

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999

# A Bill

HOUSE BILL 1020

4  
5 By: Representative Lendall

## For An Act To Be Entitled

8 "AN ACT TO PROVIDE CURRENT AND PROSPECTIVE EMPLOYEES  
9 OF GOVERNMENT EMPLOYERS WITH PROTECTION FROM  
10 DISCRIMINATION BASED ON ANY PHYSICAL CONDITION OR  
11 MEDICAL INFORMATION UNLESS IT IS JOB RELATED AND  
12 CONSISTENT WITH BUSINESS NECESSITY; AND FOR OTHER  
13 PURPOSES. "

## Subtitle

15 "TO PROTECT APPLICANTS AND EMPLOYEES OF  
16 GOVERNMENT EMPLOYERS FROM DISCRIMINATION  
17 BASED ON PHYSICAL CONDITION OR MEDICAL  
18 INFORMATION. "

19  
20  
21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

### SECTION 1. Definitions.

22  
23 As used in this act, unless the context otherwise requires:

24 (1) "Employee" means an individual who works for hire, including  
25 an independent contractor or an individual employed in a supervisory,  
26 managerial, or confidential position;

27 (2) "Employer" means a person, including any agency or  
28 organization of the State of Arkansas, a county government, a municipality, a  
29 school district, or other political subdivision, or any other governmental  
30 subdivision, agency, or instrumentality, that employs people, or an employment  
31 agency, a labor organization, or a joint labor-management committee;

32 (3) "Job related and consistent with business necessity" means  
33 the condition in question renders the individual unable to perform the  
34 essential functions of the position that the individual holds or desires,  
35 including, but not limited to, situations in which the individual poses a  
36

RCK071\*

1208980127.RCK071

1 direct threat to the health or safety of others in the workplace, but does not  
 2 include situations in which only the individual is at risk;

3 (4) "Medical information" means any information related to a  
 4 person's physical or mental condition, including, but not limited to, records  
 5 of any health care professional, medical questionnaires, family histories, and  
 6 any tests of an individual's physical or mental condition, whether or not they  
 7 are administered by an employer.

8  
 9 SECTION 2. Scope.

10 This act shall not displace or extinguish any rights or claims of an  
 11 employee against an employer arising under any other state law or federal  
 12 statutes or administrative regulations having the force of law, or county or  
 13 municipal ordinances valid under state law, a collective bargaining agreement  
 14 between an employer and a labor organization, or provisions of an express oral  
 15 or written agreement relating to employment that does not violate this act.  
 16 Those rights and claims may not be asserted under this act except as otherwise  
 17 provided in this act. The existence or adjudication of those rights or claims  
 18 shall not limit the employee's rights or claims under this act.

19  
 20 SECTION 3. Prohibitions.

21 (a) No employer shall directly or indirectly collect, or have access  
 22 to, any medical information concerning any employee or applicant for  
 23 employment, or any member of their family, unless the employer can demonstrate  
 24 that the information is job related and consistent with business necessity.

25 (b) No employer shall discriminate against any employee or applicant  
 26 for employment because of any physical or mental condition of that individual  
 27 or any member of their family unless the employer can demonstrate that the  
 28 condition is job related and consistent with business necessity.

29 (c) As used in subsection (b) of this section, the term "discriminate"  
 30 means a differential treatment in regard to job application procedures, the  
 31 hiring, advancement, or discharge of employees, employee compensation, job  
 32 training, and other terms, conditions, and privileges of employment. This  
 33 includes, but is not limited to, the following:

34 (1) limiting, segregating, or classifying a job applicant or  
 35 employee in a way that adversely affects the opportunities or status of an  
 36 applicant or employee because of the genetic information of the applicant or

1 employee;

2 (2) participating in a contractual or other arrangement or  
 3 relationship that has the effect of subjecting an applicant or employee to the  
 4 discrimination prohibited by this statute, including, but not limited to, a  
 5 relationship with an employment or referral agency, a labor union, an  
 6 organization providing fringe benefits to an employee or an employee's family  
 7 members, or an organization providing training and apprenticeship programs;

8 (3) utilizing standards, criteria, or methods of administration:

9 (A) that have the effect of discrimination on the basis of  
 10 genetic information;

11 (B) that perpetuate the discrimination of others who are  
 12 subject to common administrative control; or

13 (C) that screen out or tend to screen out employees or  
 14 applicants for employment, based on genetic information;

15 (4) excluding or otherwise denying equal jobs or benefits to an  
 16 employee or applicant for employment because of the genetic information of an  
 17 employee or applicant or to a person with whom the employee or applicant is  
 18 known to have a relationship or association.

19  
 20 SECTION 4. Enforcement.

21 (a) Any person who has been aggrieved by a violation of this act shall  
 22 have a private right of civil action in the circuit court of the county in  
 23 which the person lives or in which the violation is alleged to have taken  
 24 place.

25 (b) In a civil action under this section, the plaintiff shall have the  
 26 burden of proving that the employer directly or indirectly collected, or had  
 27 access to, medical information concerning the plaintiff. The defendant then  
 28 shall have the burden of proving that the information concerned a physical or  
 29 mental condition which affected the ability of the individual to perform the  
 30 duties of a position which they have or for which they have applied.

31 (c) A plaintiff prevailing in a civil action under this act shall be  
 32 entitled, but not limited to, reinstatement to their former position,  
 33 seniority status, lost benefits, back pay, interest on back pay, reasonable  
 34 costs and attorney's fees, and where appropriate, compensatory damages and  
 35 punitive damages.

36

1 SECTION 5. Posting Requirements.

2 An employer shall conspicuously display a notice of the rights and  
3 obligations mandated under this act in all workplaces and shall use other  
4 appropriate means to keep employees informed of the rights and obligations  
5 mandated under this act.

6  
7 SECTION 6. Rights May Not Be Waived.

8 The rights and procedures provided to persons by this act may not be  
9 waived by contract or otherwise, unless the waiver is part of a written  
10 settlement agreed to and signed by the parties to a pending action or  
11 complaint under this act.

12  
13 SECTION 7. All provisions of this act of general and permanent nature  
14 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
15 Revision Commission shall incorporate the same in the Code.

16  
17 SECTION 8. If any provisions of this act or the application thereof to  
18 any person or circumstance is held invalid, the invalidity shall not affect  
19 other provisions or applications of the act which can be given effect without  
20 the invalid provisions or application, and to this end the provisions of this  
21 act are declared to be severable.

22  
23 SECTION 9. All laws and parts of laws in conflict with this act are  
24 hereby repealed.

25