

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Senator Chaffin**

# A Bill

**SENATE BILL**

## For An Act To Be Entitled

"ARKANSANS WITH DISABILITIES ACT"

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

### ARTICLE 1 - GENERAL PROVISIONS

SECTION 1. This act shall be known and may be cited as the "Arkansans With Disabilities Act."

SECTION 2. PURPOSE. It is the purpose of this act:

(1) to provide a clear and comprehensive state mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the State of Arkansas plays a central role in enforcing the standards established in this act on behalf of individuals with disabilities; and

(4) to invoke the sweep of state authority, including its power to enforce Art. 2, §3 of the Arkansas Constitution, in order to address the major areas of discrimination against individuals with disabilities.

SECTION 3. DEFINITIONS. As used in this act:

(1) Auxiliary Aids and Services. The term "auxiliary aids and services" includes:

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual

1 impairments;

2 (C) acquisition or modification of equipment or devices; and

3 (D) other similar services and actions.

4 (2) Disability. The term "disability" means, with respect to an  
5 individual:

6 (A) a physical or mental impairment that substantially limits one  
7 or more of the major life activities of such individual;

8 (B) a record of such an impairment; or

9 (C) being regarded as having such an impairment.

10 (3) Commission. The term "Commission" means the Arkansas Disability  
11 Rights Commission.

12 (4) Readily Achievable. The term "readily achievable" means easily  
13 accomplishable and able to be carried out without much difficulty or expense.

14

15 SECTION 4. Prohibition Against Retaliation and Coercion.

16 (a) Retaliation. No individual shall discriminate against any other  
17 individual because such other individual has opposed any act or practice made  
18 unlawful by this act or because such other individual made a charge,  
19 testified, assisted, or participated in any manner in an investigation,  
20 proceeding, or hearing under this act.

21 (b) Interference, Coercion, or Intimidation. It shall be unlawful to  
22 coerce, intimidate, threaten, or interfere with any person in the exercise or  
23 enjoyment of, or on account of his having exercised or enjoyed, or on account  
24 of his or her having aided or encouraged any other person in the exercise or  
25 enjoyment of, any right granted or protected by this act.

26

27 SECTION 5. Regulations.

28 No later than three (3) months after the effective date of this act, the  
29 commission shall issue regulations in an accessible format to carry out this  
30 act in accordance with the Arkansas Administrative Procedure Act found in Ark.  
31 Code Ann. 25-15-201 et seq.

32

33 SECTION 6. Technical Assistance.

34 (a) Plan for Assistance. Not later than three (3) months after the  
35 effective date of this act, the commission, in consultation with the Attorney

1 General, the State Fire Marshal, the State Architect, the State Labor Board,  
2 State Building Services, and any other state agency affected by this act shall  
3 develop a plan to assist entities covered under the act, along with other  
4 executive agencies and commissions, in understanding the responsibility of  
5 such entities, agencies, and commissions under this act.

6 (b) Failure to Receive Assistance. An employer, public accommodation,  
7 or other entity covered under this act shall not be excused from meeting the  
8 requirements of this act because of any failure to receive technical  
9 assistance under this section.

10

11 SECTION 7. Enforcement.

12 (a) In General.

13 (1) Availability of Remedies and Procedures. Whenever any person  
14 has engaged or there are reasonable grounds to believe that any person is  
15 about to engage in any act or practice prohibited by this act, a civil action  
16 for preventive relief, including an application for a permanent or temporary  
17 injunction, restraining order, or other order, may be instituted by the person  
18 aggrieved and, upon timely application, the court may, in its discretion,  
19 permit the commission to intervene in such civil action if he certifies that  
20 the case is of general public importance.

21 (2) Injunctive Relief. In the case of violations of architectural  
22 accessibility, injunctive relief shall include an order to alter facilities to  
23 make such facilities readily accessible to and usable by individuals with  
24 disabilities to the extent required by this act. Where appropriate,  
25 injunctive relief shall also include requiring the provision of an auxiliary  
26 aid or service, modification of a policy, or provision of alternative methods,  
27 to the extent required by this act.

28 (3) Costs. In any action or administrative proceeding commenced  
29 pursuant to this act, the court or the commission, in its discretion may allow  
30 the prevailing party, other than the state, reasonable attorney's fees,  
31 including litigation expenses and costs and other demonstrable monetary  
32 damages related to the discrimination.

33 (b) Enforcement by the commission.

34 (1) Denial of Rights.

35 (A) Duty to Investigate.

1 (i) In General. The commission shall investigate  
2 alleged violations of this article, which shall include undertaking periodic  
3 reviews of compliance of covered entities under this act.

4 (ii) Commission Certification. On the application of  
5 a local government, the commission may, after prior notice and a public  
6 hearing at which individuals with disabilities are provided an opportunity to  
7 testify against such certification, certify that a local building code or  
8 similar ordinance that establishes accessibility requirements meets or exceeds  
9 the minimum requirements of the act for the accessibility and usability of  
10 covered facilities under this act. At any enforcement proceeding under this  
11 section, such certification by the commission shall be rebuttable evidence  
12 that such building code does meet or exceed the minimum requirements of this  
13 act.

