

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

HOUSE BILL 2053

5 By: Representative Hammer
6

For An Act To Be Entitled

8 AN ACT TO TRANSFER THE ARKANSAS FAIR HOUSING
9 COMMISSION TO THE ARKANSAS DEVELOPMENT FINANCE
10 AUTHORITY; AND FOR OTHER PURPOSES.
11

Subtitle

12
13
14 TO TRANSFER THE ARKANSAS FAIR HOUSING
15 COMMISSION TO THE ARKANSAS DEVELOPMENT
16 FINANCE AUTHORITY.
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. DO NOT CODIFY. Transfer of the Arkansas Fair Housing
22 Commission to the Arkansas Development Finance Authority.

23 (a)(1) The Arkansas Fair Housing Commission is transferred to the
24 Arkansas Development Finance Authority by a type 2 transfer under § 25-2-105.

25 (2) For the purposes of this act, the Arkansas Development
26 Finance Authority shall be considered a principal department established by
27 Acts 1971, No. 38.

28 (b) All authority, powers, duties, functions, records, personnel,
29 property, unexpended balances of appropriations, allocations, and other
30 funds, including the functions of budgeting or purchasing, are transferred to
31 the Arkansas Development Finance Authority except as specified by this act.

32 (c) All powers, duties, and functions, including rulemaking,
33 regulation, and licensing, promulgation of rules, rates, regulations, and
34 standards, and the rendering of findings, orders, and adjudications are
35 transferred to the Board of Directors of the Arkansas Development Finance
36 Authority.



1 ~~(7)(A)(5)~~ “Disability” throughout this subchapter shall be
 2 interpreted identically to the term “handicap” within federal laws,
 3 regulations, cases, directives, and administrative rulings and positions on
 4 subject matter similar to the purposes of this subchapter and means a person:

5 (i) With a physical or mental impairment which
 6 substantially limits one (1) or more of the person’s major life activities;

7 (ii) With a record of having an impairment which
 8 substantially limits one (1) or more of the person’s major life activities;

9 or

10 (iii) Regarded as having an impairment which
 11 substantially limits one (1) or more of a person’s major life activities.

12 (B) “Disability” does not include current, illegal use of
 13 or addiction to a controlled substance, as defined in § 102 of the Controlled
 14 Substances Act, 21 U.S.C. § 802, as in effect January 1, 2001;

15 ~~(8)(6)~~ “Discriminatory housing practice” means an act that is
 16 prohibited under §§ ~~16-23-310~~ 16-123-310 – 16-123-316 and § ~~16-23-344~~ 16-123-
 17 344;

18 ~~(9)(7)~~ “Dwelling” means any building, structure, or portion
 19 thereof, which is occupied as, or designed or intended for occupancy as, a
 20 residence by one (1) or more families and any vacant land which is offered
 21 for sale or lease for the construction or location thereon of any building,
 22 structure, or portion thereof which is occupied as, or designed or intended
 23 for occupancy as, a residence by one (1) or more families;

24 ~~(10)(8)~~ “Familial status” means:

25 (A) The status resulting from one (1) or more individuals
 26 who are under eighteen (18) years of age being domiciled with:

27 (i) The parent or another person having legal
 28 custody of the individual under eighteen (18) years of age; or

29 (ii) The designee of the parent or other person
 30 having custody, with the written permission of the parent or other person;

31 (B) The status resulting from being in the process of
 32 securing legal custody of any individual who is under eighteen (18) years of
 33 age; or

34 (C) The status resulting from being pregnant;

35 ~~(11)(9)~~ “Family” includes a single individual;

36 ~~(12)(10)~~ “Person” includes individuals, corporations,

1 partnerships, associations, labor organizations, legal representatives,
 2 mutual companies, joint-stock companies, trusts, unincorporated
 3 organizations, trustees, bankruptcy trustees, receivers, and fiduciaries;

4 ~~(13)~~(11) "Prevailing party" has the same meaning as the term has
 5 in Section 722 of the Revised Statutes of the United States, 42 U.S.C. §
 6 1988;

7 ~~(14)~~(12) "Respondent" means:

8 (A) The person or other entity accused in a complaint or
 9 an unfair housing practice; and

10 (B) Any other person notified as required with respect to
 11 respondents under § 16-123-317(f); and

12 ~~(15)~~(13) "To rent" includes to lease, to sublease, to let, and
 13 otherwise to grant for a consideration the right to occupy premises not owned
 14 by the occupant.

15
 16 SECTION 4. Arkansas Code § 16-123-303 is amended to read as follows:
 17 16-123-303. Creation — ~~Members.~~

18 ~~(a)~~ There is created the Arkansas Fair Housing Commission Division
 19 which shall be a division within the Arkansas Development Finance Authority.

