

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**

A Bill

HOUSE BILL

4 **By: Representatives Fairchild and M. Wilson**

5
6

For An Act To Be Entitled

8 "THE ARKANSAS CIVIL RIGHTS ACT OF 1993."

9

Subtitle

10

11 "THE ARKANSAS CIVIL RIGHTS ACT OF 1993."

12

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

14

15 SECTION 1. Title.

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

18

19 SECTION 2. Purposes of the Act.

20 The general purposes of the Arkansas Civil Rights Act of 1993 are to
21 secure for each individual within the state freedom from discrimination
22 because of race, color, religion, sex, national origin, age, or disability and
23 thereby to protect each individual's interest in personal dignity, to make
24 available to the state the full productive capacity of each individual, to
25 secure the state against domestic strife and unrest, to preserve the public
26 safety, health, and general welfare, and to promote the interests, rights, and
27 privileges of individuals within the state. Also, whereas the delay in the
28 resolution of disputes involving civil rights results in the denial of those
29 civil rights, it is the purpose of the act to provide for resolution of civil
30 rights disputes in the most expeditious manner possible.

31

32 SECTION 3. Definitions.

33 For the purposes of the Arkansas Civil Rights Act of 1993, the term:

34 (a) "Age" refers to the chronological age of any individual who has
35 reached his or her fortieth (40th) birthday.

1 (b) "Disability" means a physical or mental impairment that
2 substantially limits a major life function. "Disability" shall not include:

3 (1) Homosexuality, bisexuality, transvestism, transsexualism,
4 pedophilia, exhibitionism, voyeurism, gender identity disorders, or other
5 sexual behavior disorders;

6 (2) Compulsive gambling, kleptomania, or pyromania;

7 (3) Current use of illegal drugs or psychoactive substance use
8 disorders resulting from illegal use of drugs; or

9 (4) Alcoholism.

10 (c) "Employee" does not include any individual employed by his or her
11 parents, spouse, or child, or any individual employed under a special license
12 in a nonprofit sheltered workshop or rehabilitation facility.

13 (d) "Employer" means any person employing fifteen (15) or more
14 employees for each working day in each of twenty (20) or more calendar weeks
15 in the current or preceding calendar year, and any agent of such a person, but
16 does not include any religious or sectarian organization, not organized for
17 private profit, and does not include any bona fide private membership club
18 (other than a labor organization) that is exempt from taxation under 26 U.S.C.
19 §501(c).

20 (e) "Employment agency" means any person regularly undertaking, with or
21 without compensation, to procure employees for an employer or to procure for
22 employees opportunities to work for an employer, and includes an agent of such
23 a person.

24 (f) "Individual" means a man or a woman.

25 (g) "Labor organization" means any organization which exists for the
26 purpose, in whole or in part, of collective bargaining or of dealing with
27 employers concerning grievances, terms or conditions of employment, or other
28 mutual aid or protection in connection with employment.

29 (h) "National origin" includes ancestry.

30 (i) "Person" includes an individual, association, corporation, joint
31 apprenticeship committee, joint-stock company, labor union, legal
32 representative, mutual company, partnership, receiver, trust, trustee in
33 bankruptcy, or unincorporated organization, any other legal or commercial
34 entity, the state, or any governmental entity or agency.

35 (j) "Public accommodation" does not include lodge halls or other

1 similar facilities of private organizations which are made available for
2 public use occasionally or periodically.

3 (k) "Religious creed", "religion", "religious observance", "religious
4 belief", and "creed" include all aspects of religious belief, observance, and
5 practice.

6 (l) "Sex" includes, but is not is not limited to, gender
7 differentiation, pregnancy, childbirth, and medical conditions related to
8 pregnancy or childbirth. "Sex" does not include sexual preference or
9 orientation. Sex discrimination does include sexual harassment.

10 (m) "Sexual harassment" includes the following conduct:

11 (1) The use by an individual of his or her position of managerial
12 authority to coerce sexual favors from a subordinate individual;

13 (2) Continued sexual comments or behavior toward an individual
14 after the individual has communicated to the offending individual that the
15 comments or behavior are unwelcomed and unwanted; or

16 (3) The creation of a sexually offensive environment that after
17 complaint remains so hostile and pervasive as to render a reasonable
18 individual incapable of performing the job duties for which the individual was
19 employed. Provided, that the use of profanity, unless consistently directed
20 at an individual or class of individuals, shall not constitute evidence of a
21 sexually offensive environment.