14 (B) Potential Violation. If the commission has reasonable  
15 cause to believe that any person or group of persons is engaged in a pattern  
16 or practice of resistance to the full and equal enjoyment of any of the rights  
17 granted by this act, and such denial raises an issue of general public  
18 importance, the commission may commence a civil action in any appropriate  
19 court.

20 (2) Authority of the Court. In a civil action, the court:

21 (A) may grant any equitable relief that such court considers  
22 to be appropriate, including granting temporary, preliminary, or permanent  
23 relief, providing an auxiliary aid or service, modification of policy or  
24 alternative method, or making facilities readily accessible to and usable by  
25 individuals with disabilities, to the extent required by this act;

26 (B) may award such other relief as the court considers to be  
27 appropriate, including monetary damages to persons aggrieved when requested by  
28 the commission; and

29 (C) may, to vindicate the public interest, assess a civil  
30 penalty against the entity in an amount:

- 31 (i) not exceeding \$10,000 for a first violation; and
- 32 (ii) not exceeding \$25,000 for a second violation.

33

34 SECTION 8. Relief.

35 (a) In General. Any relief granted under this act shall be limited in

1 duration by a specified date and the commission shall be notified of any such  
2 relief granted.

3 (b) Fraudulent Application. If at any time, the commission has  
4 reasonable cause to believe that such relief was fraudulently applied for, the  
5 commission shall:

6 (1) cancel such relief, if such relief is still in  
7 effect; and

8 (2) take other steps that the commission considers appropriate.

9

10 SECTION 9. (a) The Arkansas Disability Rights Commission is hereby  
11 established with the purpose to prevent and eliminate discriminatory practices  
12 in employment, public accommodations and public services.

13 (b) The commission shall consist of five (5) members, who shall be  
14 appointed by the Governor. One of the commissioners shall be designated by  
15 the other commissioners as chairman.

16 (c) The term of office of each member of the commission shall be six (6)  
17 years. A member of the commission is eligible for reappointment.

18 (d) Fifty percent (50%) or more of the current membership of the  
19 commission constitutes a quorum. A vacancy in the commission does not impair  
20 the authority of the remaining members to exercise the powers of the  
21 commission.

22 (e) A commissioner may be removed by the Governor for inefficiency,  
23 neglect of duty, misconduct or malfeasance in office, after being given a  
24 written statement of the charges and an opportunity to be heard thereon.

25 (f) The commission shall have the authority to promulgate all procedural  
26 and substantive regulations necessary to implement this act.

27 (g) (1) The commission shall have the authority to appoint an executive  
28 director approved by the Governor and any necessary attorneys, hearing  
29 examiners, clerks, and other employees or agents.

30 (2) Attorneys for the commission shall:

31 (A) render legal advice to the commission on matters  
32 appearing before it and to represent the commission in legal actions to which  
33 it is a party; and

34 (B) give legal assistance to complainants appearing before  
35 the commission or its hearing examiners.

1           (3) These responsibilities shall require a separate staff of  
2 attorneys to perform each function.

3           (h) The commission shall have the following duties and responsibilities:

4           (1) to maintain an office in Little Rock and such other offices  
5 within the state as it may deem necessary and meet and exercise its power any  
6 place within the state;

7           (2) to exercise general supervision and direct the activities of  
8 the executive director and other administrative staff;

9           (3) to initiate, receive, investigate, seek to conciliate, hold  
10 hearings on, and pass upon complaints charging unlawful discriminatory  
11 practices;

12           (4) to authorize the creation of statewide or local advisory  
13 committees to study the problems of discrimination in all or specific fields  
14 of human relationships, and foster through community effort or goodwill  
15 cooperation and conciliation among the groups and elements of the population  
16 of Arkansas, and publish results of investigations and research as in its  
17 judgment will tend to eliminate discrimination because of handicap or  
18 disability;

19           (5) to make an overall assessment, at least once every three (3)  
20 years, of progress made toward equal employment opportunity by every  
21 department of state government;

22           (6) to conduct mandatory training seminars on the Arkansans with  
23 Disabilities Act and other applicable federal and state law procedures and  
24 rules for the Office of Personnel Management of the Department of Finance and  
25 Administration or for personnel representatives of each state agency;

26           (7) to investigate where no complaint has been filed, but with the  
27 consent of two-thirds (2/3) of the members of the commission, any problem of  
28 discrimination with the intent of avoiding and preventing the development of  
29 racial tension;

30           (8) to issue an annual report, describing in detail the  
31 investigations, proceedings, and hearings it has conducted and their outcome,  
32 the decisions it has rendered, and the other work performed by it, and make  
33 recommendations for such further legislation concerning abuses and  
34 discrimination because of handicap or disability;

35           (9) to accept public grants, private gifts, bequests, or other

1 amounts or payments; and

2 (10) to adopt, promulgate, amend, and rescind rules and  
3 regulations to effectuate the purposes and policies of this act, including  
4 regulations requiring the posting or inclusion in advertising of notices  
5 prepared or approved by the commission, and regulations as to the filing,  
6 approval, or disapproval of plans to eliminate or reduce imbalance with  
7 respect to handicap or disability.

8 (i) The commission may call upon the departments and agencies of the  
9 state, with the approval of the Governor, for cooperation and assistance in  
10 carrying out this act;

11 (j) The commission shall be authorized to issue subpoenas, subpoenas  
12 duces tecum and other process to compel the attendance of witnesses and the  
13 production of testimony, records, papers, accounts, and documents in any  
14 commission in the state. The commission, a commissioner, or an employee  
15 authorized by the commission may petition a court of this state to enforce its  
16 subpoenas and other process.