20 ~~(b)(1) The Arkansas Fair Housing Commission shall consist of thirteen~~
 21 ~~(13) voting members, to be selected as follows: Seven (7) appointed by the~~
 22 ~~Governor subject to confirmation by the Senate, three (3) appointed by the~~
 23 ~~Speaker of the House of Representatives, and three (3) appointed by the~~
 24 ~~President Pro Tempore of the Senate, as set forth in this subchapter, for~~
 25 ~~terms of four (4) years whose terms begin on January 1 and end on December 31~~
 26 ~~of the fourth year or when their respective successors are appointed and~~
 27 ~~qualified.~~

28 ~~(2)(A)(i) One (1) member shall have been a licensed real estate~~
 29 ~~broker or licensed real estate salesperson engaged in the practice of~~
 30 ~~residential real estate sales for not fewer than five (5) years prior to his~~
 31 ~~or her appointment.~~

32 ~~(ii) One (1) member shall have been a licensed real~~
 33 ~~estate broker or licensed real estate salesperson engaged in the practice of~~
 34 ~~multifamily real estate property management for no fewer than five (5) years~~
 35 ~~prior to his or her appointment.~~

36 ~~(iii) One (1) member shall have been a licensed real~~

1 ~~estate broker or licensed real estate salesperson engaged in the practice of~~
2 ~~real estate for no fewer than five (5) years prior to his or her appointment.~~

3 ~~(B) The Governor shall appoint members to fill vacancies~~
4 ~~under subdivision (b)(2)(A) of this section after consulting the Arkansas~~
5 ~~Realtors Association, subject to confirmation by the Senate.~~

6 ~~(3)(A) One (1) member shall have been a licensed homebuilder~~
7 ~~engaged in the homebuilding business for not fewer than five (5) years.~~

8 ~~(B) The Governor shall appoint a member to fill a vacancy~~
9 ~~for the member to represent subdivision (b)(3)(A) of this section after~~
10 ~~consulting the Arkansas Home Builders Association and subject to confirmation~~
11 ~~by the Senate.~~

12 ~~(4)(A) One (1) member shall have been a mortgage broker employed~~
13 ~~for not fewer than five (5) years by a registered mortgage loan company or~~
14 ~~loan broker.~~

15 ~~(B) The Governor shall appoint a member to fill a vacancy~~
16 ~~for the member to represent subdivision (b)(4)(A) of this section after~~
17 ~~consulting the Mortgage Bankers Association of Arkansas and subject to~~
18 ~~confirmation by the Senate.~~

19 ~~(5)(A) One (1) member shall have been a banker engaged in the~~
20 ~~banking business for not fewer than five (5) years.~~

21 ~~(B) The Governor shall appoint a member to fill a vacancy~~
22 ~~for the member to represent subdivision (b)(5)(A) of this section after~~
23 ~~consulting Arkansas Community Bankers and the Arkansas Bankers Association~~
24 ~~and subject to confirmation by the Senate.~~

25 ~~(6)(A)(i) Seven (7) members shall represent consumers and shall~~
26 ~~not be actively engaged in or retired from the business of real estate,~~
27 ~~homebuilding, mortgage lending, or banking, including one (1) member who~~
28 ~~shall be appointed by the Governor to represent persons meeting the~~
29 ~~definition of individuals with a disability in this subchapter after~~
30 ~~consulting the Governor's Commission on People with Disabilities and subject~~
31 ~~to confirmation by the Senate.~~

32 ~~(ii) Three (3) of the members to be appointed~~
33 ~~pursuant to subdivision (b)(6)(A)(i) of this section shall be appointed by~~
34 ~~the Speaker of the House of Representatives, one (1) member who shall be a~~
35 ~~fair housing attorney or advocate with at least five (5) years of experience~~
36 ~~in advocaey for fair housing issues.~~

1 ~~(iii) Three (3) of the members to be appointed~~
2 ~~pursuant to subdivision (b)(6)(A)(i) of this section shall be appointed by~~
3 ~~the President Pro Tempore of the Senate, one (1) member of whom shall be~~
4 ~~sixty (60) years of age or older who shall represent the elderly.~~

5 ~~(B) A minimum of four (4) appointments made pursuant to~~
6 ~~subdivision (b)(6)(A)(i) of this section shall be given to persons protected~~
7 ~~under §§ 16-123-310 — 16-123-316.~~

8 ~~(c) All members shall be full voting members of the Arkansas Fair~~
9 ~~Housing Commission.~~

10 ~~(d)(1) Members of the Arkansas Fair Housing Commission appointed by~~
11 ~~the Governor shall at all times include one (1) member from each Arkansas~~
12 ~~congressional district.~~

13 ~~(2) Appointments by the President Pro Tempore of the Senate and~~
14 ~~the Speaker of the House of Representatives shall be as follows:~~

15 ~~(A) The three (3) members appointed by the President Pro~~
16 ~~Tempore of the Senate shall be from the First Congressional District and the~~
17 ~~Second Congressional District and the three (3) members appointed by the~~
18 ~~Speaker of the House of Representatives shall be from the Third Congressional~~
19 ~~District and the Fourth Congressional District;~~