22

23 SECTION 4. Civil Rights: Business and Government.

24 (a) The right of otherwise qualified individuals to be free from
25 discrimination by business or government, without legitimate reason, because
26 of race, color, religion, sex, national origin, age, or disability is
27 recognized and declared to be a civil right. This right shall include, but
28 not be limited to:

29 (1) The right to obtain and hold employment without
30 discrimination;

31 (2) The right to the full enjoyment of any of the accommodations,
32 advantages, facilities, or privileges of any place of public resort,
33 accommodation, assemblage, or amusement;

34 (3) The right to engage in credit and other contractual
35 transactions without discrimination;

1 (4) The right to vote and participate fully in the political
2 process; and

3 (5) The right to a public education.

4 (b) Nothing in this act shall be construed to prohibit a religious
5 corporation, religious association, religious educational institution, or
6 religious society from giving religious preferences in its religious
7 activities.

8 (c) Public lodging establishments and public food service
9 establishments are private enterprises, and the operator has the right to
10 refuse accommodations or service to any individual who is objectionable or
11 undersireable to the operator, but such refusal may not be based upon race,
12 color, religion, sex, national origin, age or disability. Nothing in this
13 section shall be construed to prohibit a covered entity from refusing service
14 or accommodation to an individual who is engaged in the illegal use of drugs
15 or who is under the influence of alcohol at the time that individual seeks
16 service or accommodation.

17 (d) Provided the conduct at issue is based upon a bona fide business
18 judgement and is not a pretext for prohibited discrimination, nothing in
19 Section 4(a)(3) of this act shall be construed to prohibit or restrict:

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

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

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

35 (e) This act shall not affect matters regulated by the Arkansas

1 Insurance Code or the Unfair Trade Practices Act of the Arkansas Insurance
2 Code, Arkansas Code Annotated § 23-66-206.

3

4 SECTION 5. Civil Rights: Employment.

5 (a) It is an unlawful employment practice for an employer
6 intentionally:

7 (1) To discharge or to fail or refuse to hire an individual, or
8 otherwise to discriminate against any individual with respect to compensation,
9 terms, conditions, or privileges of employment, because of such individual_s
10 race, color, religion, sex, national origin, age or disability.

11 (2) To limit, segregate, or classify employees or applicants for
12 employment in any way for the purpose of depriving any individual of
13 employment opportunities, or adversely affecting any individual_s status as an
14 employee, because of such individual_s race, color, religion, sex, national
15 origin, age or disability.

16 (3) To discriminate with regard to any term or condition of
17 employment against a qualified individual with a disability who can, with or
18 without a reasonable accommodation, perform the essential functions of the
19 job, unless such accommodation would result in an undue hardship on the
20 employer.

21 (b) It is an unlawful employment practice for an employment agency to
22 fail or refuse to refer for employment, or otherwise to discriminate against,
23 any individual because of race, color, religion, sex, national origin, age, or
24 disability or to classify or refer for employment any individual on the basis
25 of race, color, religion, sex, national origin, age or disability.

26 (c) It is an unlawful employment practice for a labor organization:

27 (1) To exclude or to expel from its membership, or otherwise to
28 discriminate against, any individual because of race, color, religion, sex,
29 national origin, age or disability.

30 (2) To limit, segregate, or classify its membership or applicants
31 for membership, or to classify or fail or refuse to refer for employment any
32 individual, in any way which would deprive or tend to deprive any individual
33 of employment opportunities, or adversely affect any individual_s status as an
34 employee or as an applicant for employment, because of such individual_s race,
35 color, religion, sex, national origin, age or disability.

1 (3) To cause or attempt to cause an employer to discriminate
2 against an individual in violation of this section.

3 (d) It is an unlawful employment practice for any employer, labor
4 organization, or joint labor-management committee controlling apprenticeship
5 or other training or retraining, including on-the-job training programs, to
6 discriminate against any individual because of race, color, religion, sex,
7 national origin, age, or disability in admission to, or employment in, any
8 program established to provide apprenticeship or other training.

9 (e) Whenever, in order to engage in a profession, occupation, or trade,
10 it is required that an individual receive a license, certification, or other
11 credential, become a member or an associate of any club, association, or other
12 organization, or pass any examination, it is an unlawful employment practice
13 for any person to discriminate against any other individual seeking such
14 license, certification, or other credential, seeking to become a member or
15 associate of such club, association, or other organization, or seeking to take
16 or pass such examination, because of such other individual_s race, color,
17 religion, sex, national origin, age or disability.

18 (f) It is an unlawful employment practice for an employer, labor
19 organization, employment agency, or joint labor-management committee to print,
20 or cause to be printed or published, any notice or advertisement relating to
21 employment, membership, classification, referral for employment, or
22 apprenticeship or other training, indicating any preference, limitation,
23 specification, or discrimination, based on race, color, religion, sex,
24 national origin, age or absence of disability.

