

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Senators Lewellen, Jewell, and Edwards**

A Bill

SENATE BILL 224

For An Act To Be Entitled

"The Arkansas Civil Rights Act."

Subtitle

"The Arkansas Civil Rights Act."

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

15 SECTION 1. PURPOSE AND INTENT. It is the purpose and intent of the
16 State of Arkansas by this act:

17 (1) To provide for execution within Arkansas of the policies embodied
18 in the Federal Civil Rights Act of 1964, 1968, 1972, 1991, as amended, the
19 Pregnancy Amendment of 1978, and the Age Discrimination in Employment Act of
20 1967 and the Americans with Disabilities Act, as amended, and the Fair Housing
21 Amendment Act of 1988;

22 (2) To assure that Arkansas has appropriate legislation prohibiting
23 discrimination in employment, public accommodations, and housing sufficient to
24 justify the deferral of cases from the U.S. Equal Employment Opportunity
25 Commission, the U.S. Department of Housing and Urban Development, the
26 Secretary of Labor, and the Department of Justice under those statutes;

27 (3) To safeguard all individuals within the State from discrimination
28 because of race, creed, color, disability, marital status, religion, sex, age,
29 national origin in connection with employment, housing and public
30 accommodations;

31 (4) To protect all individual_s interest in personal dignity and
32 freedom from humiliation;

33 (5) To protect all individuals from sexual harassmt in connection
34 with employment;

1 (6) To make available to the State their full productive capacity in
2 employment;

3 (7) To protect the right to engage in property transactions without
4 discrimination;

5 (8) To secure the right to engage in credit and other related
6 contractual transactions without discrimination;

7 (9) To secure the right to vote and participate fully in the political
8 process;

9 (10) To secure the State against internal domestic strife and unrest
10 which would menace its democratic institutions;

11 (11) To preserve the public safety, health, and general welfare; and

12 (12) That the prohibitions in this chapter against discrimination
13 because of age in connection with employment and public accommodations shall
14 be limited to individuals who are at least forty (40) years of age.

15

16 SECTION 2. DEFINITIONS. As used in this act:

17 (1) *Age* refers to an individual who is at least forty years old."

18 (2) "Discriminatory practices" means any direct or indirect act or
19 practice of exclusion, distinction, restriction, segregation, limitation,
20 refusal, denial, or any other act or practice of differentiation or preference
21 in the treatment of a person or persons because of race, creed, color,
22 religion, sex, age, national origin, and where appropriate, familial status or
23 disability. *Employee does not include any individual employed by his or her*
24 *parents, spouse, or child, an individual employed under a special license in a*
25 *non-profit sheltered workshop or rehabilitation facility, or an individual*
26 *employed outside the state of Arkansas.*

27 (3) "Employer" includes any person, state or any political or civil
28 subdivision employing nine (9) or more employees in each of 20 or more
29 calendar weeks in the current or preceding calendar year.

30 (4) "Employment agency" includes any person or agency, public or
31 private, regularly undertaking with or without compensation to procure
32 employees for an employer or to procure for employees opportunities to work
33 for an employer and includes any agent of person;

34 (5) "Family" includes a single individual;

35 (6) "Financial institution" means a bank, banking organization, savings

1 and loan association, mutual savings, credit union, mortgage company,
2 insurance company, or other lender to whom application is made for financial
3 assistance for the purchase, lease, acquisition, construction, rehabilitation,
4 repair, maintenance, or improvements of real property, or an individual
5 employed by or acting on behalf of any of these;

6 (7) "Housing accommodation" includes improved and unimproved property
7 and means a building, structure, lot or part thereof which is used or
8 occupied, or is intended, arranged or designed to be used or occupied as the
9 home or residence of one or more individuals;

10 (8) "Labor organization" includes any organization which exists for the
11 purpose in whole or in part, of collective bargaining or of dealing with
12 employers concerning grievances, terms or conditions of employment or for
13 other mutual aid or protection in relation to employment of any agent acting
14 for organizations;

15 (9) "Election Process" includes, but is not limited to, all action
16 necessary to make a vote effective in any primary, special, or general
17 election, including, but not limited to, registration or any other action
18 required by law prerequisite to voting, casting a ballot counted properly and
19 included in the appropriate totals of votes cast with respect to candidates
20 for public or party office and propositions for which votes are received in an
21 election.

22 (10) "National origin" includes ancestry;

23 (11) "Person" includes one (1) or more individuals, governments,
24 governmental agencies, public authorities, labor organizations, corporations,
25 legal representatives, partnerships, associations, trustees, trustees in
26 bankruptcy, receivers, mutual companies, joint stock companies, trusts,
27 unincorporated organizations, or other organized groups of persons;

28 (12) "Places of public accommodation, resort or amusement" includes any
29 place, store or other establishment, either licensed or unlicensed, which
30 supplies goods or services to the general public or which solicits or accepts
31 the patronage or trade of the general public, or which is supported directly
32 or indirectly by government funds; but a place of public accommodation, resort
33 or amusement does not include any lodging establishment which contains four or
34 more rooms for rent or which is actually occupied by the proprietor of such
35 establishment as a residence.