20 ~~(B) At the next time for appointments, the three (3)~~
21 ~~members appointed by the President Pro Tempore of the Senate shall be from~~
22 ~~the Third Congressional District and the Fourth Congressional District and~~
23 ~~the three (3) members appointed by the Speaker of the House of~~
24 ~~Representatives shall be from the First Congressional District and the Second~~
25 ~~Congressional District; and~~

26 ~~(C) Future appointments shall alternate between the~~
27 ~~requirements of subdivisions (d)(2)(A) and (B) of this section.~~

28 ~~(e) The Arkansas Fair Housing Commission shall elect a chair from its~~
29 ~~membership.~~

30 ~~(f) The Arkansas Fair Housing Commission shall meet at least~~
31 ~~quarterly.~~

32 ~~(g)(1) The members of the Arkansas Fair Housing Commission shall serve~~
33 ~~four-year terms, except that the initial appointees shall serve staggered~~
34 ~~terms determined by a procedure established by the Arkansas Fair Housing~~
35 ~~Commission so that six (6) serve a two-year term and seven (7) serve a four-~~
36 ~~year term.~~

1 ~~(2) No member may serve more than two (2) four year terms.~~

2 ~~(h) Each commissioner may receive expense reimbursement and stipends~~
3 ~~in accordance with § 25-16-905.~~

4
5 SECTION 5. Arkansas Code § 16-123-304 is amended to read as follows:
6 16-123-304. Powers and duties.

7 (a) ~~The Arkansas Fair Housing Commission~~ Board of Directors of the
8 Arkansas Development Finance Authority shall adopt rules necessary to
9 implement this subchapter substantially equivalent to those provided in
10 federal fair housing laws and regulations.

11 (b) The ~~commission~~ board shall receive, initiate, investigate, seek to
12 conciliate, and, if conciliation fails, seek to resolve complaints alleging
13 violations of this subchapter through the procedures described by this
14 subchapter.

15 (c) The ~~commission~~ board, at least annually, shall make a written
16 report to the Legislative Council based upon and detailing the past year's
17 activities and operations, including policy and program recommendations.

18 (d) The ~~commission~~ board shall cooperate with and, as appropriate, may
19 provide technical and other assistance to federal, state, local, and other
20 public or private entities that are formulating or operating programs to
21 prevent or eliminate discriminatory housing practices.

22 (e) ~~The commission shall have the power to~~ board may issue subpoenas
23 and subpoenas duces tecum in connection with both its investigations and
24 hearings.

25 (f) A witness summoned by a subpoena under this subchapter shall be
26 entitled to a witness fee payable in the same amount as set forth in rules of
27 procedure for civil proceedings.

28
29 SECTION 6. Arkansas Code § 16-123-305 is repealed.

30 ~~16-123-305. Director.~~

31 ~~(a) The Arkansas Fair Housing Commission may employ a Director of the~~
32 ~~Arkansas Fair Housing Commission and fix compensation, duties, authority, and~~
33 ~~responsibilities.~~

34 ~~(b) The commission may authorize the director to hire necessary staff~~
35 ~~and to provide for services, furnishings, equipment, and office space.~~

36

1 SECTION 7. Arkansas Code § 16-123-307(d)(1)(A), concerning exemptions
 2 pertaining to religious organizations, private clubs, and others, is amended
 3 to read as follows:

4 (A) Provided under any state program that the ~~Director of~~
 5 ~~the Arkansas Fair Housing Commission~~ President of the Arkansas Development
 6 Finance Authority determines is specifically designed and operated to assist
 7 elderly persons, as defined in any state program, or provided under any
 8 federal program that the United States Secretary of the Department of Housing
 9 and Urban Development determines is specifically designed and operated to
 10 assist elderly persons, as defined in any federal program;

11
 12 SECTION 8. Arkansas Code § 16-123-317 is amended to read as follows:
 13 16-123-317. Complaint.

14 (a) The ~~Director of the Arkansas Fair Housing Commission~~ President of
 15 the Arkansas Development Finance Authority shall investigate any
 16 discriminatory housing practices alleged in a complaint filed under this
 17 section.

18 (b) A complaint shall be:

19 (1) In writing and under oath; and

20 (2) In the form specified and standardized by this subchapter
 21 and the ~~regulations~~ rules promulgated by the ~~Arkansas Fair Housing Commission~~
 22 Arkansas Development Finance Authority, which shall not require that the
 23 complaint be notarized.

24 (c) An aggrieved person shall not file later than one (1) year after
 25 an alleged discriminatory housing practice has occurred or terminated a
 26 complaint with the ~~commission~~ Board of Directors of the Arkansas Development
 27 Finance Authority alleging the discriminatory housing practice.

28 (d) Not later than one (1) year after an alleged discriminatory
 29 housing practice has occurred or terminated, the ~~commission~~ board may file
 30 its own complaint.