25 (g) It is an unlawful employment practice for an employer, an
26 employment agency, a joint labor-management committee, or a labor organization
27 to discriminate against any individual because that individual has opposed any
28 practice which is an unlawful employment practice under this section, or
29 because that individual has made a charge, testified, assisted, or
30 participated in any manner in an investigation, proceeding, or hearing under
31 this Section.

32 (h) This Section shall not apply to any religious corporation,
33 religious association, religious educational institution, or religious society
34 which conditions opportunities in the area of employment or public
35 accommodation to members of that religious corporation, association,

1 educational institution, or society or to persons who subscribe to its tenets
2 or beliefs. This Section shall not prohibit a religious corporation,
3 association, educational institution, or society from giving preference in
4 employment to individuals of a particular religion to perform work connected
5 with the carrying on by such corporations, associations, education
6 institutions, or societies of its various activities.

7 (i) Notwithstanding any other provision of this act, it is not an
8 unlawful employment practice for any employer, employment agency, labor
9 organization, or joint labor-management committee to:

10 (1) Select or refer the better qualified individual from among
11 all applicants for a job. The burden of proving a violation of this act shall
12 be upon the individual or individuals claiming that the violation occurred.

13 (2) Take or fail to take any action on the basis or race, color,
14 religion, sex, national origin, age or disability in those certain instances
15 in which race, color, religion, sex, national origin, age, or disability is a
16 bona fide occupational qualification reasonably necessary for the performance
17 of the particular employment to which such action or inaction is related.

18 (3) Observe the terms of a bona fide seniority system, a bona
19 fide employee benefit plan such as a retirement, pension, or insurance plan,
20 or a system which measures earnings by quantity or quality of production,
21 which is not designed, intended, or used to evade the purposes of this act.
22 However, no such employee benefit plan or system which measures earnings shall
23 excuse the involuntary retirement of, any individual on the basis of any
24 factor not related to the ability of such individual to perform the particular
25 employment for which such individual has applied or in which such individual
26 is engaged.

27 (4) Take or fail to take any action on the basis of age, pursuant
28 to law or regulation governing any employment or training program designed to
29 benefit individuals of a particular age group.

30 (5) Make employment decisions regarding relatives of an owner of
31 the business.

32 (j) Nothing in Section 4(a)(1) of this act shall be construed to
33 prohibit or impair the right of any employer to:

34 (1) Prohibit the illegal use of drugs and the use of alcohol on
35 the employer_s premises;

1 (2) Require that employees shall not be under the influence of
2 alcohol or be engaging in the use of drugs at the workplace;

3 (3) Hold an employee who engaged in the illegal use of drugs or
4 who is an alcoholic to the same qualifications and standards for employment or
5 job performance and behavior that the employer holds other employees, even if
6 any unsatisfactory performance or behavior is related to the drug use or
7 alcoholism of such employee.

8

9 SECTION 6. Remedies in Non-employment Cases.

10 (a) Any individual who is injured by an intentional and unjustified act
11 of discrimination prohibited by Sections 4(a)(2), 4 (a)(3), 4(a)(4) or 4(a)(5)
12 shall have a civil action in a court of competent jurisdiction. A person
13 seeking equitable relief shall sue in chancery court an individual seeking
14 legal relief shall sue in circuit court. In either type of action, the party
15 requesting relief shall have the burden of persuasion on each element of his
16 claim.

17 (1) Trial by jury shall be permitted to the extent authorized by
18 Article 2, Section 7, and Amendment 16 of the Arkansas Constitution.

19 (2) In a damages action brought under this Section, compensatory
20 damages shall not exceed an amount equal to the provable harm the injured
21 party actually suffered as a proximate result of the defendant_s culpable
22 conduct. Compensatory damages for pain and suffering and mental anguish shall
23 be limited to an aggregate amount of five thousand dollars (\$5,000).

24 (3) In a damages action brought under this Section, punitive
25 damages shall be permissible only if the injured party proves either that the
26 defendant knew or ought to have known, in the light of the surrounding
27 circumstances, that his or her conduct would naturally and probably result in
28 damage and that he continued such conduct with malice or in reckless disregard
29 of the consequences from which malice may be inferred, or that the defendant
30 intentionally pursued a course of conduct for the purpose of causing damage.
31 The judgement for the total amount of damages awarded under this Section to an
32 aggrieved individual shall not exceed fifty thousand dollars (\$50,000).

33 (4) In the discretion of the court, a party held liable under
34 Section 4 of this act shall also pay the injured party_s costs of litigation,
35 and reasonable attorneys_ fees in an amount to be fixed by the court.

1 (5) In the discretion of the court, any person who files a
2 frivolous claim under Section 4 of this act shall be required to pay the
3 opposing party_s costs of litigation, and reasonable attorneys_ fees in an
4 amount to be fixed by the court.