1 (A) A bona fide private club is not a place of public
2 accommodation, resort or amusement if its policies are determined solely by
3 its members; and

4 (B) Its facilities or services are available only to its members
5 and their bona fide guests.

6 (13) "Real estate broker" or "real estate salesperson" means an
7 individual, whether licensed or not, who, on behalf of others, for a fee,
8 commission, salary, or other valuable consideration, or who with the intention
9 or expectation of receiving or collecting the same, lists, sells, purchases,
10 exchanges, rents or leases real estate, or the improvements thereon, including
11 options, or who negotiates or attempts to negotiate on behalf of others a loan
12 secured by mortgage or other encumbrance upon a transfer of real estate, or
13 who is engaged in the business of charging an advance fee or contracting for
14 collection of a fee in connection with a contract whereby he undertakes to
15 promote the sale, purchase, exchange, rental, or lease of real estate through
16 its listing in a publication issued primarily for such purpose; or an
17 individual employed by or acting on behalf of any of these;

18 (14) "Real estate operator" means any individual or combination of
19 individuals, labor unions, joint apprenticeship committees, partnerships,
20 associations, corporations, legal representatives, mutual companies, joint-
21 stock companies, trust, unincorporated organizations, trustees in bankruptcy,
22 receivers or other legal or commercial entity, or the county or any of its
23 agencies, that is engaged in the business of selling, purchasing, exchanging,
24 renting or leasing real estate, or the improvements thereon, including
25 options, or that derives incomes, in whole or in part, from the sale,
26 purchase, exchange, rental or lease of real estate; or an individual employed
27 by or acting on behalf of any of these;

28 (15) "Real estate transaction" includes the sale, exchange, rental or
29 lease of real property; and

30 (16) "Real property" includes buildings, structures, real estate,
31 lands, tenements, leaseholds, cooperatives, condominiums, corporeal and
32 incorporeal, or any interest in the above;

33 (17) "Familial status" means one or more individuals who have not
34 attained eighteen (18) years of age, being domiciled with:

35 (A) A parent or another person having legal custody of such

1 individual or individuals; or

2 (B) The designee of such parent or other person having such
3 custody, with the written permission of such parent or other person.

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

6 (1) Homosexuality, bisexuality, or other sexual orientation of an
7 individual;

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

9 (3) Pedophilia, exhibitionism, voyeurism, or other sexual
10 disorder;

11 (4) Current use of illegal drugs or psychoactive substance use
12 disorders results from illegal use of drugs; or

13 (4) Alcoholism.

14 (19) "Marital status" shall mean the status of a person whether married
15 or single;

16 (20) "Because of sex" or "on the basis of sex" shall include, but not
17 be limited to, because of or on the basis of pregnancy, childbirth, or related
18 medical conditions; but does not include sexual preference or orientation

19 (21) "Unlawful under federal law or the laws of this State" shall mean
20 acting contrary to or in defiance of the law or disobeying or disregarding the
21 law.

22

23 SECTION 3. Equal rights under the law.

24 (a) All persons within the jurisdiction of this state shall have the
25 same right to make and enforce contracts, to sue, be parties, give evidence,
26 and to the full and equal benefit all laws and proceedings for the security of
27 persons and property as is enjoyed by white citizens, and shall be subject to
28 like punishment, pains, penalties, taxes, licenses, and exactions of every
29 kind, and to no other.

30 (b) For purpose of this section, the term 'make and enforce contracts'
31 includes the making, performance, modification, and termination of contracts,
32 and the enjoyment of all benefits , privileges, terms, and conditions of the
33 contractual relationship.

34 (c) The rights protected by this section are protected against
35 impairment by nongovernmental discrimination and impairment under color of

1 state law.

2 When construing this section, a court may look for guidance to state and
3 federal decisions interpreting the federal Civil Rights Act of 1871, as
4 amended and codified in 42 U.S.C. §1981 and 42 U.S.C. § 1988, as in effect on
5 March 1, 1993, which decisions and act shall have persuasive authority only.

6 In any civil action brought under Section 3 of this act, the appropriate
7 court may issue an order prohibiting discriminatory practices and provide
8 affirmative relief from the effects of the practices, including back pay. The
9 court may also award compensatory damages, including, but not limited to,
10 damages for mental anguish, loss of dignity, and other intangible injuries and
11 punitive damages.