17 (k) A commissioner or an employee authorized by the commission shall be  
18 authorized to administer oaths and certify to all official acts.

19 (l) The members of the commission are to serve without compensation but  
20 shall be authorized to receive reimbursement for their actual housing and  
21 travel expenses for travel incident to their attendance to the business of the  
22 commission and at a rate authorized for state employees' travel.

23

24 SECTION 10. (a) (1) A person claiming to be aggrieved by a  
25 discriminatory practice, his agent, a member of the commission, the Attorney  
26 General, a state board or commission, or a non-profit organization chartered  
27 to combat discrimination (hereinafter the complainant), may file with the  
28 commission a written complaint stating that a discriminatory practice has been  
29 committed, setting forth facts sufficient to enable the commission to identify  
30 the person charged (hereinafter the respondent). The commission or a member  
31 of the commission or the commission director or staff shall promptly  
32 investigate the allegations of discriminatory practice set forth in the  
33 complaint and shall immediately furnish the respondent with a copy of the  
34 complaint. The complaint must be filed within one (1) year after the alleged  
35 discriminatory practice occurs, provided, however that a complaint alleging a

1 discriminatory practice in employment shall be filed within one hundred and  
2 eighty (180) days after it occurs.

3           (2) If within sixty (60) days after the complaint is filed it is  
4 determined by the commission or a member of the commission or the commission  
5 director or staff that there is no reasonable cause to believe that the  
6 respondent has engaged in a discriminatory practice, the commission shall  
7 issue an order dismissing the complaint and shall furnish a copy of the order  
8 to the complainant, the respondent, the Attorney General, and other such  
9 public officers and persons as the commission deems proper.

10           (3) The complainant, within thirty (30) days after receiving a  
11 copy of an order dismissing the complaint, may file with the commission an  
12 application for reconsideration of the order. Upon such application, the  
13 commission or a designated member of the commission other than the member  
14 making the determination under the subdivision (a)(2) of this section shall  
15 make a new determination whether there is reasonable cause to believe that the  
16 respondent has engaged in a discriminatory practice. If it is determined  
17 within thirty (30) days after the application for reconsideration is filed  
18 that there is no reasonable cause to believe that the respondent has engaged  
19 in a discriminatory practice, the commission shall issue a final order  
20 dismissing the complaint and shall furnish a copy of the order to the  
21 complainant, the respondent, the Attorney General, and other such public  
22 officers and persons as the commission deems proper.

23           (4) Unless the commission has issued an order dismissing the  
24 complaint pursuant to this section, a member of the commission designated by  
25 the chairman or the staff may endeavor to eliminate the alleged discriminatory  
26 practice by conference, conciliation, and persuasion. The terms of a  
27 conciliation agreement reached with a respondent may require him to refrain in  
28 the future from committing discriminatory practices of the type stated in the  
29 agreement and to take such affirmative action as in the judgment of the  
30 commission will carry out the purposes of this act and may include consent by  
31 the respondent to the entry in a court of a consent decree embodying terms of  
32 the conciliation agreement. If a conciliation agreement is entered into, the  
33 commission shall issue an order stating its terms and furnish a copy of the  
34 order to the complainant, the respondent, the Attorney General, and other such  
35 public officers and persons as the commission deems proper.

1           (5) At any time in its discretion but not later than one (1) year  
2 from the date of a conciliation agreement, the commission shall investigate  
3 whether the terms of the agreement are being complied with by the respondent.  
4 Upon a finding that the terms of the agreement are not being complied with by  
5 the respondent, the commission shall take appropriate action to assure  
6 compliance.

7           (6) (A) At any time after a complaint is filed, the commission may  
8 file a petition in the Circuit Court in a county in which the subject of the  
9 complaint occurs, or in a county in which a respondent resides or transacts  
10 business, seeking appropriate temporary relief against the respondent, pending  
11 final determination on proceedings, under this act, including an order or  
12 decree restraining him from doing or procuring any act tending to render  
13 ineffectual any order the commission may enter with respect to the complaint.  
14 The court shall have the power to grant such temporary relief or restraining  
15 order as it deems just and proper, but no such relief or order extending  
16 beyond five (5) days shall be granted except by consent of the respondent  
17 after hearing upon notice to the respondent and a finding by the court that  
18 there is reasonable cause to believe that the respondent has engaged in a  
19 discriminatory practice.

20           (B) If a complaint is dismissed by final order of the  
21 commission or a court after a court has granted temporary relief or a  
22 restraining order under subdivision (a) (6) (A) of this section, the respondent  
23 shall be entitled to recover from the state reasonable attorney's fees and  
24 costs sustained by reason of the temporary relief or restraining order in an  
25 action in the court which granted the temporary relief or restraining order.

26           (b) (1) If the commission has not issued an order dismissing the  
27 complaint or stating the terms of the conciliation agreement within sixty (60)  
28 days after a complaint is filed, or within thirty (30) days after an  
29 application for reconsideration is filed, the commission shall serve on the  
30 respondent by registered or certified mail a written notice, together with a  
31 copy of the complaint as it may have been amended, requiring the respondent to  
32 answer in writing the allegations of the complaint at a hearing before one or  
33 more members of the commission or a hearing examiner at a time and place  
34 specified in the notice. A copy of the notice shall be furnished to the  
35 complainant, the Attorney General, and other such public officers and persons

1 as the commission deems proper.

