

1 State of Arkansas

2 82nd General Assembly

3 Regular Session, 1999

A Bill

HOUSE BILL 1685

4
5 By: Representative Lendall

For An Act To Be Entitled

9 "AN ACT CONCERNING THE USE OF GENETIC INFORMATION BY
10 EMPLOYERS; AND FOR OTHER PURPOSES."

Subtitle

13 "AN ACT CONCERNING THE USE OF GENETIC
14 INFORMATION BY EMPLOYERS."

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

18 19 SECTION 1. Definitions:

20 For the purposes of this act:

21 (1) "Discriminate" means differential treatment in regard to job
22 application procedures, the hiring, advancement or discharge of employees,
23 employee compensation, job training and other terms, conditions and privileges
24 of employment. This includes the following:

25 (A) Limiting, segregating, or classifying a job applicant or
26 employee in a way that adversely affects the opportunities or status of such
27 applicant or employee because of the genetic information of such applicant or
28 employee;

29 (B) Participating in a contractual or other arrangement or
30 relationship that has the effect of subjecting an applicant or employee to the
31 discrimination prohibited by this statute. Such relationships include but are
32 not limited to: a relationship with an employment or referral agency, labor
33 union, an organization providing fringe benefits to an employee or an
34 employee's family members, or an organization providing training and
35 apprenticeship programs;

36 (C) Utilizing standards, criteria, or methods of administration

1 that:

2 (i) Have the effect of discrimination on the basis of
3 genetic information;

4 (ii) Perpetuate the discrimination of others who are
5 subject to common administrative control; or

6 (iii) Screen out or tend to screen out employees or
7 applicants for employment, based on genetic information.

8 (D) Excluding or otherwise denying equal jobs or benefits to an
9 employee or applicant for employment because of the genetic information of an
10 employee or applicant for employment with whom the employee or applicant for
11 employment is known to have a relationship or association.

12 (2) "Employee" means an individual who works for hire, including an
13 independent contractor or an individual employed in a supervisory, managerial,
14 or confidential position;

15 (3) "Employer" means a person, including this state, a political
16 subdivision, a municipal corporation or any other governmental subdivision,
17 agency, or instrumentality, that employs people or an employment agency, labor
18 organization, or joint labor-management committee;

19 (4) "Genetic information" means any information about genes, gene
20 products, or inherited characteristics that may derive from the individual or
21 a family member. This includes, but is not limited to, information regarding
22 carrier status, information regarding an increased likelihood of future
23 disease or increased sensitivity to any substance, information derived from
24 laboratory tests that identify mutations in specific genes or chromosomes,
25 physical medical examinations, family histories, requests for genetic testing
26 or counseling, tests of gene products, and direct analysis of genes or
27 chromosomes.

28 (5) "Job related and consistent with business necessity" means the
29 condition in question renders the individual unable to perform the essential
30 functions of the position that such individual holds or desires. This
31 includes situations in which the individual poses a direct threat to the
32 health or safety of others in the workplace, but not situations in which only
33 the individual is at risk; and

34 (6) "Medical information" means any information related to a person's
35 physical or mental condition, including, but not limited to, records of any
36 health care professional, medical questionnaires, family histories, and any

1 test of physical or mental condition, whether or not administered by the
2 employer.

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4 SECTION 2. Prohibitions.

5 (a) No employer may directly or indirectly collect or have access to
6 any genetic information concerning an employee or applicant for employment, or
7 member of their family, unless the employer can demonstrate that the
8 information is job related and consistent with business necessity.

9 (b) No employer shall discriminate against any employee or applicant
10 for employment or any member of their family because of any genetic
11 information about that individual or a member of their family unless the
12 employer can demonstrate that the information is job related and consistent
13 with business necessity.

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15 SECTION 3. Scope.

16 This act does not displace or extinguish rights or claims of an employee
17 against an employer arising under state or federal statutes or administrative
18 regulations having the force of law, or local ordinances valid under state
19 law, a collective bargaining agreement between an employer and a labor
20 organization, or provisions of an express oral or written agreement relating
21 to employment that does not violate this act. Those rights and claims may not
22 be asserted under this act except as otherwise provided in this act. The
23 existence or adjudication of those rights or claims does not limit the
24 employee's rights or claims under this act.

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26 SECTION 4. Enforcement.

27 (a) Any person who has been aggrieved by a violation of this act shall
28 have a private right of civil action in any court of competent jurisdiction.

29 (b) In any such civil action, the plaintiff shall have the burden of
30 proving that the employer directly or indirectly collected, or had access to,
31 medical information concerning the plaintiff. The defendant then shall have
32 the burden of proving that the information concerned a physical or mental
33 condition which affected the ability of the individual to perform the duties
34 of a position which they have, or for which they have applied.

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36 SECTION 5. Remedies.

1 A prevailing plaintiff in a civil action under this act is entitled to,
2 but not limited to, reinstatement to their former position, seniority status,
3 lost benefits, back pay, interest on back pay, reasonable costs and attorney's
4 fees, punitive damages, injunction, and where appropriate, compensatory
5 damages.

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7 SECTION 6. Posting requirements.

8 An employer shall conspicuously display notice of the rights and
9 obligations mandated under this act and shall use other appropriate means to
10 keep employees so informed.

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12 SECTION 7. Rights may not be waived.

13 The rights and procedures provided by this act may not be waived by
14 contract or otherwise, unless such waiver is part of a written settlement
15 agreed to and signed by the parties to a pending action or complaint under
16 this act.

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

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22 SECTION 9. If any provision of this act or the application thereof to
23 any person or circumstance is held invalid, such invalidity shall not affect
24 other provisions or applications of the act which can be given effect without
25 the invalid provision or application, and to this end the provisions of this
26 act are declared to be severable.

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28 SECTION 10. All laws and parts of laws in conflict with this act are
29 hereby repealed.