

1 **State of Arkansas**

2 **79th General Assembly**

3 **Regular Session, 1993**

4 **By: Representatives Walker, Townsend, Flanagan, Brown, McGee, Brownlee, Roberts,**  
5 **Smith, Wilkins, Bennett, and Holland**

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## **For An Act To Be Entitled**

9 "THE ARKANSAS CIVIL RIGHTS ACT OF 1993."

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### **Subtitle**

12 "THE ARKANSAS CIVIL RIGHTS ACT OF 1993."

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

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16 SECTION 1. This act shall be referred to as the "Arkansas Civil Rights  
17 Act of 1993".

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19 SECTION 2. Every governmental entity or natural person who, under color  
20 of any statute, ordinance, regulation, custom, or usage, of this state or any  
21 of its political subdivisions, subjects, or causes to be subjected, any person  
22 to the deprivation of any rights, privileges, or immunities secured by the  
23 Constitution of Arkansas, shall be liable to the party injured in an action at  
24 law, suit in equity, or other proper proceeding for redress. In the  
25 discretion of the court, a party held liable under this section shall also pay  
26 the injured party\_s cost of litigation and reasonable attorneys\_ fees in an  
27 amount to be fixed by the court. When construing this section, a court may  
28 look for guidance to state and federal decisions interpreting the federal  
29 Civil Rights Act of 1871, as amended and codified in 42 U.S.C. § 1983, as in  
30 effect on January 1, 1993, which decisions and act shall have persuasive  
31 authority only.

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33 SECTION 3. (a) An action for injunctive relief or civil damages, or  
34 both, shall lie for any person who is subjected to acts of:

35 (i) intimidation or harassment, or

1 (ii) violence directed against his person, or  
2 (iii) vandalism directed against his real or personal property, where  
3 such acts are motivated by racial, religious, or ethnic animosity. Any  
4 aggrieved party who initiates and prevails in an action authorized by this  
5 section shall be entitled to damages, including punitive damages, and in the  
6 discretion of the court to an award of the cost of the litigation and  
7 reasonable attorneys\_ fees in an amount to be fixed by the court.

8 (b) *This section shall not apply to speech or conduct protected by the*  
9 *First Amendment of the United States Constitution or Title 2, §6 of the*  
10 *Arkansas Constitution.*

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12 SECTION 4. The right of an otherwise qualified person to be free from  
13 discrimination because of race, religion, ancestry or national origin, gender,  
14 or the presence of any sensory, mental, or physical disability is recognized  
15 as and declared to be a civil right. This right shall include, but not be  
16 limited to:

17 (a) The right to obtain and hold employment without discrimination;

18 (b) The right to the full enjoyment of any of the accommodations,  
19 advantages, facilities, or privileges of any place of public resort,  
20 accommodation, assemblage, or amusement;

21 (c) The right to engage in property transactions without  
22 discrimination;

23 (d) The right to engage in credit and other contractual transactions  
24 without discrimination; and

25 (e) The right to vote and participate fully in the political process.

26 Any person who is injured by an intentional act of discrimination *in violation*  
27 *of Sections 4(b), 4(c), 4(d) or 4(e) of this act* shall have a civil action in  
28 a court of competent jurisdiction to enjoin further violations, to recover  
29 compensatory and punitive damages, and, in the discretion of the court, to  
30 recover the cost of litigation and reasonable attorneys\_ fee.

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32 SECTION 5. (a) *Any individual who is injured by employment*  
33 *discrimination by an employer in violation of section 4(a) of this act shall*  
34 *have a civil action in a court of competent jurisdiction, which may issue an*  
35 *order prohibiting the discriminatory practices and provide affirmative relief*

1 from the effects of the practices, and award back pay, interest on back pay,  
2 and, in the discretion of the court, the cost of litigation and reasonable  
3 attorney fees. No liability for back pay shall accrue from a date more than  
4 two (2) years prior to the filing of an action.

5 (b) In addition to the remedies under subsection (a) of this section,  
6 any individual who is injured by intentional discrimination by an employer in  
7 violation of section 4(a) shall be entitled to recover compensatory damages  
8 and punitive damages. The total compensatory and punitive damages awarded  
9 under this subsection shall not exceed:

10 (1) the sum of fifteen thousand dollars (\$15,000) in the case of  
11 an employer who employs fewer than fifteen (15) employees in each of twenty  
12 (20) or more calendar weeks in the current or preceding calendar year;

13 (2) the sum of fifty thousand (\$50,000) in the case of an  
14 employer who employs more than fourteen (14) and fewer than one hundred and  
15 one (101) employees in each of twenty (20) or more calendar weeks in the  
16 current or preceding calendar year;

17 (3) the sum of one hundred thousand dollars (\$100,000) in the  
18 case of an employer who employs more than one hundred (100) and fewer than two  
19 hundred and one (201) employees in each of twenty (20) or more calendar weeks  
20 in the current or preceding calendar year;

21 (4) the sum of two hundred thousand dollars (\$200,000) in the  
22 case of an employer who employs more than two hundred (200) and fewer than  
23 five hundred and one (501) employees in each of twenty (20) or more calendar  
24 weeks in the current or preceding calendar year; and

25 (5) the sum of three hundred thousand dollars (\$300,000) in the  
26 case of an employer who employs more than five hundred (500) employees in each  
27 of twenty (20) or more calendar weeks in the current or preceding calendar  
28 year.

