

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"

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

### ARTICLE 1 - GENERAL PROVISIONS

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

17 SECTION 2. Purpose. It is the purpose of this act:

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

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

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

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

29 SECTION 3. Definitions. As used in this act:

30 (1) The term "auxiliary aids and services" includes:

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

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

1 (C) acquisition or modification of equipment or devices; and  
2 (D) other similar services and actions.

3 (2) The term "disability" means, with respect to an individual:

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

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

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

8 (3) The term "Commission" means the Governor's Commission on People  
9 with Disabilities.

10 (4) The term "readily achievable" means easily accomplishable and able  
11 to be carried out without much difficulty or expense.

12

13 SECTION 4. Prohibition Against Retaliation and Coercion.

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

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

24

25 SECTION 5. Regulations.

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

30

31 SECTION 6. Technical Assistance.

32 (a) Not later than three (3) months after the effective date of this  
33 act, the Commission, in consultation with the Attorney General, the State Fire  
34 Marshal, the State Architect, the State Labor Board, State Building Services,  
35 and any other state agency affected by this act shall develop a plan to assist

1 entities covered under the act, along with other executive agencies and  
2 commissions, in understanding the responsibility of such entities, agencies,  
3 and commissions under this act.

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

7

8 SECTION 7. Enforcement.

9 (a) In General.

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

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

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

30 (b) Enforcement by the Commission.

31 (1) Denial of Rights.

32 (A) Duty to Investigate.

33 (i) The Commission shall investigate alleged  
34 violations of this article, which shall include undertaking periodic reviews  
35 of compliance of covered entities under this act.

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

10 (B) If the Commission has reasonable cause to believe that  
11 any person or group of persons is engaged in a pattern or practice of  
12 resistance to the full and equal enjoyment of any of the rights granted by  
13 this act, and such denial raises an issue of general public importance, the  
14 Commission may commence a civil action in any appropriate court.

15 (2) In a civil action, the court:

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

21 (B) may award such other relief as the court considers to  
22 be appropriate, including monetary damages to persons aggrieved when requested  
23 by the Commission; and

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

26 (i) not exceeding \$10,000 for a first violation; and

27 (ii) not exceeding \$25,000 for a second violation.

28

29 SECTION 8. Relief.

30 (a) Any relief granted under this act shall be limited in duration by a  
31 specified date and the Commission shall be notified of any such relief  
32 granted.

33 (b) If at any time, the Commission has reasonable cause to believe that  
34 such relief was fraudulently applied for, the Commission shall:

35 (1) cancel such relief, if such relief is still in

1 effect; and

2 (2) take other steps that the Commission considers appropriate.

3

4 ARTICLE 2 - EMPLOYMENT

5

6 SECTION 9. Definitions. As used in this article:

7 (1) The term "covered entity" means an employer, employment agency,  
8 labor organization, or joint labor-management committee.

9 (2) The term "employee" means an individual employed by an employer.

10 (3) The term "employer" means a person or a covered entity engaged in  
11 an industry, who has fifteen (15) or more employees for each working day in  
12 each of twenty (20) or more calendar weeks in the current or preceding  
13 calendar year, and any agent of such person.

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

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

21 (6) The term "qualified individual with a disability" means an  
22 individual with a disability who, with or without reasonable accommodation,  
23 can perform the essential functions of the employment position that such  
24 individual holds or desires.

25 (7) The term "reasonable accommodation" may include:

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

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

33 (8) (A) The term "undue hardship" means an action requiring significant  
34 difficulty or expense.

35 (B) In determining whether an accommodation would impose an undue

1 hardship on a covered entity, factors to be considered include:

2 (i) the overall size of the covered entity with respect to  
3 the number of its employees; the number, type, and location of its facilities;  
4 the overall financial resources of the entity and the financial resources of  
5 its facility or facilities involved in the provision of the reasonable  
6 accommodation;

7 (ii) the type of operation or operations of the covered  
8 entity, including the composition and structure of the work force, in terms of  
9 such factors as functions of the work force, geographic separateness, and  
10 administrative relationship, to the extent that such factors contribute to a  
11 reasonable determination of undue hardship; and

12 (iii) the nature and cost of the accommodation needed under  
13 this act.

14

15 SECTION 10. Discrimination.

16 (a) No covered entity shall discriminate against a qualified individual  
17 with a disability because of the disability of such individual in regard to  
18 job application procedures, the hiring, advancement, or discharge of  
19 employees, employee compensation, job training, and other terms, conditions  
20 and privileges of employment.

21 (b) As used in subsection (a) of this section, the term "discriminate"  
22 includes:

23 (1) limiting, segregating, or classifying a job applicant or  
24 employee in a way that adversely affects the opportunities or status of such  
25 applicant or employee because of the disability of such applicant or employee;

26 (2) participating in a contractual or other arrangement or  
27 relationship that has the effect of subjecting a covered entity's qualified  
28 applicant or employee with a disability to the discrimination prohibited by  
29 this article, including relationships with an employment or referral agency,  
30 labor union, an organization providing fringe benefits to an employee of the  
31 covered entity, or an organization providing training and apprenticeship  
32 programs;

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

34 (A) that have the effect of discrimination on the basis of  
35 disability; or

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

3 (4) excluding or otherwise denying equal jobs or benefits to a  
4 qualified individual because of the known disability of an individual with  
5 whom the qualified individual is known to have a relationship or association.

