

SENATE BILL No. 402

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, national origin, disability, veteran status, and ancestry.

Effective: July 1, 2019.

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January 14, 2019, read first time and referred to Committee on Judiciary.



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. 402

A BILL FOR AN ACT to amend the Indiana Code concerning general provisions.

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, **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, **sexual orientation, gender identity, veteran status,**
 5 disability, national origin, or ancestry through reasonable methods is
 6 the 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, 2019]: 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 the
42 physical or mental condition of a person that constitutes a substantial



1 disability unrelated to the person's ability to engage in a particular
2 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.136-2018,
15 SECTION 126, IS AMENDED TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) The commission shall
17 establish and 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
15 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 appoint administrative law judges other
30 than commissioners, when an appointment is deemed necessary by a
31 majority of the commission. The administrative law judges shall be
32 members in good standing before the bar of Indiana and shall be
33 appointed by the chairman of the commission. An administrative law
34 judge appointed under this subsection shall have the same powers and
35 duties as a commissioner sitting as an administrative law judge.
36 However, the administrative law judge may not issue subpoenas.

37 (j) The commission shall state its findings of fact after a hearing
38 and, if the commission finds a person has engaged in an unlawful
39 discriminatory practice, shall cause to be served on this person an order
40 requiring the person to cease and desist from the unlawful
41 discriminatory practice and requiring the person to take further
42 affirmative action as will effectuate the purposes of this chapter,



1 including but not limited to the power:

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

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

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

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

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

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

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

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

41 (n) The commission shall promote the creation of local civil rights
42 agencies to cooperate with individuals, neighborhood associations, and



1 state, local, and other agencies, both public and private, including
2 agencies of the federal government and of other states.

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

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

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

26 SECTION 4. IC 22-9-1-9.5 IS ADDED TO THE INDIANA CODE
27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
28 1, 2019]: **Sec. 9.5. (a) Every discriminatory practice relating to the
29 acquisition or sale of real estate, education, public
30 accommodations, employment, or the extending of credit (as
31 defined in IC 24-4.5-1-301.5) shall be considered unlawful unless it
32 is specifically exempted by this chapter.**

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

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

38 SECTION 5. IC 22-9-1-10 IS AMENDED TO READ AS
39 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 10. Every contract to
40 which the state or any of its political or civil subdivisions is a party,
41 including franchises granted to public utilities, shall contain a provision
42 requiring the contractor and ~~his~~ **the contractor's** subcontractors not to



1 discriminate against any employee or applicant for employment to be
 2 employed in the performance of such contract, with respect to ~~his the~~
 3 **employee's or applicant's** hire, tenure, terms, conditions, or privileges
 4 of employment or any matter directly or indirectly related to
 5 employment, because of ~~his the employee's or applicant's~~ race,
 6 religion, color, sex, **sexual orientation, gender identity**, disability,
 7 national origin, **veteran status**, or ancestry. Breach of this covenant
 8 may be regarded as a material breach of the contract.

9 SECTION 6. IC 22-9-1-11 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 11. In addition to its
 11 power to investigate the discriminatory practices referred to in this
 12 chapter, the commission may receive written complaints of violation of
 13 this chapter or other discriminatory practices based upon race, religion,
 14 color, sex, **sexual orientation, gender identity, disability**, national
 15 origin, **veteran status**, or ancestry and ~~to~~ investigate such complaints
 16 as it deems meritorious, or ~~to~~ conduct such investigation in the absence
 17 of complaints whenever it deems it in the public interest. ~~It~~ **The**
 18 **commission** may transmit to the general assembly its recommendations
 19 for legislation designed to aid in the removing of such discrimination.

20 SECTION 7. IC 22-9-2-11, AS AMENDED BY P.L.166-2009,
 21 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2019]: Sec. 11. Nothing contained herein shall be deemed to
 23 repeal any of the provisions of any law of this state relating to
 24 discrimination because of age, race, ~~or~~ color, religion, **sex, sexual**
 25 **orientation, gender identity, disability, veteran status**, or country of
 26 ancestral origin. Nothing herein shall be deemed to limit, restrict or
 27 affect the freedom of any employer in regard to:

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