31 (e) A complaint may be reasonably and fairly amended at any time.

32 (f) On the filing of a complaint, the ~~director~~ president shall:

33 (1) Give the aggrieved person notice that the complaint has been
 34 received;

35 (2) Advise the aggrieved person of the time limits and choice of
 36 forums under this subchapter; and

1 (3) Not later than the tenth day after the filing of the
 2 complaint or after the identification of an additional respondent under § 16-
 3 123-320, provide each respondent:

4 (A) Notice identifying the alleged discriminatory housing
 5 practice and advising the respondent of the procedural rights and obligations
 6 of a respondent under this subchapter; and

7 (B) A copy of the original complaint.

8
 9 SECTION 9. Arkansas Code § 16-123-318(b)(3), concerning the answer to
 10 a complaint, is amended to read as follows:

11 (3) In the form specified and standardized by this subchapter
 12 and the ~~regulations~~ rules promulgated by the ~~Arkansas Fair Housing Commission~~
 13 Arkansas Development Finance Authority, which shall not require that the
 14 answer be notarized.

15
 16 SECTION 10. Arkansas Code § 16-123-319 is amended to read as follows:
 17 16-123-319. Investigation.

18 (a) ~~The Director of the Arkansas Fair Housing Commission~~ President of
 19 the Arkansas Development Finance Authority shall investigate all complaints,
 20 and except as provided by subsection (b) of this section, shall commence an
 21 investigation within thirty (30) days of receiving the complaint and shall
 22 complete the investigation no later than the one hundredth day after the
 23 complaint is filed, and shall dispose of all administrative proceedings
 24 related to the investigation not later than the first anniversary after the
 25 complaint is filed.

26 (b) If the ~~director~~ president is unable to complete an investigation
 27 within the time periods prescribed by subsection (a) of this section, the
 28 ~~director~~ president shall notify the complainant and the respondent in writing
 29 of the reasons for the delay.

30 (c) If the ~~director~~ president is unable to begin an investigation
 31 within the time periods prescribed in subsection (a) of this section, the
 32 ~~director~~ president shall notify the complainant and the respondent in writing
 33 of the reasons for the delay.

34 (d) If the ~~director~~ president is unable to dispose of all
 35 administrative proceedings related to the investigation of a complaint within
 36 one (1) year after the complaint is filed, the ~~director~~ president shall

1 notify the complainant and the respondent in writing of the reasons for the
2 delay.

3
4 SECTION 11. Arkansas Code § 16-123-320 is amended to read as follows:

5 16-123-320. Additional or substitute respondent.

6 (a) The ~~Director of the Arkansas Fair Housing Commission~~ President of
7 the Arkansas Development Finance Authority may join a person not named in the
8 complaint as an additional or substitute respondent if, in the course of the
9 investigation, the ~~director~~ president determines that the person may have
10 committed a discriminatory housing practice.

11 (b) In addition to the information required in the notice under § 16-
12 123-317(f)(3), the ~~director~~ president shall include in a notice to a
13 respondent joined under this section an explanation of the basis for the
14 determination that the person is properly joined as a respondent.

15
16 SECTION 12. Arkansas Code § 16-123-321 is amended to read as follows:

17 16-123-321. Conciliation.

18 (a) The ~~Director of the Arkansas Fair Housing Commission~~ President of
19 the Arkansas Development Finance Authority, during the period beginning with
20 the filing of a complaint and ending with the filing of a charge or a
21 dismissal by the ~~director or the Arkansas Fair Housing Commission~~ president,
22 to the extent feasible, shall engage in conciliation with respect to the
23 complaint.

24 (b) A conciliation agreement reached through conciliation is a written
25 agreement between a respondent, the complainant, and the ~~commission~~ Board of
26 Directors of the Arkansas Development Finance Authority requiring approval
27 from all three (3).

28 (c)(1) A conciliation agreement may provide for binding arbitration of
29 the dispute arising from the complaint.

30 (2) A conciliation agreement may authorize appropriate relief,
31 including monetary relief.

32 (d) A conciliation agreement shall be made public, unless the
33 complainant and respondent agree otherwise and the ~~director~~ president
34 determines that disclosure is not necessary to further the purposes of this
35 subchapter.

36 (e) If the ~~director~~ president has reasonable cause to believe that a

1 respondent has breached a conciliation agreement, the ~~director~~ president may
 2 authorize and the Attorney General may file a civil action for the
 3 enforcement of the conciliation agreement as provided by § 16-123-330 or the
 4 Attorney General may authorize the ~~director~~ president to hire outside counsel
 5 to seek enforcement.

6 (f) No statements or actions made within the course of conciliation
 7 may be made public or used as evidence in a subsequent proceeding under this
 8 subchapter without the written consent of the persons concerned.

9 (g) After completion of the ~~director's~~ investigation by the president,
 10 the ~~director~~ president shall make available to the aggrieved person and the
 11 respondent, at any time, information derived from the investigation and the
 12 final report related to that investigation.

