 (5) permit an employee, without the written consent of an  
 13 employer, to disclose proprietary information, trade secret  
 14 information, or information that is otherwise subject to a legal  
 15 privilege or protected by law; or
- 16 (6) permit an employee to disclose wage information to a  
 17 competitor of the employer.

18 **Sec. 14. (a) Each employer shall keep each record required by  
 19 the commission that pertains to:**

- 20 (1) wages of employees;
- 21 (2) job classifications of employees; and
- 22 (3) other conditions of employment.

23 (b) An employer shall keep the records required under this  
 24 section for the period of time required by the commission.

25 (c) On the basis of the records required under this section, an  
 26 employer shall make each report that the commission requires.

27 **Sec. 15. (a) Each employer shall post a copy of this chapter in a  
 28 conspicuous location at the employer's place of business.**

29 (b) The commission shall, at the request of an employer, provide  
 30 a copy of this chapter at no charge.

31 (c) The commission shall develop educational materials and  
 32 make training available to assist employers in adopting training,  
 33 policies, and procedures that comply with the requirements of this  
 34 chapter.

35 **Sec. 16. (a) If the commission determines that this chapter has  
 36 been violated, the commission shall:**

- 37 (1) attempt to resolve any issue informally through the use of  
 38 mediation; or
- 39 (2) request the attorney general bring an action on behalf of  
 40 the applicant or employee.

41 (b) The attorney general may bring an action under this section  
 42 in the county where the violation allegedly occurred. The attorney



1 general may seek injunctive relief, damages, or other relief deemed  
2 appropriate by the attorney general.

3 **Sec. 17. (a) If an employer knew or reasonably should have**  
4 **known that the employer's actions violated section 6 of this**  
5 **chapter, an affected employee may bring an action against the**  
6 **employer for:**

- 7 (1) injunctive relief;  
8 (2) damages equaling the difference between the wages paid  
9 to employees of one (1) sex and the wages paid to employees  
10 of another sex who do the same type of work; and  
11 (3) an additional equal amount as liquidated damages.

12 (b) If an employer knew or reasonably should have known the  
13 employer's actions violated section 8 of this chapter, an affected  
14 employee may bring an action against the employer for:

- 15 (1) injunctive relief;  
16 (2) actual damages; and  
17 (3) an additional equal amount as liquidated damages.

18 (c) An employee may bring an action on behalf of the employee  
19 and other employees similarly affected.

20 (d) On the written request of an employee who is entitled to  
21 bring an action under this section, the commission may:

- 22 (1) take assignment of the claim in trust for the employer;  
23 (2) request the attorney general bring an action in accordance  
24 with this section on behalf of the employee; and  
25 (3) consolidate two (2) or more claims against an employer.

26 (e) An action under this section shall be filed not later than three  
27 (3) years after the employee receives wages from the employer  
28 upon the employee's termination of employment.

29 (f) The agreement of an employee to work for less than the wage  
30 to which the employee is entitled under this chapter is not a defense  
31 to an action under this section.

32 (g) If a court determines that an employee is entitled to  
33 judgment in an action under this section, the court shall award the  
34 plaintiff reasonable attorney's fees and other costs of the action, as  
35 well as prejudgment interest under IC 34-51-4.

36 **Sec. 18. (a) An employer may not:**

- 37 (1) willfully violate any provision of this chapter;  
38 (2) hinder, delay, or otherwise interfere with the commission  
39 or an authorized representative of the commission in the  
40 enforcement of this chapter;  
41 (3) refuse entry to the commission or an authorized  
42 representative of the commission into a place of employment





1 that the commission is authorized under this chapter to  
 2 inspect; or

3 (4) discharge or otherwise discriminate against an employee  
 4 because the employee:

5 (A) makes a complaint to the employer, the commission, or  
 6 another person;

7 (B) brings an action under this chapter or a proceeding  
 8 that relates to the subject of this chapter, or causes the  
 9 action or proceeding to be brought; or

10 (C) has testified or will testify in an action under this  
 11 chapter or a proceeding that relates to the subject of this  
 12 chapter.

13 (b) An employer or the employer's agent who violates subsection  
 14 (a)(2) or (a)(3) commits a Class A infraction.

15 (c) An employer or the employer's agent who violates subsection  
 16 (a)(2) or (a)(3), and has a prior unrelated judgment for a violation  
 17 of subsection (a)(2) or (a)(3) commits a Class A misdemeanor.

18 (d) An employee may not:

19 (1) make a groundless or malicious complaint to the  
 20 commission or an authorized representative of the  
 21 commission;

22 (2) bring, in bad faith, an action under this chapter;

23 (3) bring, in bad faith, a proceeding that relates to the subject  
 24 of this chapter; or

25 (4) testify, in bad faith, in an action under this chapter or a  
 26 proceeding that relates to the subject of this chapter.

27 (e) The commission may bring an action for injunctive relief and  
 28 damages against a person who violates subsection (a) or (d).

29 **Sec. 19.** The commission may adopt and enforce rules under  
 30 IC 4-22-2, including emergency rules in the manner provided  
 31 under IC 4-22-2-37.1, that are necessary to carry out this chapter.

32 SECTION 3. IC 35-52-22-17.5 IS ADDED TO THE INDIANA  
 33 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 34 [EFFECTIVE JULY 1, 2019]: **Sec. 17.5. IC 22-9-12-18** defines a  
 35 crime concerning equal pay and wage protection.

