

1 **State of Arkansas**

2 **78th General Assembly**

3 **Regular Session, 1991**

4 **By: Representatives George, Mahony, et al.**

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For An Act To Be Entitled

8 "THE ARKANSAS CIVIL RIGHTS ACT OF 1991."

9

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

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12 SECTION 1. Title.

13 This act shall be referred to as the "Arkansas Civil Rights Act".

14

15 SECTION 2. Civil Rights.

16 Every governmental entity or natural person who, under color of any
17 statute, ordinance, regulation, custom, or usage, of this state or any of its
18 political subdivisions, subjects, or causes to be subjected, any person to the
19 deprivation of any rights, privileges, or immunities secured by the
20 Constitution of Arkansas, shall be liable to the party injured in an action at
21 law, suit in equity, or other proper proceeding for redress. This section
22 shall be enforced in the same manner, with the same remedies, as 42 U.S.C. §
23 1983, as of January 1, 1991. This section does not alter the law of state
24 sovereign immunity.

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26 SECTION 3. Racial, Religious or Ethnic Harassment.

27 (a) An action for injunctive relief or civil damages, or both, shall
28 lie for any person who is subjected to acts of:

29 (i) extreme intimidation or harassment, so outrageous as to be utterly
30 intolerable in a civilized society, or

31 (ii) violence directed against his person, or

32 (iii) vandalism directed against his real or personal property, where
33 such acts are motivated by racial, religious, or ethnic animosity. Any
34 aggrieved party who initiates and prevails in an action authorized by this
35 section shall be entitled to damages, including punitive damages, and in the

1 discretion of the court to an award of the cost of the litigation and
 2 reasonable attorneys' fees in an amount to be fixed by the court. The court
 3 may also award the cost of litigation and reasonable attorneys' fees to a
 4 prevailing defendant in a frivolous lawsuit.

5 (b) The provisions of this section shall not apply to any actions
 6 between an employee and his employer, or between or among employees of the
 7 same employer, for damages arising out of incidents occurring in the workplace
 8 or arising out of the employee-employer relationship.

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10 SECTION 4. Non-Discrimination.

11 The right of otherwise qualified individuals to be free from
 12 discrimination without legitimate reason because of race, religion, ancestry
 13 or national origin, gender, or the presence of any sensory, mental, or
 14 physical disability is recognized as and declared to be a civil right. This
 15 right shall include, but not be limited to:

16 (a) The right to obtain and hold employment;

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;

21 (d) The right to engage in credit and other contractual transactions;
 22 and

23 (e) The right to vote and participate fully in the political process.

24 Any person who is injured by an intentional act of discrimination prohibited
 25 by this section shall have a civil action in chancery court to enjoin further
 26 violations and to recover ancillary damages.

27

28 SECTION 5. Construction.

29 (a) Nothing in Section 4(a) of this act shall be construed to preempt,
 30 modify, or amend any state, county, or local law, ordinance, or regulation
 31 which is designed to protect the public health from individuals who pose a
 32 significant risk to the health or safety of others.

33 (b) Under Section 4(a) of this act, the term "disability" shall not
 34 include -

35 (1) homosexuality, bisexuality, transvestism, transsexualism,

1 pedophilia, exhibitionism, voyeurism, gender identity disorders, or other
2 sexual behavior disorders;

3 (2) compulsive gambling, kleptomania, or pyromania; or

4 (3) psychoactive substance use disorders resulting from illegal
5 use of drugs.

6 (c) Nothing in Section 4(a) of this act shall be construed to prohibit
7 a religious corporation, association, educational institution, or society from
8 giving preference in employment to individuals of a particular religion to
9 perform work connected with the carrying on by such corporation, association,
10 education institution, or society of its activities nor shall anything under
11 this act be construed to prohibit a religious organization from requiring that
12 all applicants and employees conform to the religious tenets of such
13 organization, nor shall anything under this act be construed to prohibit a
14 religious organization from giving preference to individuals of a particular
15 religion in providing service or accommodation.

16 (d) Nothing in Section 4(a) of this act shall be construed to prohibit
17 or impair a covered entity's right to

18 (1) prohibit the illegal use of drugs and the use of alcohol on
19 its premises;

20 (2) require that employees shall not be under the influence of
21 alcohol or be engaging in the use of drugs at the workplace;

22 (3) hold an employee who engages in the illegal use of drugs or
23 who is an alcoholic to the same qualification standards for employment or job
24 performance and behavior that such entity holds other employees, even if any
25 unsatisfactory performance or behavior is related to the drug use or
26 alcoholism of such employee.

27 (e) Nothing in Section 4(b) of this act shall be construed to prohibit
28 a covered entity from refusing service or accommodation to an individual who
29 is engaged in the illegal use of drugs or who is under the influence of
30 alcohol at the time that individual seeks service or accommodation.

31 (f) Nothing in Section 4(a) of this act shall be construed to require a
32 covered entity to make architectural or other physical changes to any building
33 where such changes are not already required by other federal or state law.

34 (g) For purposes of this act, the term "otherwise qualified individual"
35 does not include an individual who is currently engaging in the illegal use of

1 drugs, when the covered entity acts on the basis of such use.

2 (h) Nothing in this act shall be construed to encourage, prohibit, or
3 authorize the conducting of drug testing for the illegal use of drugs.

4 (i) Nothing in Section 4(a) of this act shall be construed to prevent a
5 family-owned and operated business with fifteen (15) or fewer employees from
6 giving preferential treatment to a member of the immediate family.

7 (j) Nothing in Section 4(d) of this act shall be construed to prohibit
8 or restrict -

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

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

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

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25 SECTION 6. Insurance Matters.

26 This act shall not affect matters regulated by the Arkansas Insurance
27 Code or the Unfair Trade Practices Act of the Arkansas Insurance Code,
28 Arkansas Code Annotated §23-66-206.

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30 SECTION 7. Compatibility with Federal Statutes.

31 For purposes of deciding cases brought under this act, the exemptions,
32 defenses, burdens of proof and affirmative defenses which apply under any
33 comparable federal law, including but not limited to 42 U.S.C. §§ 1981, 1982,
34 & 1983, the Age Discrimination in Employment Act, the Equal Pay Act and Titles
35 VI, VII, and VIII of the Civil Rights Act of 1964, as amended, are

1 incorporated herein and shall apply in the same manner and to the same extent
2 as in cases brought pursuant to those statutes as of January 1, 1991.

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4 SECTION 8. Coverage of Section 4(a).

5 The provisions of Section 4(a) of this act shall not apply to employers
6 with less than ten (10) employees. Any person aggrieved under Section 4(a)
7 of this act must file an action in chancery court within one hundred eighty
8 (180) days of the alleged illegal act, or within ninety (90) days of receipt
9 of a notice of "Right to Sue" or notice of "determination" from the United
10 States Equal Employment Opportunity Commission concerning the alleged illegal
11 act, whichever is later.

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13 SECTION 9. No Duplicity of Actions.

14 If any party aggrieved by an alleged violation of this act files a
15 charge or complaint under federal law seeking remedies arising from the same
16 set of operative facts, that party may not file or otherwise pursue a separate
17 civil action under this act.

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

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23 SECTION 11. If any provision of this act or the application thereof to
24 any person or circumstance is held invalid, such invalidity shall not affect
25 other provisions or applications of the act which can be given effect without
26 the invalid provision or application, and to this end the provisions of this
27 act are declared to be severable.

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

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