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

11 (6) denying employment opportunities to a job applicant or  
12 employee who is an otherwise qualified individual with disability, if such  
13 denial is based on the need of such covered entity to make reasonable  
14 accommodation to the physical or mental impairments of the employee or  
15 applicant;

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

22 (8) failing to select and administer tests concerning employment  
23 in the most effective manner to ensure that, when such test is administered to  
24 a job applicant or employee who has a disability that impairs sensory, manual,  
25 or speaking skills, such test results accurately reflect the skills, aptitude,  
26 or whatever other factor of such applicant or employee that such test purports  
27 to measure, rather than reflecting the impaired sensory, manual, or speaking  
28 skills of such employee or applicant, except where such skills are the factors  
29 that the test purports to measure.

30 (c) (1) The prohibition against discrimination as referred to in  
31 subsection (a) of this section shall include medical examinations and  
32 inquiries.

33 (2) (A) Except as provided in paragraph (3) of subsection (c) of  
34 this section, a covered entity shall not conduct a medical examination or make  
35 inquiries of a job applicant or employee as to whether such applicant or

1 employee is an individual with a disability or as to the nature or severity of  
2 such disability.

3 (B) A covered entity may make preemployment inquiries into  
4 the ability of an applicant to perform job-related functions.

5 (3) A covered entity may require a medical examination after an  
6 offer of employment has been made to a job applicant and prior to the  
7 commencement of the employment duties of such applicant, and may condition an  
8 offer of employment on the results of such examination, if:

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

11 (B) information obtained regarding the medical condition or  
12 history of the applicant is collected and maintained on separate forms and in  
13 separate medical files and is treated as a confidential medical record, except  
14 that:

15 (i) supervisors and managers may be informed  
16 regarding necessary restrictions on the work or duties of the employee and  
17 necessary accommodations;

18 (ii) first aid and safety personnel may be informed,  
19 when appropriate, if the disability might require emergency treatment; and

20 (iii) government officials investigating compliance  
21 with this act shall be provided relevant information on request; and

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

24 (4) (A) A covered entity shall not conduct or require a medical  
25 examination and shall not make inquiries of an employee as to whether such  
26 employee is an individual with a disability or as to the nature or severity of  
27 the disability, unless such examination or inquiry is shown to be job-related  
28 and consistent with business necessity.

29 (B) A covered entity may make inquiries into the ability of  
30 an employee to perform job-related functions.

31

32 SECTION 11. Defenses.

33 (a) It may be a defense to a charge of discrimination under this act  
34 that an alleged application of qualification standards, tests, or selection  
35 criteria that screen out or tend to screen out or otherwise deny a job or



1 benefit to an individual with a disability has been shown to be job-related  
2 and consistent with business necessity, and such performance cannot be  
3 accomplished by reasonable accommodation, as required under this article.

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

7 (c)(1) This article shall not prohibit a religious corporation,  
8 association, educational institution, or society from giving preference in  
9 employment to individuals of a particular religion to perform work connected  
10 with the carrying on by such corporation, association, educational  
11 institution, or society of its activities.

12 (2) Under this article, a religious organization may require, as  
13 a qualification standard to employment, that all applicants and employees  
14 conform to the religious tenets of such organization.

15

16 SECTION 12. Illegal Drugs and Alcohol.

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

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

22 (1) has successfully completed a supervised drug rehabilitation  
23 program and is no longer using illegal drugs, or has otherwise been  
24 rehabilitated successfully and is no longer using illegal drugs; or

25 (2) is participating in a supervised rehabilitation program and  
26 is no longer using illegal drugs; or

27 (3) is erroneously regarded as being an illegal drug user but is  
28 not using illegal drugs.

29 (c) A covered entity:

30 (1) may prohibit the use of alcohol or illegal drugs at the  
31 workplace by all employees;

32 (2) may require that employees shall not be under the influence  
33 of alcohol or illegal drugs at the workplace; and

34 (3) may hold an employee who is a drug user or alcoholic to the  
35 same qualification standards for employment or job performance and behavior

1 that such entity holds other employees, even if any unsatisfactory performance  
2 or behavior is related to the drug use or alcoholism of such employee.

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

7

8 SECTION 13. Posting Notices.

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

12

13 ARTICLE 3 - PUBLIC SERVICES

14

15 SECTION 14. Definition.

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

24

25 SECTION 15. Discrimination.

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

30

31 ARTICLE 4 - PUBLIC ACCOMMODATIONS AND SERVICES

32 OPERATED BY PRIVATE ENTITIES

33

34 SECTION 16. Definitions. As used in this article:

35 (1) The term "commerce" means travel, trade, traffic, commerce,

1 transportation, or communication.