2           (2) A member of the commission or staff who filed or investigated  
3 the complaint or endeavored to eliminate the alleged unlawful practice by  
4 conference or conciliation, shall preside at the hearing or participate in the  
5 subsequent deliberation of the commission.

6           (3) The respondent shall file an answer with the commission in  
7 person or by registered or certified mail in accordance with the rules of the  
8 commission. The commission shall furnish a copy of the answer to the  
9 complainant and any other party to the proceeding. The commission or the  
10 complainant may amend a complaint and the respondent may amend an answer at  
11 any time prior to the issuance of an order based upon the complaint, but no  
12 order shall be issued unless the respondent has had the opportunity of a  
13 hearing on the complaint or amendment on which the order is based.

14           (4) The case in support of the complaint shall be presented at the  
15 hearing by the commission staff. Efforts in a particular case to eliminate a  
16 discriminatory practice by conference and conciliation shall not be received  
17 in evidence.

18           (5) A respondent who has filed an answer or whose default in  
19 answering has been set aside for good cause shown may appear at the hearing  
20 with or without legal representation, may examine and cross-examine witnesses  
21 and the complainant, and may offer evidence. The complainant, the Attorney  
22 General, and, in the discretion of the commission, any person may intervene,  
23 examine, and cross-examine witnesses, and may present evidence.

24           (6) If the respondent fails to answer the complaint, the  
25 commission or the hearing examiner may enter his default and the hearing shall  
26 proceed on the evidence in support of the complaint. The default may be set  
27 aside for good cause shown upon equitable terms and conditions.

28           (7) Testimony taken at the hearing shall be under oath and  
29 transcribed. If the testimony is not taken before the commission, the record  
30 shall be transmitted to the commission. After the hearing, the commission  
31 upon notice to all parties with an opportunity to be heard may take further  
32 evidence or hear argument.

33           (c) If the commission determines that the respondent has not engaged in  
34 a discriminatory practice, the commission shall state its findings of fact and  
35 conclusions of law and shall issue an order dismissing the complaint and

1 furnish a copy of the order to the complainant, the respondent, the Attorney  
2 General, and such other public officers and persons as the commission deems  
3 proper.

4 (d) (1) If the commission determines that the respondent has engaged in a  
5 discriminatory practice, the commission shall state its findings of fact and  
6 conclusions of law and shall issue an order requiring the respondent to cease  
7 and desist from the discriminatory practice and to take such affirmative  
8 action as in the judgment of the commission will carry out the purposes of  
9 this act. A copy of the order shall be delivered to the complainant, the  
10 respondent, the Attorney General, and other such public officers and persons  
11 as the commission deems proper.

12 (2) An affirmative action order under this subsection may include  
13 but is not limited to:

14 (A) hiring, reinstatement, or upgrading employees with or  
15 without pay;

16 (B) admission or restoration of individuals to union  
17 membership or admission to or participation in a training program, with the  
18 utilization of objective criteria in the admission of individuals to such  
19 programs;

20 (C) admission of individuals to a public accommodation,  
21 public service, or an educational institution;

22 (D) reporting as to the manner of compliance;

23 (E) posting notices in conspicuous places in the  
24 respondent's place of business in a form prescribed by the commission and  
25 inclusion of such notices in advertising material;

26 (F) payment to the complainant of damages for an injury or  
27 loss caused by the discriminatory practice, a reasonable attorney's fee, and  
28 all or a portion of the costs of maintaining the action before the commission,  
29 including expert witness fees.

30 (3) In the case of a respondent operating by virtue of a license  
31 issued by the state, or a political subdivision or agency thereof, if the  
32 commission, upon notice to the respondent with an opportunity to be heard,  
33 determines that the respondent has engaged in a discriminatory practice and  
34 that the discriminatory practice was authorized, requested, commanded,  
35 performed, or knowingly or recklessly tolerated by the board of directors of

1 the respondent or by an officer or executive agent acting within the scope of  
2 his employment, the commission shall so certify to the licensing agency.  
3 Unless the commission's finding of a discriminatory practice is reversed in  
4 the course of judicial review, the finding of discrimination is binding on the  
5 licensing agency.

6 (4) In the case of a respondent who is found by the commission to  
7 have engaged in a discriminatory practice in the course of performing under a  
8 contract or subcontract with the state or subdivision or agency thereof, if  
9 the discriminatory practice was authorized, requested, commanded, performed,  
10 or knowingly or recklessly tolerated by the board of directors of the  
11 respondent or by an officer or executive agent acting within the scope of his  
12 employment, the commission shall so certify to the contracting agency. Unless  
13 the commission finding of a discriminatory practice is reversed in the course  
14 of judicial review, the finding of discrimination is binding on the  
15 contracting agency.

16 (e) (1) A complainant, respondent, or intervenor shall have the right of  
17 appeal from any final order of the commission before the Circuit Court for the  
18 county in which the alleged discriminatory practice occurred or where the  
19 person against whom the complaint is filed, resides, or has his or her  
20 principal place of business.

