

**TITLE 910 - Indiana Civil Rights Commission
LSA Document #XX-XXX**

I. Description of Rule

The Indiana Civil Rights Commission (“ICRC”) enforces the Indiana Fair Housing Act (“IFHA”) codified at IC 22-9.5 and has rule making authority under IC 22-9.5-4-2. Under the IFHA, ICRC may assess civil penalties against entities who are found to have engaged in a discriminatory housing practice (IC 22-9.5-6-15). However, there are no current laws or rules that provide guidance on how that civil penalty amount should be determined.

Regulations related to the Federal Fair Housing Act (24 CFR 180.671(c)) provide several factors for Administrative Law Judges (“ALJs”) to consider in issuing a civil penalty on the federal level. ICRC’s proposed rule will establish these factors in 910 IAC 2 for ALJ/Commission guidance in determining whether a civil penalty should be issued and in what amount. Indiana’s Fair Housing laws are required to be substantially equivalent to Federal fair housing law for ICRC to maintain its eligibility for federal funding through the U.S. Department of Housing and Urban Development (“HUD”) as a Fair Housing Assistance Program (“FHAP”); incorporating these factors will help maintain and strengthen that substantial equivalency.

Adding these factors will bring ICRC’s civil penalty into compliance with the statutory changes made under HEA 1623. This new rule does not add, increase, nor change any of the civil penalty amounts that currently exist in the IFHA. It is merely intended to provide guidance to adjudicators in determining the civil penalty amount, if/when it is issued. The IFHA civil penalty statute has remained unchanged since it was first passed in 1990.

II. Fiscal Impact Analysis

This rule is anticipated to become effective by July 1, 2025. ICRC does not anticipate a meaningful fiscal impact on State and local government finances. Over the last five years, this civil penalty has been issued less than five times. In all of those cases, the civil penalty has not yet been paid as it is either pending decision on judicial review or the Respondent has not yet paid and the matter has been turned over to the Office of the Attorney General for collection. Once/If paid, the funds go to the General Fund.

III. Impacted Parties

This rule only impacts parties engaged in housing-related activities who have been determined to have engaged in a discriminatory practice. There are numerous parties who could potentially be subject to this civil penalty based on their involvement in housing-related activities. These include parties such as realtors (over 18,000 licensed realtors in Indiana¹), landlords and property owners/managers², home owners associations (HOAs)³, banks who provide lending for housing⁴, and hotels who provide long-term housing. However, the vast majority of these parties maintain compliance with Indiana fair housing laws.

¹ According to Indiana Association of Realtors.

² The Indiana Apartment Association, a statewide trade association for professionally managed multifamily housing indicates representation of over 285,000 homes.

³ According to ipropertymanagement.com, there are 5,150 HOAs in Indiana.

⁴ According to bankbranchlocator.com, there are 132 local and national banks in Indiana.

During the five-year period of 2019-2023, ICRC averaged approximately 130 complaints alleging housing discrimination each year. Of those 130 annual complaints, only 10-15% of those cases are determined to be cause cases that proceed to an administrative or judicial proceeding. Further, only 5-10 cases each year proceed to a litigation stage where a decision on the merits is rendered (many cases are settled or withdrawn for various reasons). Over the last five years, there have been fewer than 5 cases each year where a Respondent has been determined to have engaged in a discriminatory act and thus potentially subject to a civil penalty. As indicated previously, there have been fewer than five cases in total over the last five years where a civil penalty has been issued.

IV. Changes in Proposed Rule

This proposed rule would add a new regulation. The Indiana Fair Housing Act is intended to provide rights and remedies substantially equivalent to those granted under federal law (IC 22-9.5-1-1(3)). The proposed rule would add 910 IAC 2-7-11. The proposed rule adds a reference to the Indiana Code to put into rule the amount of the civil penalty that may be assessed for each separate and distinct discriminatory housing practice. The rule would add an explanation as to what constitutes separate and distinct discriminatory housing practice to clarify the standard used when assessing if a violation has occurred. The rule also adds the factors used on the federal level when considering civil penalties. Finally, the rule adds an explanation for the term housing-related hate act to match the federal definition. This rule would further align Indiana's Fair Housing Act with federal law as well as comply with HEA 1623 (2023).

V. Benefit Analysis

Currently, the Indiana Fair Housing Act and the associated regulations do not provide any guidance to ALJs in determining the amount of civil penalty to issue once it is determined a discriminatory practice has occurred. In adding these factors, the ALJ will have some guidance should be situation arise where civil penalties may be issued. This benefits the general public and any impacted parties by indicating the factors an ALJ would consider when considering the issuance of a civil penalty.

Because this civil penalty is only issued occasionally, it is unlikely the proposed rule will result in any significant time or money saved for ICRC or any other state agency. Likewise, the potential impact on regulated parties is nominal as most parties maintain compliance with fair housing laws. To the extent the civil penalty serves as a deterrence to engaging in discriminatory acts, further awareness of the civil penalty may result in even more compliance, thus reducing complaints of housing discrimination filed with ICRC.

VI. Cost Analysis

ICRC does not anticipate any new costs associated with the proposed rule compared to existing requirements. The civil penalty currently exists, and the proposed rule merely provides guidance for when it is seldomly issued. The proposed rule does not require parties to engage in any new behavior or procedures. The proposed rule will not add any new costs to ICRC or other state agencies. As indicated above, civil penalties have been issued fewer than five times over the last five years. The total amount of civil penalties issued is roughly \$40,000 over that time period, which is well below the threshold set in IC 4-22-2-22.7(c)(6).

VII. Sources of Information

As indicated in footnotes above, ICRC obtained information from various sources to identify potential impacted parties to help with the cost-benefit analysis. These sources include the Indiana Association of Realtors, the Indiana Apartment Association, ipropertymanagement.com, and bankbranchlocator.com. ICRC also reviewed internal reports and metrics. Because this proposed rule does not result in any new costs, other sources were not consulted.

VIII. Regulatory Analysis

Because there are little to no costs associated with the proposed rule, the benefit of additional guidance related to civil penalties exceeds those costs.

IX. Contact Information of Staff to Answer Substantive Questions

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Additional Information for OMB and SBA Review

The following information is required for OMB and State Budget Agency (SBA) review but will not be published along with the regulatory analysis.

X. Redline Draft of Proposed Rules

The Proposed Rule is attached separately.