

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 As Engrossed: S3/5/01 S3/12/01 S3/26/01 S3/29/01 H4/9/01

2 83rd General Assembly

A Bill

3 Regular Session, 2001

SENATE BILL 499

4

5 By: Senators B. Walker, Riggs, Argue, Beebe, Fitch, B. Johnson, Mahony, J. Jeffress, Simes, Bisbee,
6 Baker, DeLay, Gullett, P. Malone, Wilkins, Wilkinson, Webb, Critcher

7 By: Representatives Jones, J. Elliott, Ledbetter, W. Walker, Lewellen, Broadway, Eason, Goss, Salmon,
8 T. Steele, Prater, Lendall, Weaver, White, Willis, Oglesby, Verkamp, M. Smith, D. Elliott, Altes, Hathorn,
9 Thomas, Files, C. Johnson, Hunt, Clemons, Rackley, Jacobs

10

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For An Act To Be Entitled

13

AN ACT TO CREATE AN ARKANSAS FAIR HOUSING

14

COMMISSION; TO PROVIDE PROCEDURES FOR THE

15

INVESTIGATION AND REMEDIATION OF UNFAIR HOUSING

16

PRACTICES; AND FOR OTHER PURPOSES.

17

18

Subtitle

19

AN ACT TO CREATE AN ARKANSAS FAIR

20

HOUSING COMMISSION; TO PROVIDE

21

PROCEDURES FOR THE INVESTIGATION AND

22

REMEDICATION OF UNFAIR HOUSING PRACTICES.

23

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

26

27 SECTION 1. Arkansas Code 16-123-203 is amended to read as follows:

28 16-123-203. Legislative declaration.

29 The opportunity to obtain housing and other real estate without
30 discrimination because of religion, race, color, national origin, sex,
31 disability, or familial status as prohibited by this chapter, is recognized
32 and declared to be a civil right provided the provisions of this act of 2001
33 shall become effective after the statutes and regulations required by this
34 act are adopted as substantially equivalent to federal fair housing laws, as
35 recognized by the appropriate federal agency designated to enforce the
36 provisions of federal fair housing laws.

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SECTION 2. The General Assembly recognizes:

(1) That the right to seek housing underlies the general public's ability to secure health, safety and welfare; and

(2) Seeks with this act to protect the public's access to fair housing.

SECTION 3. Definitions.

(1) "Aggrieved Person" means a person who:

(A) Claims to have been injured by a discriminatory housing practice; or

(B) Believes that a person will be injured by a discriminatory housing practice that is about to occur;

(2) "Complainant" means a person, including the director acting on behalf of the commission, who files a complaint under this act;

(3) "Commission" means the Arkansas Fair Housing Commission;

(4) "Conciliation" means the process for resolving of issues raised by a complaint or by the investigation of a complaint through informal negotiations involving the aggrieved person, the respondent, and the director on behalf of the commission;

(5) "Conciliation agreement" means a written agreement setting forth the resolution of the issues raised in conciliation;

(6) "Director" means the Director of the Arkansas Fair Housing Commission;

(7) "Disability" shall, throughout this act be interpreted identically to the term "handicap" within federal laws, regulations, cases, directives and administrative rulings and positions on subject matter similar to the purposes of this act and means a person:

(A)(i) With a physical or mental impairment which substantially limits one (1) or more of the person's major life activities;

(ii) With a record of having an impairment which substantially limits one (1) or more of the person's major life activities;

or

(iii) Regarded as having an impairment which substantially limits one (1) or more of a person's major life activities;

(B) "Disability" does not include current, illegal use of

1 or addiction to a controlled substance, as defined in the Section 102 of the
2 Controlled Substances Act, 21 U.S.C. § 802, as in effect January 1, 2001;

3 (8) "Discriminatory housing practice" means an act that is
4 prohibited under Sections 11-17 and Section 45 of this act;