29 (c) Any action based on employment discrimination in violation of  
30 section 4(a) of this act shall be brought within one (1) year after the  
31 alleged employment discrimination occurred, or within ninety (90) days of  
32 receipt of a "Right to Sue" letter or notice of "Determination" from the  
33 United States Employment Opportunity Commission concerning the alleged  
34 unlawful employment practice, whichever is later.

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1           SECTION 6. (a) The provisions of this act relating to employment shall  
2 not be applicable with respect to the employment by a religious corporation,  
3 association, society, or other religious entity.

4           (b) It shall not constitute employment discrimination under this act  
5 for an employer to refuse to accommodate the religious observance or practice  
6 of an employee or prospective employee if the employer demonstrates that he is  
7 unable to reasonably make such accommodation without undue hardship on the  
8 conduct of the employer's business.

9           (c) A defendant may avoid liability under this act by showing that his  
10 actions were based on legitimate, non-discriminatory factors and not on  
11 unjustified reasons.

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13           SECTION 7. Sovereign Immunity. Nothing in this act shall be construed  
14 to waive the sovereign immunity of the state.

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16           SECTION 8. (a) Provided the conduct at issue is based on a bona fide  
17 business judgment and is not a pretext for prohibited discrimination, nothing  
18 in this act shall be construed to prohibit or restrict:

19                 (1) An insurer, hospital, medical service company, health  
20 maintenance organization, or any agent or entity that administers benefit  
21 plans, or any bank, savings and loan, or other lender from underwriting  
22 insurance or lending risks, or administering such risks that are based on or  
23 not inconsistent with federal or state law;

24                 (2) A person covered by this act from establishing, sponsoring,  
25 observing or administering the terms of a bona fide benefit plan that are  
26 based on underwriting risks, classifying risks, or administering such risks  
27 that are based on or not inconsistent with federal or state law; or

28                 (3) A person covered by this act from establishing, sponsoring,  
29 observing or administering the terms of a bona fide benefit plan that is not  
30 subject to federal or state laws that regulate insurance.

31           (b) This act shall not apply to matters regulated by the Arkansas  
32 Insurance Code or the Trade Practices Act of the Arkansas Insurance Code.

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34           SECTION 9. For the purposes of this act:

35                 (1) "Because of gender" means, but is not limited to, on account of

1 pregnancy, childbirth, or related medical conditions.

2 (2) "Compensatory damages" means damages for mental anguish, loss of  
3 dignity, and other intangible injuries, but "compensatory damages" does not  
4 include punitive damages.

5 (3) "Disability" means a physical or mental impairment that  
6 substantially limits a major life function, but "disability" does not include:

7 (A) Compulsive gambling, kleptomania, or pyromania;

8 (B) Current use of illegal drugs or psychoactive substance use  
9 disorders resulting from illegal use of drugs; or

10 (C) Alcoholism.

11 (4) "Employee" does not include any individual employed by his or her  
12 parents, spouse, or child; an individual employed under a special license in a  
13 nonprofit sheltered workshop or rehabilitation facility; or an individual  
14 employed outside the State of Arkansas.

15 (5) "Employer" means a person who employs nine (9) or more employees in  
16 the State of Arkansas in each of twenty (20) or more calendar weeks in the  
17 current or preceding calendar year, or any agent of such person.

18 (6) "National origin" includes ancestry.

19 (7) "Place of public resort, accommodation, assemblage, or amusement"  
20 means any place, store or other establishment, either licensed or unlicensed,  
21 that supplies accommodations, goods, or services to the general public, or  
22 that solicits or accepts the patronage or trade of the general public, or  
23 which is supported directly or indirectly by government funds, but "place of  
24 public resort, accommodation, assemblage, or amusement" does not include:

25 (A) any lodging establishment which contains not more than five  
26 (5) rooms for rent and which is actually occupied by the proprietor of such  
27 establishment as a residence; or

28 (B) any private club or other establishment not in fact open to  
29 the public.

30 (8) "Religion" means all aspects of religious belief, observance, and  
31 practice.

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33 SECTION 10. All provisions of this act of a general and permanent  
34 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
35 Code Revision Commission shall incorporate the same in the Code.

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SECTION 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 12. All laws and parts of laws in conflict with this act are hereby repealed.

*/s/William Walker, et al*

***As Engrossed: 2/5/93 2/24/93***

**HB 1075**

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