12

13 SECTION 4. Every governmental entity or person who, under color of any
14 statute, ordinance, regulation, custom, or usage, of this state or any of its
15 political subdivisions, subjects, or causes to be subjected, any person to the
16 deprivation of any rights, privileges, or immunities secured by the
17 Constitution or laws of the state of Arkansas, shall be liable to the party
18 injured in an action at law, suit in equity, or other proper proceeding for
19 redress. In the discretion of the court, a party held liable under this
20 section shall also pay the injured party_s cost of litigation and reasonable
21 attorneys_ fees in an amount to be fixed by the court. When construing this
22 section, a court may look for guidance to state and federal decisions
23 interpreting the federal Civil Rights Act of 1871, as amended and codified in
24 42 U.S.C. § 1983, as in effect on March 1, 1993, which decisions and Act shall
25 have persuasive authority only. This section does not alter the law of state
26 sovereign immunity.

27 Any person who is injured by a discriminatory practice prohibited by
28 this section shall have a civil action in a court of competent jurisdiction to
29 enjoin further violations, to recover compensatory or punitive damages, and,
30 in the discretion of the court, to recover the cost of litigation and
31 reasonable attorneys_ fees.

32

33 SECTION 5. It shall be unlawful for any person to subject or cause to
34 be subjected, other persons to the deprivation of any rights or privileges
35 secured by the Arkansas Constitution or its laws by acts of:

- 1 (i) unprotected intimidation or harassment, or
- 2 (ii) violence directed against his person, or
- 3 (iii) vandalism directed against his real or personal property, where
- 4 such acts are motivated by racial, gender, religious, or ethnic animosity.

5 This section shall not apply to speech or conduct protected by the First
6 Amendment of the United States Constitution or Title 2, §6 of the Arkansas
7 Constitution.

8 The provisions of subsection (a)(1) shall not apply to actions by an
9 employee against an employer for an action arising out of incidents occurring
10 in the workplace or arising out of the employer-employee relationship.

11 Any aggrieved party who initiates and prevails in an action authorized
12 by this section against any person committing such acts shall be entitled to
13 damages, including punitive damages, and in the discretion of the court to an
14 award of the cost of the litigation and reasonable attorneys_ fees in an
15 amount to be fixed by the court.

16

17 SECTION 6. It shall be unlawful for any person to engage in any conduct
18 or acts intended to prohibit or abridge, or which have the result of
19 prohibiting or abridging the full participation in the election processes of
20 this state or any political subdivisions of this state.

21 Any person who is injured by an act of discrimination prohibited by this
22 section shall have a civil action in a court of competent jurisdiction to
23 enjoin further violations, to recover compensatory and/or punitive damages,
24 and, in the discretion of the court, to recover the cost of litigation and
25 reasonable attorneys_ fees.

26 Nothing in this section is intended to restrict employers from
27 prohibiting employee campaign activities during normal working hours.

28

29 SECTION 7. *Sexual Harassment.*

30 (a) It shall be unlawful for any person within the workplace or in
31 connection with employment:

32 (1) To use or attempt to use a position of managerial authority
33 to coerce sexual favors from a subordinate individual or to retaliate against
34 a subordinate individual who has refused sexual advances; or

35 (2) To make sexual comments or engage in sexual behavior toward

1 an individual after the individual has communicated to the individual making
2 the comments or engaging in the behavior that the comments or behavior are
3 unwelcome or unwanted; or

4 (3) To engage in a pattern or practice of sexual advances or
5 physical contact of a sexual nature directed at a specific individual where
6 the activity is sufficiently severe that it demonstrably hinders or completely
7 prevents an individual from performing his or her duties; or

8 (4) To create a sexually offensive environment that is
9 sufficiently severe that it demonstrably hinders or completely prevents a
10 reasonable individual from performing his or her duties.

11 (b) Any individual who is injured by sexual harassment in violation of
12 this section shall have a civil action in a court of competent jurisdiction to
13 enjoin further violations; to recover damages including punitive damages; and,
14 in the discretion of the court, to recover the cost of litigation and
15 reasonable attorneys_ fees.

16 (c) An individual engaging in sexual harassment and the employer of
17 such individual may be found liable under this section. An employer is
18 strictly liable for sexual harassment in violation of subsection (a)(1) of
19 this section. An employer is liable for sexual harassment in violation of
20 subsections (a)(2), (a)(3), and (a)(4) of this section only if the employer
21 knew, or reasonably should have known, of the prohibited conduct and did not
22 take any action to correct or prevent the prohibited conduct.

23

24

25 SECTION 8. DISCRIMINATION IN EMPLOYMENT.

26 (a) Employers. It is an unlawful employment practice for an employer:

27 (1) to fail or refuse to hire or to discharge an individual or
28 otherwise to discriminate against an individual with respect to compensation
29 or the terms, conditions, or privileges of employment because of race, color,
30 disability, religion, sex, national origin, or age; or

31 (2) to limit, segregate, or classify an employee or applicant for
32 employment in a way that would deprive or tend to deprive an individual of
33 employment opportunities or otherwise adversely affect the status of an
34 employee because of race, color, disability, religion, sex, national origin,
35 or age.