5 (9) "Dwelling" means any building, structure, or portion thereof
6 which is occupied as, or designed or intended for occupancy as, a residence
7 by one (1) or more families, and any vacant land which is offered for sale or
8 lease for the construction or location thereon of any building, structure, or
9 portion thereof which is occupied as, or designed or intended for occupancy
10 as, a residence by one (1) or more families;

11 (10) "Family" includes a single individual;

12 (11) "Familial status" means:

13 (A) The status resulting from one (1) or more individuals
14 who are under the age of eighteen (18) years of age being domiciled with:

15 (i) The parent or another person having legal
16 custody of the individual under the age of eighteen (18); or

17 (ii) The designee of the parent or other person
18 having custody, with the written permission of the parent or other person; or

19 (B) The status resulting from being in the process of
20 securing legal custody of any individual who is under the age of eighteen
21 (18); or

22 (C) The status resulting from being pregnant;

23 (12) "Person" includes individuals, corporations, partnerships,
24 associations, labor organizations, legal representatives, mutual companies,
25 joint-stock companies, trusts, unincorporated organizations, trustees,
26 bankruptcy trustees, receivers, and fiduciaries;

27 (13) "Prevailing party" has the same meaning as the term has in
28 Section 722 of the Revised Statutes of the United States, 42 U.S.C. § 1988,
29 as in effect January 1, 2001;

30 (14) "Respondent" means:

31 (A) The person or other entity accused in a complaint or
32 an unfair housing practice; and

33 (B) Any other person notified as required with respect to
34 respondents under Section 18(f) of this act; and

35 (15) "To rent" includes to lease, to sublease, to let and
36 otherwise to grant for a consideration the right to occupy premises not owned

1 by the occupant.

2 SECTION 4. Creation - Members.

3 (a) There is created the Arkansas Fair Housing Commission.

4 (b) The commission shall consist of thirteen (13) voting members, to
5 be selected as follows: Seven (7) appointed by the Governor, Three (3)
6 appointed by the Speaker of the House of Representatives and Three (3)
7 appointed by the President of the Senate Pro Tempore, as set forth in this
8 act, for terms of four (4) years, except for the initial commissioners, whose
9 terms shall be determined as set forth in section 4(f) of this act, whose
10 terms begin on January 1 and end on December 31 of the fourth (4th) year or
11 when their respective successors are appointed and qualified.

12 (1)(A)(i) One (1) member shall have been a licensed real estate
13 broker or licensed real estate salesperson engaged in the practice of
14 residential real estate sales for not less than five (5) years prior to their
15 nomination.

16 (ii) One (1) member shall have been a licensed real
17 estate broker or licensed real estate salesperson engaged in the practice of
18 multi-family real estate property management for not less than five (5) years
19 prior to their nomination.

20 (iii) One (1) member shall have been a licensed real
21 estate broker or licensed real estate salesperson engaged in the practice of
22 real estate for not less than five (5) years prior to their nomination.

23 (B) The Governor shall appoint members to fill vacancies
24 for the two (2) members to represent subdivisions (b)(1)(A)(i) and
25 (b)(1)(A)(ii) from a list of four (4) nominees submitted by the Arkansas
26 Realtors Association and a member to fill a vacancy for the one (1) member to
27 represent subdivision (b)(1)(A)(iii) not involving nominees from the Arkansas
28 Realtors Association.

29 (2)(A) One (1) member shall have been a licensed homebuilder
30 engaged in the homebuilding business for not less than five (5) years.

31 (B) The Governor shall appoint a member to fill a vacancy
32 for the member to represent subdivision (b)(2)(A) from a list of four (4)
33 nominees submitted by the Arkansas Homebuilders Association.

34 (3)(A) One (1) member shall have been a mortgage broker employed
35 for not less than five (5) years by a registered mortgage loan company or
36 loan broker.

1 (B) The Governor shall appoint a member to fill a vacancy
2 for the member to represent subdivision (b)(3)(A) from a list of four (4)
3 nominees submitted by the Arkansas Mortgage Bankers Association.

4 (4)(A) One (1) member shall have been a banker engaged in the
5 banking business for not less than five (5) years.