13
 14 SECTION 13. Arkansas Code § 16-123-322(a), concerning temporary or
 15 preliminary relief, is amended to read as follows:

16 (a) If the ~~Director of the Arkansas Fair Housing Commission~~ President
 17 of the Arkansas Development Finance Authority concludes at any time following
 18 the filing of a complaint that prompt judicial action is necessary to carry
 19 out the purposes of this subchapter, and after consultation with the office
 20 of the Attorney General, the ~~director~~ president may authorize the filing by
 21 the Attorney General and the Attorney General may file a civil action in a
 22 court of competent jurisdiction in the county where the respondent resides
 23 for appropriate temporary or preliminary relief pending final disposition of
 24 the complaint or the Attorney General may authorize the ~~director~~ president to
 25 hire outside counsel to seek the relief.

26
 27 SECTION 14. The introductory language of the Arkansas Code § 16-123-
 28 323(a), concerning the investigative report, is amended to read as follows:

29 (a) The ~~Director of the Arkansas Fair Housing Commission~~ President of
 30 the Arkansas Development Finance Authority shall prepare a final
 31 investigative report showing:

32
 33 SECTION 15. Arkansas Code § 16-123-324 is amended to read as follows:
 34 16-123-324. Reasonable cause determination.

35 (a) The ~~Director of the Arkansas Fair Housing Commission~~ President of
 36 the Arkansas Development Finance Authority shall determine, based on the

1 facts and after consultation with the office of the Attorney General, whether
 2 reasonable cause exists to believe that a discriminatory housing practice
 3 occurred or is about to occur.

4 (b) The ~~director~~ president shall make the determination under
 5 subsection (a) of this section not later than the one hundredth day a
 6 complaint is filed unless:

7 (1) It is impracticable to make the determination; or

8 (2) The ~~director~~ president has approved a conciliation agreement
 9 relating to the complaint.

10 (c) If it is impracticable to make the determination within the time
 11 period provided by subsection (b) of this section, the ~~director~~ president
 12 shall notify the complainant and respondent in writing of the reasons for the
 13 delay.

14 (d) If the ~~director~~ president determines that reasonable cause exists
 15 to believe that a discriminatory housing practice occurred or is about to
 16 occur, the ~~director~~ president shall immediately issue a charge on behalf of
 17 the aggrieved person, except as provided by § 16-123-326.

18
 19 SECTION 16. Arkansas Code § 16-123-325 is amended to read as follows:
 20 16-123-325. Charge.

21 (a) A charge issued under § 16-123-324 shall:

22 (1) Consist of a short and plain statement of the facts on which
 23 the ~~Director of the Arkansas Fair Housing Commission~~ President of the
 24 Arkansas Development Finance Authority has found reasonable cause to believe
 25 that a discriminatory housing practice occurred or is about to occur;

26 (2) Be based on the investigation; and

27 (3) Not necessarily be limited to the facts or grounds alleged
 28 in the complaint.

29 (b) The ~~director~~ president shall immediately send a copy of the charge
 30 with information concerning the process of election of judicial
 31 determination, as under § 16-123-329, to:

32 (1) Each respondent, together with a notice of the opportunity
 33 for a hearing provided by § 16-123-331; and

34 (2) Each aggrieved person on whose behalf the complaint was
 35 filed.

36

1 SECTION 17. Arkansas Code § 12-123-326 is amended to read as follows:
2 16-123-326. Land use law.

3 If the ~~Director of the Arkansas Fair Housing Commission~~ President of
4 the Arkansas Development Finance Authority determines the matter involves the
5 legality of a state or local zoning ordinance or other land use law or
6 ordinance, the ~~director~~ president shall not issue a charge, but shall
7 immediately refer the matter to the Attorney General for appropriate action.
8

9 SECTION 18. Arkansas Code § 16-123-327 is amended to read as follows:
10 16-123-327. Dismissal.

11 (a) If the ~~Director of the Arkansas Fair Housing Commission~~ President
12 of the Arkansas Development Finance Authority determines that no reasonable
13 cause exists to believe that a discriminatory housing practice occurred or is
14 about to occur, the ~~director~~ president shall promptly dismiss the complaint.

15 (b) The ~~director~~ president shall disclose each dismissal under this
16 section both to the public and to all affected parties.
17

18 SECTION 19. Arkansas Code § 16-123-328 is amended to read as follows:
19 16-123-328. Pending civil trial.

20 The ~~Director of the Arkansas Fair Housing Commission~~ President of the
21 Arkansas Development Finance Authority shall not issue a charge under this
22 section regarding an alleged discriminatory housing practice after the
23 commencement of a civil action commenced under federal or state law or this
24 subchapter seeking determination with respect to an alleged discriminatory
25 housing practice.
26

27 SECTION 200. Arkansas Code § 16-123-329 is amended to read as follows:
28 16-123-329. Election of judicial determination.