1 (b) Employment Agencies. It is an unlawful employment practice for an
2 employment agency to fail or refuse to refer for employment or otherwise to
3 discriminate against an individual because of race, color, disability,
4 religion, sex, national origin, ancestry, or age, or to classify or refer for
5 employment an individual on the basis of race, color, disability, religion,
6 sex, national origin, or age.

7 (c) Labor Organizations. It is an unlawful employment practice for a
8 labor organization:

9 (1) to exclude or to expel from membership or otherwise to
10 discriminate against an individual because of race, color, disability,
11 religion, sex, national origin, or age;

12 (2) To limit, segregate, or classify members or applicants for
13 membership or to classify or to fail or refuse to refer for employment an
14 individual because of race, color, disability, religion, sex, national origin,
15 or age in a way:

16 (A) that would deprive or tend to deprive an individual of employment
17 opportunities; or

18 (B) that would limit employment opportunities or otherwise adversely
19 affect the status of an employee or of an applicant for
20 employment; or

21 (C) that would cause or attempt to cause an employer to violate this
22 section.

23 (d) Training Programs.

24 (1) Unless the training or retraining opportunities or programs
25 are provided under an affirmative action plan approved according to federal
26 laws, rule, or regulations, it is an unlawful employment practice for an
27 employer, labor organization, or joint labor-management committee controlling
28 an apprenticeship, on-the-job, or other training or retraining program to
29 discriminate against an individual because of race, color, disability,
30 religion, sex, national origin, or age in admission to or participation in a
31 program established to provide apprenticeship, on-the-job or other training or
32 retraining opportunities.

33 (e) Other Discriminatory Employment Practices.

34 (1) It is an unlawful employment practice for an employer, labor
35 union, or employment agency:

1 (A) to retaliate or discriminate against a person who has opposed a
2 discriminatory practice or who has made or filed a charge, filed a
3 complaint, testified, assisted, or participated in any manner in
4 an investigation, proceeding, or hearing under this act;

5 (B) to aid, abet, incite or coerce a person to engage in a
6 discriminatory practice;

7 (C) willfully to obstruct or prevent a person from complying with the
8 provisions of this act or a valid rule or order issued under this
9 act.

10 (2) Unless disability, religion, sex, national origin, marital
11 status, or age is a bona fide occupational qualification, it is an unlawful
12 employment practice for an employer, labor organization, employment agency, or
13 joint labor-management committee controlling an apprenticeship, on-the-job, or
14 other training or retraining program to print or publish or cause to be
15 printed or published a notice or advertisement relating to employment
16 indicating a preference, limitation, specification, or discrimination based on
17 race, color, disability, religion, sex, national origin, or age, if the notice
18 or advertisement concerns an employee_s status, employment, or admission to or
19 membership or participation in a labor union or an apprenticeship, on-the-job
20 or other training or retraining program.

21 (f) Exceptions. This section does not apply to:

22 (1) the employment of an individual of a particular religion by a
23 religious corporation, association, or society to perform work connected with
24 the performance of religious activities by the corporation, association, or
25 society;

26 (2) the employment of an individual by his parent, spouse, or
27 child; or

28 (3) any labor union, firm, association, or individual
29 participating in a U.S. Department of Labor-approved statewide hometown plan
30 on the effective date of this act.

31 (g) Nondiscriminatory Practices. (A) Notwithstanding any other
32 provision of this section, it is not an unlawful employment practice:

33 (1) for an employer to hire and to employ employees, for an
34 employment agency to classify or refer for employment an individual, for a
35 labor organization to classify its members or to classify or refer for

1 employment an individual, for a labor organization to classify its members or
2 to classify or refer for employment an individual, or for an employer, labor
3 organization, or joint labor-management committee controlling an
4 apprenticeship, on-the-job, or other training or retraining program to admit
5 or employ an individual in its program, on the basis of disability, religion,
6 sex, national origin, or age, if disability, religion, sex, national origin,
7 or age is a bona fide occupational qualification reasonably necessary to the
8 normal operation of the particular business or enterprise;

9 (2) for a religious corporation, association, society or
10 educational institution or an educational organization operated, supervised,
11 or controlled, in whole or in substantial part, by a religious corporation,
12 association, or society to limit employment or give preference to members of
13 the same religion;