21 (2) If an appeal is not taken within thirty (30) days after the  
22 service of an appealable order of the commission, the commission may obtain a  
23 decree for the enforcement of the order from the Circuit Court which has  
24 jurisdiction of the appeal.

25 (3) A proceeding for review or enforcement of an appealable order  
26 is initiated by filing a petition in the Circuit Court. Within thirty (30)  
27 days after the service of the petition upon the commission or filing of the  
28 petition by the commission, or within further time as the court may allow, the  
29 commission shall transmit to the court the original or a certified copy of the  
30 entire record upon which the order is based, including a transcript of the  
31 testimony, which need not be printed. By stipulation of the parties to the  
32 review proceeding, the record may be shortened. The court may grant temporary  
33 relief as it considers just, or enter an order enforcing, modifying and  
34 enforcing as modified, or setting aside in whole or in part the order of the  
35 commission, or may remand the case to the commission for further proceedings.

1 The commission's copy of the testimony shall be available at reasonable times  
2 to all parties for examination without cost.

3 (f) (1) In connection with an investigation of a complaint filed under  
4 this act, the commission or its designated representative shall have access at  
5 any reasonable time to premises, records, and documents relevant to the  
6 complaint and the right to examine, photograph, and copy evidence.

7 (2) It is unlawful for an officer or employee of the commission to  
8 make public with respect to a particular person without his consent  
9 information obtained by the commission pursuant to its authority except as  
10 necessary to the conduct of a proceeding under this act.

11

12 ARTICLE 2 - EMPLOYMENT

13

14 SECTION 11. Definitions. As used in this article:

15 (1) Covered Entity. The term "covered entity" means an employer,  
16 employment agency, labor organization, or joint labor-management committee.

17 (2) Employee. The term "employee" means an individual employed by an  
18 employer.

19 (3) Employer. The term "employer" means a person or a  
20 covered entity engaged in an industry, who has ten (10) or more employees for  
21 each working day in each of twenty (20) or more calendar weeks in the current  
22 or preceding calendar year, and any agent of such person.

23 (4) Illegal Drug. The term "illegal drug" means a controlled substance,  
24 as defined in Schedules I through VI of Ark. Code Ann. 5-64-203 through  
25 5-64-213, the possession or distribution of which is unlawful under such act.  
26 The term "illegal drug" does not mean the use of a controlled substance taken  
27 under supervision by a licensed health care professional or other uses  
28 authorized by the controlled substances act or other provisions of state law.

29 (5) Person. The term "person" means any individual or legal entity.

30 (6) Qualified Individual With a Disability. The term "qualified  
31 individual with a disability" means an individual with a disability who, with  
32 or without reasonable accommodation, can perform the essential functions of  
33 the employment position that such individual holds or desires.

34 (7) Reasonable Accommodation. The term "reasonable accommodation" may  
35 include:

1 (A) making existing facilities used by employees readily  
2 accessible to and usable by individuals with disabilities; and

3 (B) job restructuring, part-time, or modified work schedules,  
4 reassignment to a vacant position, acquisition or modification of equipment or  
5 devices, appropriate adjustments or modifications of examinations, training  
6 materials or policies, the provision of qualified readers or interpreters, and  
7 other similar accommodations for individuals with disabilities.

8 (8) Undue Hardship.

9 (A) In General. The term "undue hardship" means an action  
10 requiring significant difficulty or expense.

11 (B) Determination. In determining whether an accommodation would  
12 impose an undue hardship on a covered entity, factors to be considered  
13 include:

14 (i) the overall size of the covered entity with respect to  
15 the number of its employees; the number, type, and location of its facilities;  
16 the overall financial resources of the entity and the financial resources of  
17 its facility or facilities involved in the provision of the reasonable  
18 accommodation;

19 (ii) the type of operation or operations of the covered  
20 entity, including the composition and structure of the workforce, in terms of  
21 such factors as functions of the workforce, geographic separateness, and  
22 administrative relationship, to the extent that such factors contribute to a  
23 reasonable determination of undue hardship; and

24 (iii) the nature and cost of the accommodation needed under  
25 this act.

26

27 SECTION 12. Discrimination.

28 (a) General Rule. No covered entity shall discriminate against a  
29 qualified individual with a disability because of the disability of such  
30 individual in regard to job application procedures, the hiring, advancement,  
31 or discharge of employees, employee compensation, job training, and other  
32 terms, conditions and privileges of employment.

33 (b) Construction. As used in subsection (a) of this section, the term  
34 "discriminate" includes:

35 (1) limiting, segregating, or classifying a job applicant or

1 employee in a way that adversely affects the opportunities or status of such  
2 applicant or employee because of the disability of such applicant or employee;

3           (2) participating in a contractual or other arrangement or  
4 relationship that has the effect of subjecting a covered entity's qualified  
5 applicant or employee with a disability to the discrimination prohibited by  
6 this article, including relationships with an employment or referral agency,  
7 labor union, an organization providing fringe benefits to an employee of the  
8 covered entity, or an organization providing training and apprenticeship  
9 programs;

10           (3) utilizing standards, criteria, or methods of administration:

11                   (A) that have the effect of discrimination on the basis of  
12 disability; or

13                   (B) that perpetuate the discrimination of others who are  
14 subject to common administrative control;

15           (4) excluding or otherwise denying equal jobs or benefits to a  
16 qualified individual because of the known disability of an individual with  
17 whom the qualified individual is known to have a relationship or association;  
18