29 (a) After a charge has been issued under § 16-123-325, a complainant,
30 a respondent, or an aggrieved person on whose behalf the complaint was filed
31 may elect to have the claims asserted in that charge decided in a civil
32 action.

33 (b) The election shall be made no later than the twentieth day after
34 the date of receipt by the electing person of service under § 16-123-325 or,
35 in the case of the ~~Arkansas Fair Housing Commission~~ Arkansas Development
36 Finance Authority, not later than the twentieth day after the date the charge

1 was issued.

2 (c) The person making the election shall give notice to the ~~commission~~
3 Board of Directors of the Arkansas Development Finance Authority and to all
4 other complainants and respondents to whom the charge relates.

5

6 SECTION 21. Arkansas Code § 16-123-330(a) and (b), concerning the
7 Attorney General and an action for enforcement, are amended to read as
8 follows:

9 (a) If a timely election is made under § 16-123-329, the ~~Arkansas Fair~~
10 ~~Housing Commission~~ Board of Directors of the Arkansas Development Finance
11 Authority may authorize and the Attorney General may file and maintain on
12 behalf of the aggrieved party a civil action in a court of competent
13 jurisdiction in the county where the respondent seeking appropriate relief
14 under this section resides or the Attorney General may authorize the
15 ~~commission~~ board to hire outside counsel to pursue appropriate relief.

16 (b) If the ~~commission~~ board determines, ~~as~~ under § 16-123-321, and
17 after consultation with the office of the Attorney General, that a
18 conciliation agreement has been breached by the respondent, the Attorney
19 General may file a civil action on behalf of the aggrieved person in a court
20 of competent jurisdiction in the county where the respondent seeking
21 enforcement of the conciliation agreement resides or the Attorney General may
22 authorize the ~~commission~~ board to hire outside counsel to seek enforcement of
23 the conciliation agreement.

24

25 SECTION 22. Arkansas Code § 16-123-331(a), concerning administrative
26 hearings, is amended to read as follows:

27 (a)(1) If a timely election to commence a civil action is not made
28 under § 16-123-329, the ~~Arkansas Fair Housing Commission~~ Board of Directors
29 of the Arkansas Development Finance Authority shall provide for an
30 administrative hearing on the charge.

31 (2)(A) The administrative hearing will be adjudicated by the
32 ~~commission~~ board.

33 (B) In that proceeding or any factually related proceeding
34 under this section, no officer, employee, or agent of the State of Arkansas
35 engaged in the performance of investigative, conciliatory, or prosecutorial
36 functions in connection with the proceeding shall participate in or advise on

1 the decision of the ~~commission~~ board, except as a witness or counsel during
2 the proceedings.

3
4 SECTION 23. Arkansas Code § 16-123-332 is amended to read as follows:

5 16-123-332. Administrative penalties.

6 (a) If the ~~Arkansas Fair Housing Commission~~ Board of Directors of the
7 Arkansas Development Finance Authority determines at a hearing under § 16-
8 123-331 that a respondent has engaged in or is about to engage in a
9 discriminatory housing practice, the ~~commission~~ board may order the
10 appropriate relief, including actual damages, reasonable attorney's fees, and
11 court costs.

12 (b) To vindicate the public interest, the ~~commission~~ board may assess
13 a civil penalty against the respondent in an amount that does not exceed:

14 (1) Eleven thousand dollars (\$11,000) if the respondent has not
15 been adjudged by order of the ~~commission~~ board or a court to have committed a
16 prior discriminatory housing practice;

17 (2) Except as provided by subsection (c) of this section,
18 twenty-seven thousand five hundred dollars (\$27,500) if the respondent has
19 been adjudged by order of the ~~commission~~ board or a court to have committed
20 one (1) other discriminatory housing practice during the five-year period
21 ending on the date of the filing of this charge; and

22 (3) Except as provided by subsection (c) of this section, fifty-
23 five thousand dollars (\$55,000) if the respondent has been adjudged by order
24 of the ~~commission~~ board or a court to have committed three (3) or more
25 discriminatory housing practices during the five-year period ending on the
26 date of the filing of the charge.

27 (c) If the acts constituting the discriminatory housing practice that
28 is the object of the charge are committed by the same natural person who has
29 been previously adjudged to have committed acts constituting a discriminatory
30 housing practice, the civil penalties in subdivisions (b)(2) and (3) of this
31 section may be imposed without regard to the period of time within which any
32 other discriminatory housing practice occurred.

33 (d) In addition to all other penalties set forth in this subchapter,
34 the ~~commission~~ board may require the respondent to complete up to thirty (30)
35 classroom hours of fair housing education courses designated by the
36 ~~commission~~ board or up to thirty (30) hours of community service designated

1 by the ~~commission~~ board, or both.

2
3 SECTION 24. Arkansas Code § 16-123-333 is amended to read as follows:

4 16-123-333. Effect of a commission order.