14 (3) for an employer to apply different standards of compensation
15 or different terms, conditions, or privileges of employment under a bona fide
16 seniority system, bona fide merit system, or a bona fide employee benefit plan
17 such as a retirement, pension, or insurance plan, which is not a subterfuge to
18 evade this act, or under a system that measures earnings by quantity or
19 quality of production if those different standards are not discriminatory on
20 the basis of race, color, disability, religion, sex, national origin, or age,
21 except that no employee benefit plan may excuse a failure to hire on the basis
22 of age and no seniority or employee benefit plan may require or permit
23 involuntary retirement on the basis of age;

24 (4) for an employer to apply to employees who work in different
25 locations different standards of compensation or different terms, conditions,
26 or privileges or employment if those different standards are not
27 discriminatory on the basis of race, color, disability, religion, sex,
28 national origin, or age;

29 (5) for an employer to impose minimum or maximum age requirements
30 for peace officers or fire fighters or any other occupation where an
31 employee's age is limited by state or federal law;

32 (6) for a public school official to adopt or implement a plan
33 reasonably designed to end discriminatory school practices; or

34 (7) For an employer to adopt or enforce policies prohibiting
35 nepotism.

1 (B) The employment of one person in place of another, standing by
2 itself, is not evidence of an unlawful employment practice.

3 (h) Imbalance Plans. This act may not be interpreted to require a
4 person subject to this act to grant preferential treatment to an individual or
5 to a group on the basis of the race, color, disability, religion, sex,
6 national origin, or age of that individual or group because an imbalance
7 exists between the total number or percentage of persons of that individual_s
8 or group_s race, color, disability, religion, sex, national origin, or age
9 employed by an employer, referred or classified for employment by an
10 employment agency or labor organization, admitted to membership or classified
11 by a labor organization, or admitted to or employed in any apprenticeship, on-
12 the-job, or other training or retraining program, and the total number or
13 percentage of persons of that race, color, disability, marital status,
14 religion, sex, national origin, or age in any community, this state, region,
15 or other area, or in the available work force in any community, this state,
16 region, or other area, *but evidence of such an imbalance may be taken into*
17 *account in determining a violation of this act.*

18 (i) Other-State Employees. This act does not apply to an employer with
19 respect to employment of persons outside the state of Arkansas.

20 (j) *Any individual who is injured by an unlawful employment practice*
21 *in violation of this section shall have a civil action in a court of competent*
22 *jurisdiction to enjoin further violations, to recover backpay and interest on*
23 *backpay, and, in the discretion of the court, to recover the cost of*
24 *litigation and reasonable attorneys_ fees. No liability for backpay shall*
25 *accrue from a date more than two (2) years prior to the filing of an action.*
26 *Recovery under this subsection may be based on an unlawful employment practice*
27 *that causes a disparate impact on a protected class. An unlawful employment*
28 *practice based on disparate impact is established under this section only if a*
29 *complaining party demonstrates that a respondent uses a particular employment*
30 *practice that causes a disparate impact on the basis of race, color,*
31 *disability, religion, sex, or national origin, and the defendant fails to*
32 *demonstrate that the challenged employment practice is job related for the*
33 *position in question and consistent with business necessity. The complaining*
34 *party shall demonstrate that each particular challenged employment practice*
35 *causes a disparate impact, except that if the complaining party can*

1 demonstrate that the elements of a defendant_s decision-making process are not
2 capable of separation for analysis, the decision-making process may be
3 analyzed as one employment practice. If the defendant demonstrates that a
4 specific employment practice does not cause a disparate impact, the defendant
5 shall not be required to demonstrate that such practice is required by
6 business necessity. When construing this subsection, a court may look for
7 guidance to state and federal decisions interpreting the burden of proof in
8 disparate impact cases under federal Civil Rights Act of 1991, as amended and
9 codified in 42 U.S.C. § 2000e-2(k), as in effect on March 1, 1993, which
10 decisions and act shall have persuasive authority only.

11 (k) Any individual who is injured by intentional discrimination in
12 violation of this section shall, in addition to the remedies provided in
13 subsection (j) of this section, be entitled to recover compensatory and
14 punitive damages. A demonstration that an employment practice is required by
15 business necessity may not be used as a defense against a claim of intentional
16 discrimination. The sum of the amount of compensatory damages awarded under
17 this subsection for future pecuniary losses, emotional pain, suffering,
18 inconvenience, mental anguish, loss of enjoyment of life, and other
19 nonpecuniary losses, and the amount of punitive damages awarded under this
20 subsection shall not exceed:

21 (1) the sum of fifteen thousand dollars (\$15,000) in the case of
22 an employer who employs nine (9) or more employees and fewer than fifteen (15)
23 employees in each of twenty (20) or more calendar weeks in the current or
24 preceding calendar year;

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

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

33 (4) the sum of two hundred thousand dollars (\$200,000) in the
34 case of an employer who employs more than two hundred (200) and fewer than
35 five hundred and one (501) employees in each of twenty (20) or more calendar

1 weeks in the current or preceding calendar year; and

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

6
7 SECTION 9. *DISCRIMINATION IN PROPERTY TRANSACTIONS.* It shall be
8 unlawful to:

9 (1) Refuse to sell or rent after the making of a bona fide offer,
10 refuse to negotiate for the sale or rental of or otherwise make unavailable or
11 deny, refuse to show, or refuse to receive and transmit an offer for a
12 dwelling to any person because of race, color, disability, religion, sex,
13 national origin, or age.