19           (5) not making reasonable accommodations to the known physical or  
20 mental limitations of an otherwise qualified individual who is an applicant or  
21 employee, unless such covered entity can demonstrate that the accommodation  
22 would impose an undue hardship on the operation of the business of such  
23 covered entity;

24           (6) denying employment opportunities to a job applicant or  
25 employee who is an otherwise qualified individual with disability, if such  
26 denial is based on the need of such covered entity to make reasonable  
27 accommodation to the physical or mental impairments of the employee or  
28 applicant;

29           (7) using qualification standards, employment tests, or other  
30 selection criteria that screen out or tend to screen out an individual with a  
31 disability or a class of individuals with disabilities unless the test or  
32 other selection criteria, as used by the covered entity, is shown to be job-  
33 related for the position in question and is consistent with business  
34 necessity; and

35           (8) failing to select and administer tests concerning employment

1 in the most effective manner to ensure that, when such test is administered to  
2 a job applicant or employee who has a disability that impairs sensory, manual,  
3 or speaking skills, such test results accurately reflect the skills, aptitude,  
4 or whatever other factor of such applicant or employee that such test purports  
5 to measure, rather than reflecting the impaired sensory, manual, or speaking  
6 skills of such employee or applicant, except where such skills are the factors  
7 that the test purports to measure.

8 (c) Medical Examinations and Inquiries.

9 (1) In General. The prohibition against discrimination as  
10 referred to in subsection (a) of this section shall include medical  
11 examinations and inquiries.

12 (2) Preemployment.

13 (A) Prohibited Examination or Inquiry. Except as provided  
14 in paragraph (3) of subsection (c) of this section, a covered entity shall not  
15 conduct a medical examination or make inquiries of a job applicant or employee  
16 as to whether such applicant or employee is an individual with a disability or  
17 as to the nature or severity of such disability.

18 (B) Acceptable Inquiry. A covered entity may make  
19 preemployment inquiries into the ability of an applicant to perform job-  
20 related functions.

21 (3) Employment Entrance Examination. A covered entity may require  
22 a medical examination after an offer of employment has been made to a job  
23 applicant and prior to the commencement of the employment duties of such  
24 applicant, and may condition an offer of employment on the results of such  
25 examination, if:

26 (A) all entering employees are subjected to such an  
27 examination regardless of disability;

28 (B) information obtained regarding the medical condition or  
29 history of the applicant is collected and maintained on separate forms and in  
30 separate medical files and is treated as a confidential medical record, except  
31 that:

32 (i) supervisors and managers may be informed regarding  
33 necessary restrictions on the work or duties of the employee and necessary  
34 accommodations;

35 (ii) first aid and safety personnel may be informed,

1 when appropriate, if the disability might require emergency treatment; and  
2 (iii) government officials investigating compliance  
3 with this act shall be provided relevant information on request; and

4 (C) the results of such physical examination are used only  
5 in accord with this article.

6 (4) Examination and Inquiry.

7 (A) Prohibited Examinations and Inquiries. A covered entity  
8 shall not conduct or require a medical examination and shall not make  
9 inquiries of an employee as to whether such employee is an individual with a  
10 disability or as to the nature or severity of the disability, unless such  
11 examination or inquiry is shown to be job-related and consistent with business  
12 necessity.

13 (B) Acceptable Inquiries. A covered entity may make  
14 inquiries into the ability of an employee to perform job-related functions.

15

16 SECTION 13. Defenses.

17 (a) In General. It may be a defense to a charge of discrimination under  
18 this act that an alleged application of qualification standards, tests, or  
19 selection criteria that screen out or tend to screen out or otherwise deny a  
20 job or benefit to an individual with a disability has been shown to be job-  
21 related and consistent with business necessity, and such performance cannot be  
22 accomplished by reasonable accommodation, as required under this article.

23 (b) Qualification Standards. The term "qualification standards" may  
24 include a requirement that an individual with a currently contagious disease  
25 or infection shall not pose a direct threat to the health or safety of other  
26 individuals in the workplace.

27 (c) Religious Entities.

28 (1) In General. This article shall not prohibit a religious  
29 corporation, association, educational institution, or society from giving  
30 preference in employment to individuals of a particular religion to perform  
31 work connected with the carrying on by such corporation, association,  
32 educational institution, or society of its activities.

33 (2) Qualification Standard. Under this article, a religious  
34 organization may require, as a qualification standard to employment, that all  
35 applicants and employees conform to the religious tenets of such organization.

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SECTION 14. Illegal Drugs and Alcohol.

(a) Qualified Individual with a Disability. For purposes of this article, the term "qualified individual with a disability" shall not include any employee or applicant who is a current user of illegal drugs, when the covered entity acts on the basis of such use.

(b) Nothing in subsection (a) of this section shall be construed to exclude as an individual with a disability an individual who:

- (1) has successfully completed a supervised drug rehabilitation program and is no longer using illegal drugs, or has otherwise been rehabilitated successfully and is no longer using illegal drugs; or
- (2) is participating in a supervised rehabilitation program and is no longer using illegal drugs; or
- (3) is erroneously regarded as being an illegal drug user but is not using illegal drugs.