5 An ~~Arkansas Fair Housing Commission~~ Arkansas Development Finance
6 Authority order under § 16-123-331 does not affect any contract, sale,
7 encumbrance, or lease that:

8 (1) Was consummated before the ~~commission~~ Board of Directors of
9 the Arkansas Development Finance Authority issued the order; and

10 (2) Involved a bona fide purchaser, encumbrancer, or tenant who
11 did not have actual notice of the charge filed under this subchapter.

12
13 SECTION 25. Arkansas Code § 16-123-334 is amended to read as follows:

14 16-123-334. Licensed or regulated businesses.

15 If the ~~Arkansas Fair Housing Commission~~ Board of Directors of the
16 Arkansas Development Finance Authority issues an order with respect to a
17 discriminatory housing practice that occurred in the course of a business
18 subject to a licensing or regulation by a government agency, the ~~commission~~
19 board, not later than thirty (30) days after the issuance of the order, shall
20 send copies of the findings of fact, conclusions of law, and the order to the
21 governmental agency.

22
23 SECTION 26. Arkansas Code § 16-123-335 is amended to read as follows:

24 16-123-335. Cooperation with state and federal agencies.

25 (a) The ~~Arkansas Fair Housing Commission~~ Arkansas Development Finance
26 Authority is encouraged to cooperate with the United States Secretary of
27 Housing and Urban Development and the United States Attorney General in the
28 enforcement of the Fair Housing Act of 1968, 42 U.S.C. § 3601 et seq., as in
29 effect January 1, 2001, and may assist the United States Secretary of Housing
30 and Urban Development or the United States Attorney General in any way
31 consistent with the policies of this subchapter.

32 (b) The ~~commission~~ Board of Directors of the Arkansas Development
33 Finance Authority shall treat a complaint referred by the United States
34 Secretary of Housing and Urban Development or the United States Attorney
35 General under the Fair Housing Act of 1968, 42 ~~USC~~ U.S.C. § 3601 et seq., as
36 in effect January 1, 2001, as a complaint filed under this section.

1
2 SECTION 27. Arkansas Code § 16-123-336(d), concerning civil actions,
3 is amended to read as follows:

4 (d) If the ~~Arkansas Fair Housing Commission~~ Board of Directors of the
5 Arkansas Development Finance Authority has obtained a conciliation agreement
6 with the consent of an aggrieved person, the aggrieved person may not file an
7 action under this section with respect to the alleged discriminatory housing
8 practice that forms the basis for the complaint except to enforce the terms
9 of the conciliation agreement.

10
11 SECTION 28. Arkansas Code § 16-123-340(a), concerning intervention by
12 the Attorney General, is amended to read as follows:

13 (a) The ~~Arkansas Fair Housing Commission~~ Board of Directors of the
14 Arkansas Development Finance Authority may authorize the Attorney General to
15 intervene and the Attorney General may intervene in an action if the case is
16 of general public importance.

17
18 SECTION 29. The introductory language of Arkansas Code § 16-123-
19 341(a), concerning pattern and practice cases, is amended to read as follows:

20 (a) At the request of the ~~Arkansas Fair Housing Commission~~ Board of
21 Directors of the Arkansas Development Finance Authority, the Attorney General
22 may file a civil action in a court of competent jurisdiction in the county
23 where the respondent resides for appropriate relief if the Attorney General
24 has reasonable cause to believe that:

25
26 SECTION 30. Arkansas Code § 16-123-342 is amended to read as follows:

27 16-123-342. Subpoena enforcement.

28 The ~~Arkansas Fair Housing Commission~~ Board of Directors of the Arkansas
29 Development Finance Authority, on behalf of itself or other party at whose
30 request a subpoena is issued under this subchapter, may enforce the subpoena
31 in appropriate proceedings in a court of competent jurisdiction in the county
32 where the respondent resides.

33
34 SECTION 31. Arkansas Code § 16-123-343(a), concerning a prevailing
35 party, is amended to read as follows:

36 (a) A court in a civil action brought under this subchapter or the

1 ~~Arkansas Fair Housing Commission~~ Board of Directors of the Arkansas
 2 Development Finance Authority in an administrative hearing under § 16-123-331
 3 may award reasonable attorney's fees to the prevailing party.

4
 5 SECTION 32. Arkansas Code § 16-123-345 is amended to read as
 6 follows:

7 16-123-345. Incentives for self-testing and self-correction.

8 (a)(1) A report or result of a self-test, as that term is defined by
 9 ~~regulation rule~~ of the ~~Director of the Arkansas Fair Housing Commission~~
 10 President of the Arkansas Development Finance Authority, shall be considered
 11 to be privileged under subdivision (a)(2) of this section if a person:

12 (A) Conducts or authorizes an independent third party to
 13 conduct a self-test of any aspect of a residential real estate-related
 14 lending transaction or any part of that transaction by that person in order
 15 to determine the level or effectiveness of compliance with this subchapter by
 16 that person; and

17 (B) Has identified any possible violation of this
 18 subchapter by that person and has taken, or is taking, appropriate corrective
 19 action to address any such possible violation.

