

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001

A Bill

HOUSE BILL 1299

4
5 By: Representative Lendall
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For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE TITLE 16, CHAPTER 123 TO
10 ADD A SUBCHAPTER 3 TO PROHIBIT DISCRIMINATION IN
11 EMPLOYMENT ON THE BASIS OF AN EMPLOYEE'S GENETIC
12 INFORMATION AND TO PROVIDE EMPLOYEES WITH A RIGHT OF
13 CIVIL ACTION AND REMEDIES AT LAW; AND FOR OTHER
14 PURPOSES.

Subtitle

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16 TO PROHIBIT DISCRIMINATION IN EMPLOYMENT
17 ON THE BASIS OF AN EMPLOYEE'S GENETIC
18 INFORMATION.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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25 SECTION 1. Arkansas Code Title 16, Chapter 123, is amended to add an
26 additional subchapter to read as follows:

SUBCHAPTER 3 - GENETIC INFORMATION PROTECTED

16-123-301. Definitions.

27 As used in this subchapter, unless the context otherwise requires:

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

32 (A) Limiting, segregating, or classifying a job applicant or
33 employee in a way that adversely affects the opportunities or status of the
34 applicant or employee because of the genetic information of the applicant or
35 employee.
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1 employee;

2 (B) 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. These relationships include, but
5 are not limited to, an arrangement or relationship with an employment or
6 referral agency, a labor union, an organization providing fringe benefits to
7 an employee or an employee's family members, or an organization providing
8 training and apprenticeship programs;

9 (C) Utilizing standards, criteria, or methods of administration
10 that:

11 (i) Have the effect of discrimination on the basis of
12 genetic information;

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

15 (iii) Screen out or tend to screen out employees or
16 applicants for employment, based on genetic information; and

17 (D) Denying equal jobs or benefits to an employee or applicant
18 for employment because of the genetic information of an employee or applicant
19 for employment with whom the employee or applicant for employment is known to
20 have a relationship or association;

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

24 (3) "Employer" means a person, including the State of Arkansas, a
25 political subdivision, a municipality or any other governmental subdivision,
26 agency, or instrumentality, that employs people or an employment agency, labor
27 organization, or joint labor-management committee;

28 (4) "Genetic information" means any information about genes, gene
29 products, or inherited characteristics that may derive from the individual or
30 a family member. This includes, but is not limited to, information regarding
31 carrier status, an increased likelihood of future disease or increased
32 sensitivity to any substance, information derived from laboratory tests that
33 identify mutations in specific genes or chromosomes, physical medical
34 examinations, family histories, requests for genetic testing or counseling,
35 tests of gene products, and direct analysis of genes or chromosomes;

36 (5) "Job related and consistent with business necessity" means the

1 condition in question renders the individual unable to perform the essential
2 functions of the position that the individual holds or desires. This includes
3 situations in which the individual poses a direct threat to the health or
4 safety of others in the workplace, but not situations in which only the
5 individual is at risk; and

6 (6) "Medical information" means any information related to a person's
7 physical or mental condition, including, but not limited to, records of any
8 health care professional, medical questionnaires, family histories, and any
9 test of physical or mental condition, whether or not administered by the
10 employer.

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12 16-123-302. Prohibitions.

13 (a) An employer shall not directly or indirectly collect or have access
14 to any genetic information concerning an employee or applicant for employment,
15 or member of their family, unless the employer can demonstrate that the
16 information is job related and consistent with business necessity.

17 (b) An employer shall not discriminate against any employee or
18 applicant for employment or any member of their family because of any genetic
19 information about that individual or a member of their family unless the
20 employer can demonstrate that the information is job related and consistent
21 with business necessity.

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23 16-123-303. Scope.

24 This subchapter does not displace or extinguish rights or claims of an
25 employee against an employer arising under state or federal statutes or
26 administrative regulations having the force of law, or local ordinances valid
27 under state law, a collective bargaining agreement between an employer and a
28 labor organization, or provisions of an express oral or written agreement
29 relating to employment that does not violate this subchapter. Those rights
30 and claims may not be asserted under this subchapter except as otherwise
31 provided herein. The existence or adjudication of those rights or claims does
32 not limit the employee's rights or claims under this subchapter.

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34 16-123-304. Enforcement.

35 (a) Any person who has been aggrieved by a violation of this subchapter
36 shall have a private right of civil action in any court of competent

1 jurisdiction.

2 (b) In any civil action, the plaintiff shall have the burden of proving
3 that the employer directly or indirectly collected, or had access to, genetic
4 information concerning the plaintiff. The defendant then shall have the
5 burden of proving that the information concerned a physical or mental
6 condition which affected the ability of the individual to perform the duties
7 of a position which they have, or for which they have applied.

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9 16-123-305. Remedies.

10 A prevailing plaintiff in a civil action under this subchapter is
11 entitled, but not limited, to reinstatement to their former position,
12 seniority status, lost benefits, back pay, interest on back pay, reasonable
13 costs and attorney's fees, punitive damages, injunction, and where
14 appropriate, compensatory damages.

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16 16-123-306. Posting requirements.

17 An employer shall conspicuously display notice of the rights and
18 obligations mandated under this subchapter and shall use other appropriate
19 means to keep employees so informed.

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21 16-123-307. Rights may not be waived.

22 The rights and procedures provided by this subchapter may not be waived
23 by contract or otherwise, unless the waiver is part of a written settlement
24 agreed to and signed by the parties to a pending action or complaint under
25 this subchapter.

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