

# SENATE BILL No. 409

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## DIGEST OF INTRODUCED BILL

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

**Synopsis:** Fair pay in employment. Provides that: (1) it is an unlawful employment practice to pay wages that discriminate based on sex, race, or national origin for the same or equivalent jobs; and (2) the civil rights commission has jurisdiction for investigation and resolution of complaints of these employment actions.

**Effective:** July 1, 2019.

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## Breaux

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January 14, 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. 409

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, 2020, 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, race, or**  
 40 **national origin by:**

41 **(1) paying wages to an employee at a rate less than the rate**  
 42 **paid to an employee of:**



- 1                   (A) the opposite sex; or
- 2                   (B) a different race or national origin;
- 3           for work in an equivalent job; or
- 4           (2) paying wages to an employee in an employment position
- 5           that is dominated by employees of a particular sex, race, or
- 6           national origin at a rate less than the rate at which the
- 7           employer pays to employees in another employment position
- 8           that is dominated by employees of:
- 9                   (A) the opposite sex; or
- 10                   (B) a different race or national origin;
- 11           for work on equivalent jobs.
- 12           ~~(g)~~ (h) This chapter shall be construed broadly to effectuate its
- 13           purpose.
- 14           SECTION 2. IC 22-9-12 IS ADDED TO THE INDIANA CODE AS
- 15           A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 16           1, 2019]:
- 17           **Chapter 12. Fair Pay in Employment**
- 18           **Sec. 1. This chapter applies after June 30, 2020.**
- 19           **Sec. 2. As used in this chapter, "commission" means the civil**
- 20           **rights commission created by IC 22-9-1-4.**
- 21           **Sec. 3. As used in this chapter, "complaint" has the meaning set**
- 22           **forth in IC 22-9-1-3(o).**
- 23           **Sec. 4. As used in this chapter, "employ" means to suffer or**
- 24           **permit to work.**
- 25           **Sec. 5. As used in this chapter, "employee" has the meaning set**
- 26           **forth in IC 22-9-1-3(i).**
- 27           **Sec. 6. As used in this chapter, "employer" has the meaning set**
- 28           **forth in IC 22-9-1-3(h).**
- 29           **Sec. 7. As used in this chapter, "equivalent jobs" means jobs or**
- 30           **occupations that are equal within the meaning of the federal Equal**
- 31           **Pay Act of 1963, (29 U.S.C. 206(d)), or jobs or occupations that are**
- 32           **dissimilar but whose requirements are equivalent, when viewed as**
- 33           **a composite of skills, effort, responsibility, and working conditions.**
- 34           **Sec. 8. As used in this chapter, "labor organization" has the**
- 35           **meaning set forth in IC 22-9-1-3(j).**
- 36           **Sec. 9. As used in this chapter, "market rates" means the rates**
- 37           **that employers within a prescribed geographic area actually pay**
- 38           **or are reported to pay for specific jobs, as determined by formal or**
- 39           **informal surveys, wage studies, or other means.**
- 40           **Sec. 10. As used in this chapter, "person" means any of the**
- 41           **following:**
- 42                   (1) An individual.



- 1           (2) A partnership.  
 2           (3) An association.  
 3           (4) A corporation.  
 4           (5) A limited liability company.  
 5           (6) A legal representative.  
 6           (7) A trustee.  
 7           (8) A trustee in bankruptcy.  
 8           (9) A receiver.  
 9           (10) The state.  
 10          (11) A municipal corporation (as defined in IC 36-1-2-10).
- 11          **Sec. 11. As used in this chapter, "wages" or "wage rates"**  
 12          **includes all compensation of any kind that an employer provides to**  
 13          **an employee in payment for work done or services rendered,**  
 14          **including:**
- 15               (1) base pay;  
 16               (2) bonuses;  
 17               (3) commissions;  
 18               (4) awards;  
 19               (5) tips; or  
 20               (6) any form of nonmonetary compensation:  
 21                    (A) if provided instead of or in addition to monetary  
 22                    compensation; and  
 23                    (B) that has economic value to an employee.
- 24          **Sec. 12. It is an unlawful employment practice for an employer**  
 25          **to discriminate between employees on the basis of sex, race, or**  
 26          **national origin by:**
- 27               (1) paying wages to an employee at a rate less than the rate  
 28               paid to an employee of:  
 29                    (A) the opposite sex; or  
 30                    (B) a different race or national origin;  
 31               for work in an equivalent job; or  
 32               (2) paying wages to an employee in an employment position  
 33               that is dominated by employees of a particular sex, race, or  
 34               national origin at a rate less than the rate at which the  
 35               employer pays to employees in another employment position  
 36               that is dominated by employees of:  
 37                    (A) the opposite sex; or  
 38                    (B) a different race or national origin;  
 39               for work on equivalent jobs.
- 40          **Sec. 13. Notwithstanding section 12 of this chapter, it is not an**  
 41          **unlawful employment practice for an employer to pay different**  
 42          **wage rates to employees when the payments are made under:**