20 (2) If a person meets the conditions specified in subdivision
 21 (a)(1) of this section with respect to a self-test, any report or results of
 22 that self-test:

23 (A) Shall be privileged; and

24 (B) May not be obtained or used by the ~~Arkansas Fair~~
 25 ~~Housing Commission~~ Board of Directors of the Arkansas Development Finance
 26 Authority or any applicant, department, or agency in any:

27 (i) Proceeding or civil action in which one (1) or
 28 more violations of this subchapter are alleged; or

29 (ii) Examination or investigation relating to
 30 compliance with this subchapter.

31 (b)(1) No provision of this subchapter may be construed to prevent
 32 an aggrieved person, complainant, department, or agency from obtaining or
 33 using a report or results of any self-test in any proceeding or civil action
 34 in which a violation of this subchapter is alleged, or in any examination or
 35 investigation of compliance with this subchapter if:

36 (A) The person to whom the self-test relates or any person

1 with lawful access to the report or the results:

2 (i) Voluntarily releases or discloses all or any
 3 part of the report or results to the ~~commission~~ board, aggrieved person,
 4 complainant, department, or agency or to the general public; or

5 (ii) Refers to or describes the report or results as
 6 a defense to charges of violations of this subchapter against the person to
 7 whom the self-test relates; or

8 (B) The report or results are sought in conjunction with
 9 an adjudication or admission of a violation of this subchapter for the sole
 10 purpose of determining an appropriate penalty or remedy.

11 (2) Any report or results of a self-test that are disclosed for
 12 the purpose specified in subdivision (b)(1)(B) of this section:

13 (A) Shall be used only for the particular proceeding in
 14 which the adjudication or admission referred to in subdivision (b)(1)(B) of
 15 this section is made; and

16 (B) May not be used in any other action or proceeding.

17 (c) An aggrieved person, complainant, department, agency, or the
 18 ~~commission~~ board that challenges a privilege asserted under this section may
 19 seek a determination of the existence and application of that privilege in:

20 (1) A court of competent jurisdiction; or

21 (2) An administrative law proceeding with appropriate
 22 jurisdiction.

23
 24 SECTION 33. Arkansas Code § 16-123-346 is amended to read as follows:
 25 16-123-346. Fair housing education program.

26 (a) ~~The Director of the Arkansas Fair Housing Commission~~ President of
 27 the Arkansas Development Finance Authority shall establish a statewide
 28 education and outreach program through contracts with local governments or
 29 their agencies, public or private nonprofit organizations or institutions, or
 30 other public or private entities that are formulating or carrying out
 31 programs to prevent or eliminate discriminatory housing practices.

32 (b) The program shall be designed to provide a centralized,
 33 coordinated effort for the development and dissemination of fair housing
 34 media products, including:

35 (1) Public service announcements, both audio and video;

36 (2) Television, radio, and print advertisements;

- (3) Posters; and
- (4) Pamphlets and brochures.

(c) The ~~director~~ president shall encourage cooperation with real estate industry organizations in the program.

(d) The ~~director~~ president shall encourage the dissemination of educational information and technical assistance to support compliance with the housing adaptability and accessibility guidelines contained in the Fair Housing Act Amendments of 1988, 42 U.S.C. §§ 3601-3631, 2341, and 2342.

SECTION 34. Arkansas Code § 16-123-347 is repealed.

~~16-123-347. Arkansas Fair Housing Commission Trust Fund.~~

~~(a) There is hereby established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Arkansas Fair Housing Commission Trust Fund".~~

~~(b) The fund shall consist of:~~

~~(1) Funds received by the Arkansas Fair Housing Commission, and any other moneys as may be provided by the General Assembly, there to be used for the administration and operations of the commission; and~~

~~(2) Any administrative or civil penalty levied and collected pursuant to this subchapter, to be solely used for fair housing education of the public and the operational expenses of the commission.~~

~~(c) The appropriation to the commission providing for "public education" may be used to fund all expenses incurred in conducting educational seminars and other forms of educational projects for use and benefit generally of the public, including the production and distribution of information literature of an educational nature.~~

SECTION 35. Arkansas Code § 19-5-1135 is repealed.

~~19-5-1135. Arkansas Fair Housing Commission Trust Fund.~~

~~(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Arkansas Fair Housing Commission Trust Fund".~~

~~(b) The fund shall consist of funds received by the Arkansas Fair Housing Commission, administrative or civil penalties levied and collected pursuant to § 16-123-301 et seq., and any other moneys provided by the General Assembly.~~

1 ~~(c) The fund shall be used for fair housing education of the public~~
2 ~~and the operational expenses of the commission, as set out in § 16-123-301 et~~
3 ~~seq.~~

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