2 (2) The term "commercial facilities" means facilities:

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

4 (B) whose operations will affect commerce.

5 (3) The following publicly or privately operated entities are  
6 considered public accommodations for purposes of this article:

7 (A) an inn, motel, or other similar place of lodging, except for  
8 an establishment located within a building that contains not more than five  
9 (5) rooms for rent or hire and that is actually occupied by the proprietor of  
10 such establishment as the residence of such proprietor;

11 (B) a restaurant, bar, or other establishment serving food or  
12 drink;

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

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

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

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

22 (G) a terminal used for public transportation;

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

25 (I) a park or zoo;

26 (J) a nursery, elementary, secondary, undergraduate, or  
27 postgraduate private school;

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

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

32

33 SECTION 17. Prohibition of Discrimination by Public Accommodations.

34 (a) No individual shall be discriminated against on the basis of  
35 disability in the full and equal enjoyment of the goods, services, facilities,

1 privileges, advantages, and accommodations of any place of public  
2 accommodation.

3 (b) (1) (A) It shall be discriminatory to subject an individual or class  
4 of individuals on the basis of a disability or disabilities of such individual  
5 or class, directly, or through contractual, licensing, or other arrangements,  
6 to a denial of the opportunity of the individual or class to participate in or  
7 benefit from the goods, services, facilities, privileges, advantages, and  
8 accommodations of an entity.

9 (B) It shall be discriminatory to afford an individual or  
10 class of individuals, on the basis of a disability or disabilities of such  
11 individual or class, directly, or through contractual, licensing, or other  
12 arrangements with the opportunity to participate in or benefit from a good,  
13 service, facility, privilege, advantage, and accommodation that is not equal  
14 to that afforded to other individuals.

15 (C) It shall be discriminatory to provide an individual or  
16 class of individuals, on the basis of a disability or disabilities of such  
17 individual or class, directly, or through contractual, licensing, or other  
18 arrangements with a good, service, facility, privilege, advantage, or  
19 accommodation that is different or separate from that provided to other  
20 individuals, unless such action is necessary to provide the individual or  
21 class of individuals with a good, service, facility, privilege, advantage, or  
22 accommodation, or other opportunity that is as effective as that provided to  
23 others.

24 (2) Goods, facilities, privileges, advantages, accommodations,  
25 and services shall be afforded to an individual with a disability in the most  
26 integrated setting appropriate to the needs of the individual.

27 (3) Notwithstanding the existence of separate or different  
28 programs or activities provided in accordance with this section, an individual  
29 with a disability shall not be denied the opportunity to participate in such  
30 programs or activities that are not separate or different.

31 (4) An individual or entity shall not, directly or through  
32 contractual or other arrangements, utilize standards or criteria or methods of  
33 administration:

34 (A) that have the effect of discriminating on the basis of  
35 disability; or

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

3

4 SECTION 18. New Construction in Public Accommodations and Commercial  
5 Facilities.

6 (a) Except as provided in subsection (b) of this section, as applied to

7 (1) a public accommodation and

8 (2) commercial facilities, the term "discriminated" as used in  
9 subsection (a) of section 17 of this act shall mean a failure to design and  
10 construct facilities for first occupancy later than thirty (30) months after  
11 the date of enactment of this act that are readily accessible to and usable by  
12 individuals with disabilities, except where an entity can demonstrate that it  
13 is structurally impracticable to meet the requirements in accordance with  
14 standards set forth or incorporated by reference in regulations issued under  
15 this article. This term shall also mean any violation of state accessibility  
16 standards.

17 (b) Subsection (a) of this section shall not be construed to require  
18 the installation of an elevator for facilities that are less than three  
19 thousand (3,000) square feet per story unless the building is a shopping  
20 center, a shopping mall, or the professional office of a health care provider  
21 or unless the Commission determines that a particular category of such  
22 facilities requires the installation of elevators based on the usage of such  
23 facilities.

24

25 SECTION 19. Arkansas Code Annotated sections 20-14-601 through  
26 20-14-613 are hereby repealed.

27

28 SECTION 20. All provisions of this act of a general and permanent  
29 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
30 Code Revision Commission shall incorporate the same in the Code.

31

32 SECTION 21. If any provision of this act or the application thereof to  
33 any person or circumstance is held invalid, such invalidity shall not affect  
34 other provisions or applications of the act which can be given effect without  
35 the invalid provision or application, and to this end the provisions of this

1 act are declared to be severable.

2

3 SECTION 22. All laws and parts of laws in conflict with this act are  
4 hereby repealed.

5

6 SECTION 23. Emergency. It is hereby found and determined by the  
7 General Assembly that people with disabilities suffer discrimination because  
8 of their disabilities; that this legislation is needed immediately to address  
9 these problems and to remedy discrimination based on disabilities. Therefore,  
10 an emergency is hereby declared to exist and this act being necessary for the  
11 preservation of the public peace, health and safety shall be in full force and  
12 effect from and after its passage and approval.

13