

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

A Bill

ACT 962 OF 1993
HOUSE BILL 1075

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

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For An Act To Be Entitled

9 "THE ARKANSAS CIVIL RIGHTS ACT OF 1993."

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11

Subtitle

12 "THE ARKANSAS CIVIL RIGHTS ACT OF 1993."

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

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

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

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

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(i) intimidation or harassment, or

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(ii) violence directed against his person, or

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

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

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

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

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

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

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

24 (e) The right to vote and participate fully in the political process.
25 Any person who is injured by an intentional act of discrimination *in violation*
26 *of Sections 4(b), 4(c), 4(d) or 4(e) of this act* shall have a civil action in
27 a court of competent jurisdiction to enjoin further violations, to recover
28 compensatory and punitive damages, and, in the discretion of the court, to
29 recover the cost of litigation and reasonable attorneys_ fee.

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

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

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

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

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

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

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

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

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

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35 SECTION 6. (a) The provisions of this act relating to employment shall

1 not be applicable with respect to the employment by a religious corporation,
2 association, society, or other religious entity.

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

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

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

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

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

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

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

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

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33 SECTION 9. For the purposes of this act:

34 (1) "Because of gender" means, but is not limited to, on account of
35 pregnancy, childbirth, or related medical conditions.

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

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

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

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

9 (C) Alcoholism.

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

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

17 (6) "National origin" includes ancestry.

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

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

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

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

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

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

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

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/s/William Walker, et al

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APPROVED: 4/8/93

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

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