14 (2) Discriminate against any person in the terms, conditions, or
15 privileges of sale or rental of a dwelling or in the provision of services or
16 facilities in connection therewith because of race, color, disability,
17 *familial status, religion, sex, or national origin.*

18 (3) Make, print, publish, or cause to be made, printed, or
19 published any notice, statement, or advertisement with respect to the sale or
20 rental of a dwelling that indicates any preference, limitation, or
21 discrimination based on race, color, disability, religion, sex, national
22 origin, or age, or an intention to make any such preferences, limitation, or
23 discrimination.

24 (4) Represent to any person because of race, color, disability,
25 religion, sex, national origin, or age that any dwelling is not available for
26 inspection, sale, or rental when such dwelling is in fact so available;

27 (5) Cause to be made any written or oral inquiry or record
28 concerning the race, color, disability, religion, sex, or *national origin* of a
29 person seeking to purchase, rent, or lease any housing;

30 (6) *Include in any transfer, sale, rental, or lease of housing any*
31 *restrictive covenants based on race, color, disability, religion, sex, or*
32 *national origin or to honor or exercise or attempt to honor or exercise any*
33 *such restrictive covenant*

34 (7) Discharge or demote an employee or agent or discriminate in
35 the compensation of such employee or agent because of such employee_s or

1 agent_s compliance with the provisions of this section; and

2 (8) Induce or attempt to induce, for profit, any person to sell
3 or rent any dwelling by representations regarding the entry or prospective
4 entry into the neighborhood of a person or persons of a particular race,
5 color, disability, religion, sex, national origin, or age.

6 Any person who is injured by an act of discrimination prohibited by this
7 section shall have a civil action in a court of competent jurisdiction to
8 enjoin further violations, to recover compensatory damages and, in the
9 discretion of the court, to recover the cost of litigation and reasonable
10 attorneys_ fees.

11

12 SECTION 10. PERSONS WITH DISABILITY, DISCRIMINATORY PRACTICES
13 PROHIBITED.

14 (a) Except as exempted by *Section 13*, it shall be unlawful to:

15 (1) Discriminate in the sale or rental of or otherwise make
16 unavailable or deny a dwelling to any buyer or renter because of a disability
17 of:

18 (i) The buyer or renter;

19 (ii) Any person associated with the buyer or renter; or

20 (iii) A person residing in or intending to reside in the
21 dwelling after it is so sold, rented, or made available.

22 (2) Discriminate against any person in the terms, conditions, or
23 privileges of sale or rental of a dwelling or in the provision of services or
24 facilities in connection with a dwelling because of a disability of:

25 (i) Such person;

26 (ii) Any person associated with such person; or

27 (iii) A person residing in or intending to reside in the
28 dwelling after it is so sold, rented, or made available; or

29 (b) For purposes of this section, discrimination shall include:

30 (1) A refusal to permit, at the expense of the person with a
31 disability, reasonable modifications of existing premises occupied or to be
32 occupied by the person if the modifications may be necessary to afford the
33 person full enjoyment of the premises, except that in the case of a rental,
34 the landlord may, when it is reasonable to do so, condition permission for a
35 modification upon the renter agreeing to restore the interior of the premises

1 to the condition that existed before the modification, reasonable wear and
2 tear excepted;

3 (2) A refusal to make reasonable accommodations in rules,
4 policies, practices, or services when such accommodations may be necessary to
5 afford the person with a disability equal opportunity to use and enjoy a
6 dwelling; and

7 Any person who is injured by an act of discrimination prohibited by this
8 section shall have a civil action in a court of competent jurisdiction to
9 enjoin further violations, to recover compensatory damages, and, in the
10 discretion of the court, to recover the cost of litigation and reasonable
11 attorneys_ fees.

12

13 SECTION 11. TRANSACTION RELATED TO RESIDENTIAL REAL ESTATE;
14 DISCRIMINATORY PRACTICES PROHIBITED.

15 (a) It shall be unlawful for any person or other entity whose business
16 includes engaging in transactions related to residential real estate to
17 discriminate against any person in making available such a transaction or in
18 the terms or conditions of such a transaction because of race, color, national
19 origin, age, religion, sex, disability, familial status, or national origin.