6 (B) The Governor shall appoint a member to fill a vacancy
7 for the member to represent subdivision (b)(4)(A) from a list of four (4)
8 nominees jointly submitted by the Arkansas Community Bankers and the Arkansas
9 Bankers Association.

10 (5)(A)(i) Seven (7) members shall represent consumers and shall
11 not be actively engaged in or retired from the business of real estate,
12 homebuilding, mortgage lending or banking, being comprised of one (1) member
13 who shall be appointed by the Governor to represent persons meeting the
14 definition of "disabled" in this act from a list of four (4) nominees
15 submitted by the Governor's Commission on People with Disabilities.

16 (ii) Three (3) of the members to be appointed
17 pursuant to this subdivision (b)(5)(A) shall be appointed by the Speaker of
18 the House of Representatives, one (1) member who shall be a fair housing
19 attorney or advocate with at least five (5) years of experience in advocacy
20 for fair housing issues.

21 (iii) Three (3) of the members to be appointed
22 pursuant to this subdivision (b)(5)(A) shall be appointed by the President of
23 the Senate Pro Tempore, one (1) member who shall be sixty (60) years of age
24 or older who shall represent the elderly.

25 (B) A minimum of four (4) appointments shall be made
26 pursuant to subdivision (b)(5)(A) shall be given to persons protected under
27 Sections 11 through 17 of this act.

28 (c) All members shall be full voting members of the commission.

29 (d)(1) Members of the commission appointed by the Governor shall at
30 all times include one (1) member from each Arkansas congressional district.

31 (2) Members appointed by the President Pro Tempore of the Senate
32 shall be chosen from Arkansas congressional districts rotating in order with
33 the initial commissioners being chosen from districts (1) and two (2).

34 (3) Members appointed by the Speaker of the House of
35 Representatives shall be chosen from congressional districts rotating in
36 order with the initial members being chosen from districts three (3) and four

1 (4).

2 (e) The commission shall elect a chairperson from its membership.

3 (f) The commission shall meet at least once each month.

4 (g)(1) The members of the commission shall serve four-year terms,
5 except that the initial appointees shall serve staggered terms determined by
6 a procedure established by the commission so that six (6) serve a two-year
7 term and seven (7) serve a four-year term.

8 (2) No member may serve more than two (2) four-year terms.

9 (h) Each commissioner may receive expense reimbursement and stipends
10 in accordance with § 25-16-905.

11
12 SECTION 5. Powers and duties.

13 (a) The Arkansas Fair Housing Commission shall adopt rules necessary
14 to implement this act substantially equivalent to those provided in federal
15 fair housing laws and regulations.

16 (b) The commission shall receive, initiate, investigate, seek to
17 conciliate, and, if conciliation fails, seek to resolve complaints alleging
18 violations of this act through the procedures described by this act.

19 (c) The commission shall, at least annually, make a written report to
20 the Legislative Council based upon and detailing the past year's activities
21 and operations, including policy and program recommendations.

22 (d) The commission shall cooperate with and, as appropriate, may
23 provide technical and other assistance to federal, state, local and other
24 public or private entities that are formulating or operating programs to
25 prevent or eliminate discriminatory housing practices.

26 (e) The commission shall have the power to issue subpoenas and
27 subpoenas duces tecum in connection with both its investigations and
28 hearings.

29 (f)(1) Witnesses summoned by a subpoena under this act shall be
30 entitled to witness fees payable in the same amount as set forth in rules of
31 procedure for civil proceedings.

32 (2) Fees payable to a witness summoned by a subpoena issued at
33 the request of a party shall be paid for by that party or, if a party is
34 unable to pay the fees, by the commission.

35
36 SECTION 6. (a) The Arkansas Fair Housing Commission may employ a

1 Director of the Arkansas Fair Housing Commission and fix compensation,
2 duties, authority, and responsibilities.

3 (b) The commission may authorize the director to hire necessary staff
4 and to provide for services, furnishings, equipment, and office space.