- 1 (1) a bona fide seniority or merit system;  
 2 (2) a bona fide system:  
 3 (A) that measures earnings by quantity or quality of  
 4 production; or  
 5 (B) based on geographic differentials; or  
 6 (3) a bona fide factor other than sex, race, or national origin,  
 7 if the factor:  
 8 (A) does not result in discrimination based on sex, race, or  
 9 national origin; and  
 10 (B) is not the result of varying market rates attached to  
 11 historically undervalued traditionally female or minority  
 12 job classifications.

13 **Sec. 14. It is an unlawful employment practice for an employer**  
 14 **to do any of the following:**

- 15 (1) Reduce the wages of any employee in order to comply with  
 16 this chapter when the employer is paying wages in violation  
 17 of this chapter.  
 18 (2) Take adverse action or otherwise discriminate against an  
 19 individual because the individual has:  
 20 (A) opposed an act or practice considered unlawful by this  
 21 chapter;  
 22 (B) sought to enforce rights protected under this chapter;  
 23 or  
 24 (C) testified, assisted, or participated in any manner in an  
 25 investigation, hearing, or other proceeding to enforce this  
 26 chapter.  
 27 (3) Discharge, or in any other manner discriminate against,  
 28 coerce, intimidate, threaten, or interfere with an employee or  
 29 another person because the employee:  
 30 (A) inquired about, disclosed, compared, or otherwise  
 31 discussed the employee's wages or the wages of another  
 32 employee; or  
 33 (B) exercised, enjoyed, aided, or encouraged another  
 34 person to exercise or enjoy a right granted or protected by  
 35 this chapter.

36 **Sec. 15. A labor organization or agents of the labor organization**  
 37 **that represents employees of an employer with employees subject**  
 38 **to a provision of this chapter may not cause or attempt to cause the**  
 39 **employer to discriminate against an employee in violation of**  
 40 **section 12 or 14 of this chapter.**

41 **Sec. 16. An agreement by an employee to work for less than the**  
 42 **compensation to which the employee is entitled to work under this**



1 chapter is not a bar to an action to which the employee would  
2 otherwise be entitled in order to enforce this chapter.

3 **Sec. 17.** This chapter may not be construed to impede, infringe,  
4 or diminish the rights and benefits that accrue to an employee  
5 through a bona fide collective bargaining agreement or otherwise  
6 diminish the integrity of an existing collective bargaining  
7 relationship.

8 **Sec. 18.** The commission shall adopt rules under IC 4-22-2  
9 specifying the criteria for determining whether a job is dominated  
10 by employees of a particular sex, race, or national origin. The  
11 criteria used must include factors such as:

12 (1) whether the job has ever been formally classified or  
13 traditionally considered to be a male, female, Caucasian, or  
14 minority job;

15 (2) whether there is a history of discrimination against women  
16 or people of color with respect to wages, assignment to or  
17 access to jobs, or other terms and conditions of employment;  
18 and

19 (3) the demographic composition of the workforce in  
20 equivalent jobs, which includes numbers or percentages of  
21 males, females, Caucasians, and people of color.

22 The rules may not include a list of jobs.

23 **Sec. 19.** In addition to the rules adopted under section 18 of this  
24 chapter, the commission shall adopt rules under IC 4-22-2  
25 specifying the methodology for determining equivalent skill, effort,  
26 responsibility, and working conditions. A methodology prescribed  
27 by the commission must ensure that comparison systems do not  
28 ignore or undervalue the worth of jobs where women and  
29 minorities are disproportionately represented. The equivalence of  
30 jobs dominated by employees of a particular sex, race, or national  
31 origin relative to jobs dominated by employees of the opposite sex  
32 or of a different race or national origin must be established  
33 through the application of a single job comparison system that does  
34 not systematically ignore or undervalue the job content of  
35 traditionally female and minority jobs.

36 **Sec. 20.** In addition to the rules required to be adopted under  
37 sections 18 and 19 of this chapter, the commission may adopt and  
38 enforce rules under IC 4-22-2, including emergency rules under  
39 IC 4-22-2-37.1, that are necessary to carry out this chapter.

40 **Sec. 21.** (a) The commission shall receive, investigate, and  
41 attempt to resolve complaints of violations of this chapter in the  
42 manner provided by IC 22-9-1-6.



1           **(b) IC 22-9-1-16, IC 22-9-1-17, and IC 22-9-1-18 apply to**  
2           **complaints filed in accordance with this chapter.**

