

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 920 of the Regular Session

As Engrossed: H2/18/05 H2/21/05 S3/3/05

A Bill

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

HOUSE BILL 1598

4
5 By: Representatives Wood, Roebuck, Adcock, Boyd, Bright, D. Creekmore, Dickinson, Dunn, L. Evans,
6 George, R. Green, J. Johnson, Mack, Medley, Overbey, Pate, S. Prater, Pyle, Ragland, Reep, Rosenbaum,
7 Thompson, Thyer, Walters
8 By: *Senators Wilkinson*, Broadway, Higginbothom, Hill, J. Jeffress, T. Smith, Whitaker, Altes

11 **For An Act To Be Entitled**

12 AN ACT TO DECLARE THAT A PERSON SHALL NOT BE
13 DISCRIMINATED AGAINST BECAUSE OF MILITARY
14 SERVICE; AND FOR OTHER PURPOSES.

16 **Subtitle**

17 THE MILITARY SERVICE PROTECTION ACT.

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

22 SECTION 1. Arkansas Code Title 12, Chapter 62 is amended to add an
23 additional subchapter to read as follows:

24 12-62-801. Title.

25 This subchapter shall be known and may be cited as the "Military
26 Service Protection Act".

28 12-62-802. Definitions.

29 For the purposes of this subchapter:

30 (1)(A) "Back pay" means the amount of compensation that an
31 employee would have earned if the employer had not engaged in conduct
32 prohibited under this subchapter.

33 (B) "Back pay" shall not include any compensation that
34 would have been earned before two (2) years from the date that the cause of
35 action permitted under this subchapter is initially filed;



1 (2) "Compensatory damages" means damages for:

2 (A) Back pay and interest on back pay;

3 (B) Mental anguish;

4 (C) Loss of dignity; or

5 (D) Other intangible injuries;

6 (3)(A) "Employee" means a person who performs work or service of
7 any type for compensation on a full-time or part-time basis.

8 (B) "Employee" includes applicants for positions to
9 perform work or service for compensation.

10 (C) "Employee" does not include:

11 (i) Any individual employed by his or her parents,
12 spouse, or child;

13 (ii) An individual participating in a specialized
14 employment training program conducted by a nonprofit sheltered workshop or
15 rehabilitation facility;

16 (iii) An individual employed outside the State of
17 Arkansas; or

18 (iv) An independent contractor;

19 (4) "Employer" means a person or entity who employs five (5) or
20 more employees in the State of Arkansas in each of twenty (20) or more
21 calendar weeks in the current or preceding calendar year before the cause of
22 action arose, or any agent of such person;

23 (5) "Military service" means current honorable service or
24 honorably discharged from service within six (6) months from the date of the
25 alleged discrimination in any active or reserve component of the United
26 States Armed Forces;

27 (6) "Religious organization" means a church or other place of
28 worship that:

29 (A) Is located in the state; and

30 (B) Provides religious services to its congregation.

31
32 12-62-803. Applicability.

33 (a) The provisions of this subchapter relating to employment shall not
34 be applicable with respect to employment by a religious organization or other
35 religious entity.

36 (b)(1) This subchapter shall not be applicable to any of the

1 following:

2 (A) The State of Arkansas;

3 (B) A state agency;

4 (C) A political subdivision;

5 (D) A city of the first class, a city of the second class,
6 or an incorporated town;

7 (E) A county;

8 (F) A school district;

9 (G) A public official; or

10 (H) An agency, commission, board, committee, council, or
11 department of any of the entities stated in subdivision (b)(1) of this
12 section.

13 (2) This subchapter shall not be construed as creating a cause
14 of action against an entity stated in subdivision (b)(1) of this section.

15 (b) This subchapter shall not apply to matters regulated by the
16 Arkansas Insurance Code or the Trade Practices Act, § 23-66-201 et seq.

17
18 12-62-804. Construction.

19 (a) Nothing in this subchapter shall be construed to waive the
20 sovereign immunity of the State of Arkansas.

21 (b)(1) When construing this subchapter as it relates to employment
22 matters, a court may look for guidance to the Uniformed Services Employment
23 and Reemployment Rights Act, as amended and codified in 38 U.S.C. § 4301 et
24 seq., and as in effect on January 1, 2005, as well as federal decisions
25 interpreting this law.

26 (2) When construing this subchapter as it relates to all other
27 matters, a court may look for guidance to state and federal decisions
28 interpreting the federal Civil Rights Act of 1871, as amended and codified in
29 42 U.S.C. § 1983, as in effect on January 1, 2005.

30
31 12-62-805. Rights stated -- Cause of action created.

32 (a)(1) The right of an otherwise qualified person to be free from
33 discrimination because of military service is recognized as and declared to
34 be a civil right.

35 (2) This right shall include, but not be limited to:

36 (A) The right to obtain and hold employment without

1 discrimination;

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

5 (C) The right to engage in property transactions without
6 discrimination;

7 (D) The right to engage in credit and other contractual
8 transactions without discrimination; and

9 (E) The right to vote and participate fully in the
10 political process.

11 (b) A person who is injured by an intentional act of discrimination in
12 violation of subsection (a) of this section may bring a civil action in a
13 circuit court of competent jurisdiction.