5
6 SECTION 7. Exemptions - Certain sales and rentals.

7 (a) Sections 11, 13, 14 and 15 of this act do not apply to a single-
8 family house sold or rented by an owner, or rooms or units in dwellings
9 containing living quarters occupied or intended to be occupied by no more
10 than four (4) families living independently of each other, if the owner
11 actually maintains and occupies one (1) of the living quarters as his or her
12 residence, if:

13 (1) The private individual owner does not own more than three
14 (3) single-family houses at any one (1) time;

15 (2) In the case of the sale of a single-family house by a
16 private individual owner not residing in the house at the time of the sale,
17 or who was not the most recent resident of the house prior to the sale, the
18 exemption granted by this section shall apply only with respect to one (1)
19 sale within any twenty-four (24) month period;

20 (3) A bona fide private individual owner does not own any
21 interest in, nor is there owned or reserved on the owner's behalf, under any
22 express or voluntary agreement, title to or any right to all or a portion of
23 the proceeds from the sale or rental of more than three (3) single-family
24 houses at any one (1) time;

25 (4)(A) The house is sold or rented:

26 (i) Without the services of any real estate broker,
27 agent, or salesman; and

28 (ii) Without the publication, posting or mailing,
29 after notice, of any advertisement or written notice in violation of Section
30 12 of this act.

31 (B) However, nothing in this subdivision(a)(4) shall
32 prohibit the use of attorneys, escrow agents, abstracters, title companies,
33 and other professional assistance as necessary to perfect or transfer the
34 title.

35 (b) For the purposes of subsection (a) of this section, a person shall
36 be deemed to be in the business of selling or renting dwellings if:

1 (1) The person has, within the preceding twelve (12) months,
2 participated as principal in three (3) or more transactions involving the
3 sale or rental of any dwelling or any interest therein; or

4 (2) The person has, within the preceding twelve (12) months,
5 participated as agent, other than in the sale of his or her own personal
6 residence, in providing sales or rental facilities or sales or rental
7 services in two (2) or more transactions involving the sale or rental of any
8 dwelling or any interest therein; or

9 (3) The person is the owner of any dwelling designed or intended
10 for occupancy by, or occupied by, five (5) or more families.

11
12 SECTION 8. Exemptions - Religious organizations, private clubs and
13 others.

14 (a) This act does not prohibit a religious organization, association,
15 or society, or a nonprofit institution or organization operated, supervised,
16 or controlled by or in conjunction with a religious organization, association
17 or society from:

18 (1) Limiting the sale, rental, or occupancy of dwellings that it
19 owns or operates for other than a commercial purpose to persons of the same
20 religion; or

21 (2) Giving preference for those dwellings to persons of the same
22 religion unless membership in the religion is restricted on account of race,
23 color, or national origin.

24 (b) This act does not prohibit a private club not in fact open to the
25 public that, as an incident to its primary purpose, provides lodging that it
26 owns or operates for other than a commercial purpose, from limiting the
27 rental or occupancy of that lodging to its members or from giving preference
28 to its members.

29 (c)(1) Nothing in this act limits the applicability of any reasonable
30 local or state restriction regarding the maximum number of occupants
31 permitted to occupy a dwelling.

32 (2) Nothing in this act shall prohibit a person from refusing to
33 rent a dwelling by reason of reasonable occupancy standards established by
34 the owner or the owner's agent which apply to persons of all ages, and which
35 have been adopted and published before the event in issue.

36 (3) An occupancy limitation of two (2) persons per bedroom

1 residing in a dwelling unit shall be presumed reasonable in this state or any
2 political subdivision of this state.

3 (4) Nothing in this act regarding familial status shall apply to
4 housing for older persons.

5 (d) As used in this section, "housing for older persons" means
6 housing:

7 (1) Provided under any state program that the director
8 determines is specifically designed and operated to assist elderly persons,
9 as defined in any state program, or provided under any federal program that
10 the Secretary of the United States Department of Housing and Urban
11 Development determines is specifically designed and operated to assist
12 elderly persons, as defined in any federal program.

