

**ARKANSAS SENATE**  
83rd General Assembly - Regular Session, 2001  
**Amendment Form**

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**Subtitle of Senate Bill No. 880**

"AN ACT TO PROVIDE FOR INTEGRATED PUBLIC SERVICES FOR INDIVIDUALS  
WITH DISABILITIES IN ACCORDANCE WITH THE UNITED STATES SUPREME  
COURT'S OLMSTEAD DECISION."

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**Amendment No. 4 to Senate Bill No. 880.**

Amend Senate Bill No. 880 as engrossed, S3/13/01:

Page 1, line 36, delete "and"

AND

Page 2, line 4, delete "Court." and substitute "Court; and"

AND

Page 2, line 5, insert:

"(5) This Act is not intended to abrogate sovereign immunity, nor the immunity of individuals who are state officials or employees acting within the scope of their employment and without malice."

AND

Delete Section 2 and substitute the following:

"SECTION 2. Arkansas Code 16-123-107(b) is amended to read as follows:

(b) Any person who is injured by an intentional act of discrimination in violation of subdivisions (a)(2)-(5) of this section shall have a civil action in a court of competent jurisdiction to enjoin further violations, to recover compensatory and punitive damages, and, in the discretion of the court, to recover the cost of litigation and a reasonable attorney's fee. Any person claiming discrimination in the provision of services by a public entity based upon a disability shall first exhaust all administrative remedies or grievance procedures available through that public entity."

AND

Delete Section 3 and substitute the following:

"SECTION 3. Arkansas Code Title 16, Chapter 123, Subchapter 1 is

amended by adding an additional section to read as follows:

16-123-109. Responsibilities of Public Entities.

Public entities shall administer services offered under Title II of the Americans With Disabilities Act in the most integrated setting appropriate to the needs of qualified individuals with disabilities who are recipients of public services under Title II of the Americans With Disabilities Act, when:

- (1) The public entity's treatment professionals determine that the treatment is appropriate;
- (2) The affected persons do not oppose the treatment; and
- (3) The treatment can be reasonably accommodated, taking into account the resources available to the public entity and the needs of others with disabilities.

SECTION 4. Arkansas Code Title 16, Chapter 123, Subchapter 1 is amended by adding an additional section to read as follows:

16-123-110. Accommodating Persons With Disabilities.

In the delivery of services by public entities under Title II of the Americans with Disabilities Act, as in effect as of the date of the enactment of this section:

- (1) Persons with disabilities are to be afforded the option of declining particular services, while recognizing that persons with disabilities are not entitled to a particular accommodation;
- (2) In determining where to provide services to persons with disabilities, public entities may rely on the reasonable assessments of their own professionals in determining the allocation of resources and determining whether an individual meets the eligibility requirements for receiving services in a home or community-based program or in an residential, institutional setting;
- (3) Public entities may decline to make home or community-based services immediately available to persons with disabilities if the provision of those services to those persons would be inequitable, given the responsibility the public entity has undertaken for the care and treatment of a large and diverse population of persons with disabilities; and
- (4) It is reasonable for public entities to ask persons with disabilities to wait until home or community-based services are available, provided that the public entity has a plan to provide services delivered under Title II of the Americans With Disabilities Act in a less restrictive, most appropriate setting. The public entity may not rely upon a desire to maintain a population in existing residential, institutional care settings."

**The Amendment was read the first time, rules suspended and read the second time and \_\_\_\_\_**

**By: Senator Gullett  
LH/RRS - 032920011629  
RRS834**

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**Secretary**