14 (c)(1) An employee who is discriminated against by an employer in
15 violation of subdivision (a)(2)(A) of this section may bring a civil action
16 in a circuit court of competent jurisdiction.

17 (2) The employee may seek back pay and interest on back pay in
18 addition to the other remedies provided for under this section.

19 (d)(1) Subject to the limitations on damages in subdivision (d)(2) of
20 this section, a person may seek the following relief for a violation of a
21 civil right under this subchapter:

22 (A) An order prohibiting the discriminatory practice;

23 (B) Affirmative relief from the effects of the practice,
24 including, but not limited to, reemployment;

25 (C) An injunction to enjoin further violations;

26 (D) An order to recover compensatory and punitive damages;

27 and

28 (E) An order to recover the cost of litigation and a
29 reasonable attorney's fee, in the discretion of the court.

30 (2) The total compensatory and punitive damages awarded under
31 this section shall not exceed:

32 (A) The sum of fifteen thousand dollars (\$15,000) in the
33 case of an employer who employs no less than five (5) but fewer than fifteen
34 (15) employees in each of twenty (20) or more calendar weeks in the current
35 or preceding calendar year before the cause of action arose;

36 (B) The sum of fifty thousand dollars (\$50,000) in the

1 case of an employer who employs more than fourteen (14) but fewer than one
2 hundred one (101) employees in each of twenty (20) or more calendar weeks in
3 the current or preceding calendar year before the cause of action arose;

4 (C) The sum of one hundred thousand dollars (\$100,000) in
5 the case of an employer who employs more than one hundred (100) but fewer
6 than two hundred one (201) employees in each of twenty (20) or more calendar
7 weeks in the current or preceding calendar year before the cause of action
8 arose;

9 (D) The sum of two hundred thousand dollars (\$200,000) in
10 the case of an employer who employs more than two hundred (200) but fewer
11 than five hundred one (501) employees in each of twenty (20) or more calendar
12 weeks in the current or preceding calendar year before the cause of action
13 arose; and

14 (E) The sum of three hundred thousand dollars (\$300,000)
15 in the case of an employer who employs more than five hundred (500) employees
16 in each of twenty (20) or more calendar weeks in the current or preceding
17 calendar year before the cause of action arose.

18
19 12-62-806. Limitation of action.

20 (a) Except as provided under subsection (b) of this section, an action
21 under this section shall be brought within one (1) year after the alleged
22 violation or discriminatory conduct occurs.

23 (b) However, if a service member is deployed for active duty at any
24 time during the one (1) year period, then an action under this section shall
25 be brought within one (1) year after the end of his or her mobilization.

26
27 12-62-807. Retaliation – Interference – Remedies.

28 (a) It is unlawful under this subchapter for a person or entity to
29 retaliate or discriminate against a person because the person, in good faith:

30 (1) Opposed any act or practice made unlawful under this
31 subchapter; or

32 (2) Made a claim, testified, assisted, or participated in any
33 manner in an investigation, proceeding, or hearing under this subchapter.

34 (b) It is unlawful to coerce, intimidate, threaten, or interfere with
35 a person in his or her exercise of any rights granted or protected under this
36 subchapter.

1 (c) A person may avail himself or herself to the same procedures and
2 remedies available under § 12-62-805 for violations of this section.

3
4 12-62-808. Defenses.

5 (a) It is a defense under this subchapter if an employer establishes
6 that the employer's actions were based on legitimate, nondiscriminatory
7 factors and not on reasons related to military service.

8 (b) Provided the conduct at issue is based on a bona fide business
9 judgment and is not a pretext for discrimination that is prohibited under
10 this subchapter, this subchapter shall not be construed to prohibit or
11 restrict:

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

17 (2) A person covered by this subchapter from establishing,
18 sponsoring, observing, or administering the terms of a bona fide benefit plan
19 that are based on underwriting risks, classifying risks, or administering
20 such risks that are based on or are not inconsistent with federal or state
21 law; or

22 (3) A person covered by this subchapter from establishing,
23 sponsoring, observing, or administering the terms of a bona fide benefit plan
24 that is not subject to federal or state laws which regulate insurance.

25
26 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
27 General Assembly of the State of Arkansas that since September 11, 2001, the
28 country has an increased need for soldiers to protect against terrorist acts
29 and threats to our national security posed by other countries; that members
30 of the National Guard and Reserves risk their lives to protect and defend our
31 country at home and abroad; that military service is honorable and citizens
32 who choose to serve their country deserve respect and to be treated fairly;
33 that members of the National Guard and Reserves are being denied employment
34 and being discriminated against in other ways because of their status as
35 soldiers; and that this act is immediately necessary to protect the citizens
36 who choose to honor their country by serving in the military from being

1 denied employment or being discriminated against in other ways because of
2 their military service. Therefore, an emergency is declared to exist and
3 this act being immediately necessary for the preservation of the public
4 peace, health, and safety shall become effective on:

5 (1) The date of its approval by the Governor;

6 (2) If the bill is neither approved nor vetoed by the Governor,
7 the expiration of the period of time during which the Governor may veto the
8 bill; or

9 (3) If the bill is vetoed by the Governor and the veto is
10 overridden, the date the last house overrides the veto.

11
12 */s/ Wood*

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15 *APPROVED: 3/18/2005*
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