13 (2) Intended for, and solely occupied by, persons sixty-two (62)
14 years of age or older; or

15 (3) Intended and operated for occupancy by persons fifty-five
16 (55) years of age or older, and:

17 (A) At least eighty percent (80%) of the occupied units
18 are occupied by at least one (1) person who is fifty-five (55) years of age
19 or older;

20 (B) The housing facility or community publishes and
21 adheres to policies and procedures that demonstrate the intent required under
22 this subdivision; and

23 (C) The housing facility or community complies with rules
24 issued by the director for verification of occupancy, which shall:

25 (i) Provide for verification by reliable surveys and
26 affidavits; and

27 (ii) Include examples of the types of policies and
28 procedures relevant to a determination of compliance with the requirement of
29 subdivision (d)(3)(C).

30 (4) The surveys and affidavits authorized under subdivision
31 (d)(3)(C) of this section shall be admissible in administrative and judicial
32 proceedings for the purposes of verification.

33 (5) Housing shall not fail to meet the requirements for housing
34 for older persons by reason of:

35 (A) Persons residing in the housing as of the effective
36 date of this act who do not meet the age requirements of subdivisions (d)(2)

1 or (3), if:

2 (i) New occupants of the housing meet the age
3 requirements of subdivisions (d)(2) or (3) of this section; or

4 (ii) The units are unoccupied units and are reserved
5 for occupancy by persons who meet the age requirements of subdivisions (d)(2)
6 or (3) of this section;

7 (6)(A) A person shall not be held personally liable for monetary
8 damages for a violation of this act if the person reasonably relied, in good
9 faith, on the application of the exemption under this section relating to
10 housing for older persons.

11 (B) For the purposes of this act, "good faith reliance"
12 means:

13 (i) The person has no actual knowledge that the
14 facility or community is not, or will not be, eligible for the exemption; and

15 (ii) The facility or community has stated formally,
16 in writing, that the facility or community complies with the requirements for
17 the exemption.

18 (e) Nothing in this act prohibits discrimination against a person
19 because the person has been convicted by any court of competent jurisdiction
20 of the illegal manufacture or distribution of a controlled substance as
21 defined in Section 102 of the Controlled Substance Act, 21 U.S.C. § 802, as
22 in effect January 1, 2001.

23
24 SECTION 9. Exemption - Appraisals.

25 Nothing in this act prohibits a person engaged in the business of
26 furnishing evaluations, market analyses, or appraisals of real property to
27 take into consideration factors other than race, color, religion, sex,
28 disability, familial status, or national origin.

29
30 SECTION 10. Effect on other law.

31 This act does not affect a requirement of nondiscrimination in any
32 other act, state or federal law.

33
34 SECTION 11. Discrimination in sale or rental of housing.

35 (a) A person shall not refuse to sell or rent a dwelling to a person
36 who has made a bona fide offer; refuse to negotiate for the sale or rental of

1 a dwelling; or otherwise make unavailable or deny a dwelling to any person
2 because of race, color, religion, sex, familial status, or national origin.

3 (b) A person shall not discriminate against any person in the terms,
4 conditions, or privileges of sale or rental of a dwelling or in providing
5 services or facilities in connection with the sale or rental because of race,
6 color, religion, sex, familial status, or national origin.

7 (c) This section does not prohibit discrimination against a person
8 because the person has been convicted under federal law, or the law of any
9 state, of the illegal manufacture or distribution of a controlled substance
10 as defined in Section 102 of the Controlled Substance Act, 21 U.S.C. § 802,
11 as in effect January 1, 2001.

12
13 SECTION 12. Publication indicating discrimination.

14 A person shall not make, print, or publish or cause to be made,
15 printed, or published any notice, statement, or advertisement, with respect
16 to the sale or rental of a dwelling that indicates any preference,
17 limitation, or discrimination based on race, color, religion, sex,
18 disability, familial status, or national origin, or an intention to make such
19 a preference, limitation, or discrimination.