20 (b) For purposes of this section, transaction related to residential
21 real estate shall mean any of the following:

22 (1) The making or purchasing of loans or providing other
23 financial assistance;

24 (i) For purchasing, constructing, improving, repairing, or
25 maintaining a dwelling; or

26 (ii) Secured by residential real estate; or

27 (2) The selling, brokering, or appraising of residential real
28 property.

29 (c) Nothing in this section shall prohibit a person engaged in the
30 business of furnishing appraisals of real property from taking into
31 consideration factors other than race, color, religion, national origin, age,
32 sex, disability, or familial status.

33 Any person who is injured by an act of discrimination prohibited by this
34 section shall have a civil action in a court of competent jurisdiction to
35 enjoin further violations, to recover compensatory and/or punitive damages,

1 and, in the discretion of the court, to recover the cost of litigation and
2 reasonable attorneys_ fees.

3

4 SECTION 12. RELIGIOUS ORGANIZATION, PRIVATE HOME, PRIVATE CLUB, OR
5 HOUSING FOR OLDER PERSONS; RESTRICTING USE NOT PROHIBITED; LOCAL RESTRICTIONS;
6 HOW TREATED; CONTROLLED SUBSTANCES; ILLEGAL ACTIVITIES; EFFECT.

7 (a) Nothing in this act shall prohibit a religious organization,
8 association, or society or any nonprofit institution or organization operated,
9 supervised, or controlled by or in conjunction with a religious organization,
10 association, or society from limiting the sale, rental, or occupancy of a
11 dwelling which it owns or operates for other than commercial purposes to
12 persons of the same religion or from giving preferences to such persons unless
13 membership in such religion is restricted on account of race, color, national
14 origin, *disability*, familial status, or sex.

15 (b) Nothing in this act shall prohibit a private club not in fact open
16 to the public, which as an incident to its primary purpose or purposes
17 provides lodgings which it owns or operates for other than commercial
18 purposes, from limiting the rental or occupancy of such lodging to its members
19 or from giving preference to its members.

20 (c) Nothing in this act shall prohibit or limit the right of any person
21 or his or her authorized representative to refuse to rent a room or rooms in
22 his or her own home for any reason or for no reason or to change tenants in
23 his or her own home as often as desired, except that this exception shall not
24 apply to any person who makes available for rental or occupancy more than four
25 sleeping rooms to a person or family within his or her own home.

26 (c) (1) *This section shall not apply to the sale or rental of any*
27 *single-family house sold or rented by an owner if such house is sold or rented*
28 *(1) without the use in any manner of the sales or rental facilities of the*
29 *sales or rental services of any real estate broker, agent, or salesman, or of*
30 *such facilities or services of any person in the business of selling or*
31 *renting dwellings, or of any employee or agent of any such broker, agent,*
32 *salesman, or person and (2) without the publication, posting or mailing of any*
33 *notice, statement, or advertisement in violation of subsection (a) (3) of this*
34 *section. The exemption provided by this subsection shall apply*
35 *notwithstanding the use of attorneys, escrow agents, abstractors, title*

1 companies, and any other such professional assistance as necessary to perfect
2 or transfer title.

3 (d) (1) Nothing in this act shall limit the applicability of any
4 reasonable local restrictions regarding the maximum number of occupants
5 permitted to occupy a dwelling, and nothing in this act regarding familial
6 status shall apply with respect to housing for older persons.

7 (2) For purposes of this subsection, housing for older persons
8 shall mean housing:

9 (i) Provided under any government program specifically
10 designed and operated to assist elderly persons as defined in the program;

11 (ii) Intended for and solely occupied by persons sixty-two
12 years of age or older; and

13 (iii) Intended and operated for occupancy by at least one
14 person fifty-five years of age or older per unit. In determining whether
15 housing qualifies as housing for older persons under this subdivision, the
16 following shall be considered:

17 (A) The existence of significant facilities and
18 services specifically designed to meet the physical or social needs of older
19 persons or, if the provision of such facilities and services is not
20 practicable, that such housing is necessary to provide important housing
21 opportunities for older persons;

22 (B) That at least eighty percent of the units are
23 occupied by at least one person fifty-five years of age or older per unit; and

24 (C) The publication of and adherence to policies and
25 procedures which demonstrate an intent by the owner or manager to provide
26 housing for persons fifty-five years of age or older.

27 (3) Housing shall not fail to meet the requirement for housing
28 for older persons by reason of:

29 (i) Persons residing in the housing as of passage of this
30 act, who do not meet the age requirements of subdivision (b) (ii) or (iii) of
31 this subsection if succeeding occupants of the housing meet the age
32 requirements; or

33 (ii) Unoccupied units of the units are reserved for
34 occupancy by persons who meet the age requirements.

35 (e) Nothing in this act shall prohibit conduct against a person because

1 such person has been convicted by any court of competent jurisdiction of the
2 illegal manufacture or distribution of a controlled substance.