5

6 SECTION 7. Remedies for Unlawful Employment Discrimination.

7 (a) Any individual aggrieved hereunder must file an action in Circuit
8 Court within one hundred eighty (180) days of the alleged illegal act, or
9 within ninety (90) days of receipt of a notice of "Right to Sue" or notice of
10 "Determination" from the United States Equal Employment Opportunity Commission
11 concerning the alleged illegal act, whichever is later.

12 (b) In any civil action brought under this Section, the court may issue
13 an order prohibiting the discriminatory practice and providing affirmative
14 relief from the effects of the practice, including back pay. The court may
15 also award compensatory damages, including, but not limited to, damages for
16 mental anguish, and other intangible injuries, and punitive damages. The sum
17 of the amount of compensatory damages awarded under this Section for future
18 pecuniary losses, emotional pain, suffering, inconvenience, mental anguish,
19 loss of enjoyment of life, and other nonpecuniary losses, and the amount of
20 punitive damages awarded under this Section, shall not exceed, for each
21 complaining party:

22 (1) In the case of a respondent who has more than fourteen (14)
23 and fewer than one hundred one (101) employees in each of twenty (20) or more
24 calendar weeks in the current or preceding calendar year, fifty thousand
25 dollars (\$50,000);

26 (2) In the case of a respondent who has more than one hundred
27 (100) and fewer than two hundred one (201) employees in each of twenty (20) or
28 more calendar weeks in the current or preceding calendar year, one hundred
29 thousand dollars (\$100,000);

30 (3) In the case of a respondent who has more than two hundred
31 (200) and fewer than five hundred one (501) employees in each of twenty (20)
32 or more calendar weeks in the current or preceding calendar year, two hundred
33 thousand dollars (\$200,000); and

34 (4) In the case of a respondent who has more than five hundred
35 (500) employees in each of twenty (20) or more calendar weeks in the current

1 or preceding calendar year, three hundred thousand dollars (\$300,000).

2 Notwithstanding the above, the state and its agencies and subdivisions
3 shall not be liable for punitive damages.

4 (c) Trial by jury shall be permitted to the extent authorized by
5 Article 2, Section 7, and Amendment 16, of the Arkansas Constitution.

6 (d) No liability for back pay shall accrue from a date more than two
7 (2) years prior to the filing of a complaint.

8 (e) In the discretion of the court, a party held liable under Section
9 4(a)(1) of this act shall also pay the injured party_s costs of litigation,
10 and reasonable attorneys_ fees in an amount to be fixed by the court.

11 (f) In the discretion of the court, any person who files a frivolous
12 claim under Section 4(a)(1) of this act shall be required to pay the opposing
13 party_s costs of litigation and reasonable attorneys_ fees in an amount to be
14 fixed by the court.

15

16 SECTION 8. Construction.

17 (a) The Arkansas Civil Rights Act of 1993 shall be construed according
18 to the fair import of its terms and shall be liberally construed to further
19 the general purposes stated in this Section and the special purposes of the
20 particular provision involved. However, because delays in raising and
21 resolving claims of civil rights violations are themselves deprivations of
22 civil rights, all time limits herein are to be strictly construed and are
23 jurisdictional in nature.

24 (b) Nothing contained in this chapter shall be deemed to repeal,
25 supersede or expand upon any of the substantive law provisions of any other
26 state or federal law relating to discrimination because of race, color,
27 religion, sex, national origin, age, or disability, unless a different
28 provision is clearly stated herein. For purposes of deciding cases brought
29 under this act, it is the intent of the legislature that the Arkansas Civil
30 Rights Act, unless context clearly requires otherwise, be interpreted
31 consistently with the interpretations of federal law exemptions, defenses,
32 burdens of proof and affirmative defenses which apply under any comparable
33 federal law (including the Age Discrimination in Employment Act, the Equal Pay
34 Act, Titles VI, VII and VIII of the Civil Rights Act of 1964, and the
35 Americans with Disabilities Act).

1 (c) Nothing in Section 4(a) of this act shall be construed to preempt,
2 modify, or amend any state, county, or local law, ordinance, or regulation
3 which is designed to protect the public health from people who pose a
4 significant risk to the health and safety of others.

5

6 SECTION 9. No Duplicity of Actions.

7 If any party aggrieved by an alleged violation of this act files a
8 complaint under federal law seeking remedies arising from the same set of
9 operative facts, that party may not file or otherwise pursue a separate civil
10 action under this act. To the extent allowed by applicable jurisdictional
11 statutes and procedural rules, however, an aggrieved party may join together
12 in a single action claims based on this act and claims based on federal law.

13

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

17

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

23

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

26

27

28

29

30

31

32

33

34

35

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11