20
21 SECTION 13. Availability for inspection.

22 A person shall not represent to any person because of race, color,
23 religion, sex, disability, familial status, or national origin that a
24 dwelling is not available for inspection, sale, or rental when the dwelling
25 is in fact so available.

26
27 SECTION 14. Entry into neighborhood.

28 A person shall not, for profit, induce or attempt to induce a person to
29 sell or rent a dwelling by representations regarding the entry or prospective
30 entry into a neighborhood of a person of a particular race, color, religion,
31 sex, disability, familial status, or national origin.

32
33 SECTION 15. Disability.

34 (a) A person shall not discriminate in the sale or rental or otherwise
35 make unavailable or deny a dwelling to a buyer or renter because of a
36 disability of:

- 1 (1) That buyer or renter;
2 (2) A person residing in or intending to reside in that dwelling
3 after it is sold, rented, or made available; or
4 (3) A person associated with that buyer or renter.
5 (b) A person shall not discriminate against any person in the terms,
6 conditions, or privileges of sale or rental of a dwelling or in the provision
7 of services or facilities in connection with the dwelling because of a
8 disability of:
9 (1) That person;
10 (2) A person residing in or intending to reside in that dwelling
11 after it is sold, rented, or made available; or
12 (3) A person associated with that person.
13 (c) For purposes of this section only, "discrimination" includes:
14 (1) A refusal to permit, at the expense of the person with the
15 disability, reasonable modifications of existing premises occupied or to be
16 occupied by the person with the disability if the modifications may be
17 necessary to afford the person with the disability full enjoyment of the
18 premises, except that an owner may:
19 (A) Where reasonable to do so, reasonably condition
20 permission for modifications upon the agreement of the person with the
21 disability to restore the premises to its condition as existed prior to
22 modification, reasonable wear and tear excepted; and
23 (B) Reasonably condition the permission on the person with
24 a disability providing to the owner a reasonable description of the proposed
25 modifications and reasonable assurance that all work will be done in a
26 professional manner, all required permits for the work timely obtained, and
27 all work timely paid for.
28 (2) A refusal to make reasonable accommodations in rules,
29 policies, practices, or services, when the accommodations may be necessary to
30 afford a person with a disability equal opportunity to use and enjoy a
31 dwelling, including public and common use areas.
32 (3) In connection with the design and construction of covered
33 multi-family dwellings for first occupancy after February 1, 2004, a failure
34 to design and construct those dwellings in a manner that:
35 (A) Makes the public use and common use portions of the
36 dwellings readily accessible to and usable by persons with a disability;

1 (B) Makes all the doors designed to allow passage into and
2 within all premises within the dwellings sufficiently wide to allow passage
3 by persons in wheel chairs; and

4 (C) Makes all premises within the dwellings contain the
5 following features of adaptive design:

6 (i) An accessible route into and through the
7 dwelling;

8 (ii) Light switches, electrical outlets,
9 thermostats, and other environmental controls in accessible locations;

10 (iii) Reinforcements in bathroom walls to allow
11 later installations of grab bars; and

12 (iv) Usable kitchens and bathrooms so that an
13 individual in a wheelchair can maneuver about the space.

14 (d) Compliance with the appropriate requirements of the American
15 National Standard, as in effect January 1, 2001, for buildings and facilities
16 providing accessibility and usability for persons with a physical disability,
17 commonly cited as "ANSI A 117.1" suffices to satisfy the requirements of
18 subdivision (c)(3) of this section

19 (e) As used in subdivision (c)(3) of this section, the term "covered
20 multi-family dwellings" means:

21 (1) Buildings consisting of four (4) or more units if the
22 buildings have one (1) or more elevators; and

23 (2) Ground floor units in other buildings consisting of four (4)
24 or more units.

25 (f) Nothing in this act requires that a dwelling be made available to
26 an individual whose tenancy would constitute a direct threat to the health or
27 safety of other individuals or whose tenancy would result in substantial
28 physical damage to the property of others.