(c) Authority of Covered Entity. A covered entity:

- (1) may prohibit the use of alcohol or illegal drugs at the workplace by all employees;
- (2) may require that employees shall not be under the influence of alcohol or illegal drugs at the workplace; and
- (3) may hold an employee who is a drug user or alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee.

(d) Drug Testing. Nothing in this article shall be construed to encourage, prohibit, or authorize the conducting of drug testing for illegal drugs of job applicants or employees or making employment decisions based on such test results.

SECTION 15. Posting Notices.

Every covered entity covered under this article shall post notices in an accessible format to applicant, employees, and members describing the application provisions of this act.

ARTICLE 3 - PUBLIC SERVICES

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SECTION 16. Definition.

As used in this article, the term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, and practices, the removal or architectural, communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a department, agency, special purpose district, or other instrumentality of state or local government.

SECTION 17. Discrimination.

No qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of state or local government.

SECTION 18. Public Transportation.

(a) Definition. The term "public transportation" means transportation by bus or by any other conveyance that provides the general public with general or public service, including charter service, on a regular and continuing basis.

(b) Vehicles. Buses and Other Fixed Route Vehicles. It shall be considered discrimination for purposes of this act for a public entity to purchase or lease a fixed route bus of any size, to be used for public transportation, or any other fixed route vehicle to be used for public transportation and for which a solicitation is made later than thirty (30) days after the effective date of this act, if such bus or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Paratransit as a Supplement to Fixed Route Public Transportation System.

(1) In General. If a public entity operates a fixed route public transportation system to provide public transportation, it shall be considered discrimination for a public transit entity that is responsible for providing

1 public transportation to fail to provide paratransit or other special  
2 transportation services sufficient to provide a comparable level of services  
3 as is provided to individuals using fixed route public transportation to  
4 individuals with disabilities including individuals who use wheelchairs, who  
5 cannot otherwise use fixed route public transportation and to other  
6 individuals associated with such individuals with disabilities in accordance  
7 with service criteria established under regulations promulgated by the  
8 commission unless the public transit entity can demonstrate that the provision  
9 of paratransit or other special transportation services would impose an undue  
10 financial burden on the public transit entity.

11 (2) Undue Financial Burden. If the provision of comparable  
12 paratransit or other special transportation services would impose an undue  
13 financial burden on the public transit entity, such entity must provide  
14 paratransit and other special transportation services to the extent that  
15 providing such services would not impose an undue financial burden on such  
16 entity.

17 (3) Regulations.

18 (A) Formula. Regulations promulgated by the commission to  
19 determine what constitutes an undue financial burden, for purposes of  
20 subsection (c) of this section, may include a flexible numerical formula that  
21 incorporates appropriate local characteristics such as population.

22 (B) Additional Paratransit Services. Notwithstanding  
23 paragraphs (1) and (2) of subsection (c) of this section, the commission may  
24 require, at its discretion, a public transit authority to provide paratransit  
25 services beyond the amount determined by such formula.

26 (d) Facilities.

27 (1) It shall be considered discrimination for a covered entity to  
28 operate, build, or alter a facility for bus service and other services used  
29 for public transportation or activities conducted in such facilities so that,  
30 when viewed in the entirety, it is not readily accessible and usable by  
31 individuals with disabilities, including individuals who use wheelchairs.

32 (2) If a public entity is undertaking major structural  
33 alterations that affect or could affect the usability of the facility, as  
34 determined by the commission, such public entity shall also make the  
35 alterations in such a manner that to the maximum extent feasible, the path of

1 travel to the altered area, and the bathrooms, telephones, and drinking  
2 fountains serving such area are readily accessible to and usable by  
3 individuals with disabilities, including individuals who use wheelchairs.

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ARTICLE 4 - PUBLIC ACCOMMODATIONS AND SERVICES  
OPERATED BY PRIVATE ENTITIES

8 SECTION 19. Definitions. As used in this article:

9 (1) Commerce. The term "commerce" means travel, trade, traffic,  
10 commerce, transportation, or communication.

11 (2) Commercial Facilities. The term "commercial facilities" means  
12 facilities:

13 (A) that are intended for nonresidential use; and

14 (B) whose operations will affect commerce.

15 (3) Public Accommodation. The following publicly or privately operated  
16 entities are considered public accommodations for purposes of this article:

17 (A) an inn, motel, or other similar place of lodging, except for  
18 an establishment located within a building that contains not more than five

19 (5) rooms for rent or hire and that is actually occupied by the proprietor of  
20 such establishment as the residence of such proprietor;

21 (B) a restaurant, bar, or other establishment serving food or  
22 drink;

23 (C) a motion picture house, theater, concert hall, stadium, race  
24 track, or other place of exhibition or entertainment;

25 (D) an auditorium, convention center, or lecture hall;

26 (E) a bakery, grocery store, clothing store, hardware store,  
27 shopping center, or other similar retail sales establishment;

28 (F) a laundromat, dry-cleaners, bank, barber shop, beauty shop,  
29 travel agency, shoe repair service, funeral parlor, gas station, office of an  
30 accountant or lawyer, pharmacy, insurance office, professional office of a  
31 health care provider, or other similar service provider;

32 (G) a terminal used for public transportation;

33 (H) a museum, library, gallery, and other similar place of public  
34 display or collection;

35 (I) a park or zoo;

1 (J) a nursery, elementary, secondary, undergraduate, or  
2 postgraduate private school;

3 (K) a day care center, senior citizen center, homeless shelter,  
4 food bank, adoption program, or other similar social service center; and

5 (L) a gymnasium, health spa, bowling alley, golf course, or other  
6 similar place of exercise or recreation.