3

4 SECTION 13. AFFIRMATIVE ACTION REQUIRED. All executive departments,
5 state agencies, and independent instrumentalities exercising essential public
6 functions, including any state agency having regulatory or supervisory
7 authority over financial institutions, shall administer their programs and
8 activities relating to housing and urban development in a manner affirmatively
9 to further the purposes of the act.

10

11 SECTION 14. Any person shall be guilty of a misdemeanor who, with
12 intent to mislead another person in any proceeding under this act:

13 (1) Makes or causes to be made any false entry or statement of fact in
14 any report, account, record, or other document produced pursuant to subpoena
15 or other lawful order by any court of competent jurisdiction.

16 (2) Willfully neglects or fails to make or cause to be made full, true,
17 and correct entries in such reports, accounts, records, or other documents; or

18 (3) Willfully mutilates, alters, or by any other means falsifies any
19 documentary evidence.

20

21 SECTION 15. *Statute of Limitations.*

22 (a) *Any civil action based on a violation of this act, other than an*
23 *action based on violation of Sections 3,4, and 8 of this act, shall be brought*
24 *within two (2) years after the occurrence or termination of the alleged*
25 *unlawful conduct.*

26 (b) *Any civil action based on an unlawful employment practice in*
27 *violation of Section 8 of this act shall be brought within one (1) year after*
28 *the alleged employment practice occurred, or within ninety (90) days after*
29 *receipt of a "Right to Sue" letter or notice of "Determination" from the*
30 *United States Employment Opportunity Commission regarding the alleged unlawful*
31 *employment practice, whichever is later.*

32 (c) *Any action based on Section 3 and 4 of this act shall be brought*
33 *within three (3) years of the alleged unlawful conduct.*

34

35 SECTION 16. VIOLATIONS; PENALTY. It shall be unlawful to coerce,

1 intimidate, threaten, or interfere with any person in the exercise or
2 enjoyment of or on account of the person having exercised or enjoyed or having
3 aided and encouraged any other person in the exercise of benefits and rights
4 guaranteed by any Arkansas laws relating to fair housing. Any person who
5 violates this section shall be guilty of a misdemeanor.

6

7 SECTION 17. FULL AND EQUAL ENJOYMENT OF PUBLIC ACCOMMODATIONS. All
8 persons within this state shall be entitled to a full and equal enjoyment of
9 any place of public accommodation, as defined in this act, without
10 discrimination or segregation on the grounds of race, color, sex, religion,
11 national origin.

12 *Any person who is injured by an act of discrimination prohibited by this*
13 *section shall have a civil action in a court of competent jurisdiction to*
14 *enjoin further violations, to recover compensatory and/or punitive damages,*
15 *and, in the discretion of the court, to recover the cost of litigation and*
16 *reasonable attorneys' fees.*

17

18 SECTION 18. RETALIATION; DISCRIMINATION; VIOLATION; PENALTY.
19 Retaliation or discrimination in any manner, against any person who has
20 opposed any activity prohibited by the provisions of this act or who has
21 testified, assisted, or participated in any manner in any investigation,
22 proceeding, or hearing conducted pursuant to this act shall be a
23 *discriminatory practice. Any person engaging in such retaliation or*
24 *discrimination shall be civilly liable for compensatory and/or punitive*
25 *damages caused by such action.*

26

27 SECTION 19. RELIGIOUS PREFERENCE; NOT VIOLATION OF DISCRIMINATORY
28 PRACTICE. Any place of public accommodation owned by or operated on behalf of
29 a religious corporation, association, or society which gives preference in the
30 use of such place to members of the same faith as that of the administering
31 body shall not be guilty of discriminatory practice.

32

33 SECTION 20. PRIVATE CLUB; ESTABLISHMENT NOT OPEN TO PUBLIC; PROVISIONS
34 OF ACT DO NOT APPLY. The provisions of this act shall not apply to a private
35 club or other establishment not in fact open to the public, except to the

1 extent that the facilities of such establishment are made available to the
2 customers or patrons of an establishment within the scope of *Section 18*.

3

4 SECTION 21. This Act shall not affect matters regulated by the Arkansas
5 Insurance Code or the Unfair Trade Practices Act of the Arkansas Insurance
6 Code, Arkansas Code Annotated §23-66-206.

7

8 SECTION 22. All provisions of this act of a general and permanent
9 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
10 Code Revision Commission shall incorporate the same in the Code.

11

12 SECTION 23. If any provision of this act or the application thereof to
13 any person or circumstance is held invalid, such invalidity shall not affect
14 other provisions or applications of the act which can be given effect without
15 the invalid provision or application, and to this end the provisions of this
16 act are declared to be severable.

17

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

20

/s/ Senator Lewellen, et al.