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8 SECTION 20. Prohibition of Discrimination by Public Accommodations.

9 (a) General Rule. No individual shall be discriminated against on the  
10 basis of disability in the full and equal enjoyment of the goods, services,  
11 facilities, privileges, advantages, and accommodations of any place of public  
12 accommodation.

13 (b) Construction.

14 (1) Activities.

15 (A) Denial of Participation. It shall be discriminatory to  
16 subject an individual or class of individuals on the basis of a disability or  
17 disabilities of such individual or class, directly, or through contractual,  
18 licensing, or other arrangements, to a denial of the opportunity of the  
19 individual or class to participate in or benefit from the goods, services,  
20 facilities, privileges, advantages, and accommodations of an entity.

21 (B) Participation in Unequal Benefit. It shall be  
22 discriminatory to afford an individual or class of individuals, on the basis  
23 of a disability or disabilities of such individual or class, directly, or  
24 through contractual, licensing, or other arrangements with the opportunity to  
25 participate in or benefit from a good, service, facility, privilege,  
26 advantage, and accommodation that is not equal to that afforded to other  
27 individuals.

28 (C) Separate Benefit. It shall be discriminatory to provide  
29 an individual or class of individuals, on the basis of a disability or  
30 disabilities of such individual or class, directly, or through contractual,  
31 licensing, or other arrangements with a good, service, facility, privilege,  
32 advantage, or accommodation that is different or separate from that provided  
33 to other individuals, unless such action is necessary to provide the  
34 individual or class of individuals with a good, service, facility, privilege,  
35 advantage, or accommodation, or other opportunity that is as effective as that

1 provided to others.

2 (2) Integrated Settings. Goods, facilities, privileges,  
3 advantages, accommodations, and services shall be afforded to an individual  
4 with a disability in the most integrated setting appropriate to the needs of  
5 the individual.

6 (3) Opportunity to Participate. Notwithstanding the existence of  
7 separate or different programs or activities provided in accordance with this  
8 section, an individual with a disability shall not be denied the opportunity  
9 to participate in such programs or activities that are not separate or  
10 different.

11 (4) Administrative Methods. An individual or entity shall not,  
12 directly or through contractual or other arrangements, utilize standards or  
13 criteria or methods of administration:

14 (A) that have the effect of discriminating on the basis of  
15 disability; or

16 (B) that perpetuate the discrimination of others who are  
17 subject to common administrative control.

18

19 SECTION 21. New Construction in Public Accommodations and Commercial  
20 Facilities.

21 (a) Application of Term. Except as provided in subsection (b) of this  
22 section, as applied to

23 (1) a public accommodation and

24 (2) commercial facilities, the term "discriminated" as used in  
25 subsection (a) of section 18 of this act shall mean a failure to design and  
26 construct facilities for first occupancy later than thirty (30) months after  
27 the date of enactment of this act that are readily accessible to and usable by  
28 individuals with disabilities, except where an entity can demonstrate that it  
29 is structurally impracticable to meet the requirements in accordance with  
30 standards set forth or incorporated by reference in regulations issued under  
31 this article.

32 (b) Elevator. Subsection (a) of this section shall not be construed to  
33 require the installation of an elevator for facilities that are less than  
34 three thousand (3,000) square feet per story unless the building is a shopping  
35 center, a shopping mall, or the professional office of a health care provider

1 or unless the commission determines that a particular category of such  
2 facilities requires the installation of elevators based on the usage of such  
3 facilities.

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5 SECTION 22. Public Transportation Services Provided by Private Entities.

6 (a) General Rules. No individual shall be discriminated against on the  
7 basis of disability in the full and equal enjoyment of public transportation  
8 services provided by a privately operated entity that is primarily engaged in  
9 the business of transporting people and whose operations affect commerce.

10 (b) Construction. As used in subsection (a) of this section, the term  
11 "discriminated against" includes:

12 (1) the imposition of application by an entity of eligibility  
13 criteria that screen out or tend to screen out an individual with a disability  
14 or any class of individuals with disabilities from fully enjoying the public  
15 transportation services provided by the entity;

16 (2) the failure of an entity to:

17 (A) make reasonable modifications consistent with those  
18 required by this act;

19 (B) provide auxiliary aids and services consistent with the  
20 requirements of this act; and

21 (C) remove barriers consistent with the requirements of this  
22 act.

23

24 SECTION 23. Arkansas Code Annotated Sections 20-14-601 through  
25 20-14-613 are hereby repealed.

26

27 SECTION 24. All provisions of this act of a general and permanent  
28 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
29 Code Revision Commission shall incorporate the same in the Code.

30

31 SECTION 25. If any provision of this act or the application thereof to  
32 any person or circumstance is held invalid, such invalidity shall not affect  
33 other provisions or applications of the act which can be given effect without  
34 the invalid provision or application, and to this end the provisions of this  
35 act are declared to be severable.

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SECTION 26. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 27. EMERGENCY. It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that people with disabilities suffer discrimination because of their disabilities; that this legislation is needed immediately to address these problems and to remedy discrimination based on disabilities. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.