29
30 SECTION 16. Residential real estate related transaction.

31 (a) A person whose business includes engaging in residential real
32 estate related transactions shall not discriminate against a person in making
33 a real estate related transaction available, or in the terms or conditions of
34 a real estate related transaction because of race, color, religion, sex,
35 disability, familial status, or national origin.

36 (b) In this section, "residential real estate related transaction"

1 means making or purchasing loans or providing other financial assistance:

2 (1) To purchase, construct, improve, repair, or maintain a
3 dwelling; or

4 (2) Secured by residential real estate; or

5 (3) Selling, brokering, or appraising residential real property.

6
7 SECTION 17. Brokerage services.

8 A person shall not deny persons access to, or membership or
9 participation in, a multiple listing service, real estate brokers'
10 organization or other service, organization, or facility relating to the
11 business of selling or renting dwellings, or discriminate against a person in
12 the terms or conditions of access, membership, or participation in such an
13 organization, service, or facility because of race, color, religion, sex,
14 disability, familial status, or national origin.

15
16 SECTION 18. Complaint.

17 (a) The Director of the Arkansas Fair Housing Commission shall
18 investigate any discriminatory housing practices alleged in a complaint filed
19 under this section.

20 (b) A complaint shall be:

21 (1) In writing and under oath; and

22 (2) In the form specified and standardized by this act and the
23 regulations promulgated by the commission which shall not require that the
24 complaint be notarized.

25 (c) An aggrieved person shall not, later than one (1) year after an
26 alleged discriminatory housing practice has occurred or terminated, file a
27 complaint with the commission alleging the discriminatory housing practice.

28 (d) Not later than one (1) year after an alleged discriminatory
29 housing practice has occurred or terminated, the commission may file its own
30 complaint.

31 (e) A complaint may be reasonably and fairly amended at any time.

32 (f) On the filing of a complaint the director shall:

33 (1) Give the aggrieved person notice that the complaint has been
34 received;

35 (2) Advise the aggrieved person of the time limits and choice of
36 forums under this act; and

1 (3) Not later than the tenth day after the filing of the
2 complaint or after the identification of an additional respondent under
3 Section 21 of this act, provide each respondent:

4 (A) Notice identifying the alleged discriminatory housing
5 practice and advising the respondent of the procedural rights and obligations
6 of a respondent under this act; and

7 (B) A copy of the original complaint.

8
9 SECTION 19. Answer.

10 (a) Not later than tenth day after receipt of the notice and copy of
11 the complaint as required by subdivision (f)(3) of Section 18 of this act, a
12 respondent may file an answer to the complaint.

13 (b) An answer must be:

14 (1) In writing;

15 (2) Under oath; and

16 (3) In the form specified and standardized by this act and the
17 regulations promulgated by the commission which shall not require that the
18 complaint be notarized.

19 (c) An answer may be reasonably and fairly amended at any time.

20
21 SECTION 20. Investigation.

22 (a) The Director of the Arkansas Fair Housing Commission shall
23 investigate all complaints, and except as provided by subsection (b) of this
24 section, shall commence an investigation within thirty (30) days of receiving
25 the complaint and shall complete the investigation no later than the one
26 hundredth (100th) day after the complaint is filed, and shall dispose of all
27 administrative proceedings related to the investigation not later than the
28 first anniversary after the complaint is filed.

29 (b) If the director is unable to complete an investigation within the
30 time periods prescribed by subsection (a) of this section, the director shall
31 notify the complainant and the respondent in writing of the reasons for the
32 delay.

33 (c) If the director is unable to begin an investigation within the
34 time periods prescribed in subsection (a) of this section, the director shall
35 notify the complainant and the respondent in writing of the reasons for the
36 delay.

1 (d) If the director is unable to dispose of all administrative
2 proceedings related to the investigation of a complaint within one (1) year
3 after the complaint is filed, the director shall notify the complainant and
4 the respondent in writing of the reasons for the delay.

5
6 SECTION 21. Additional or substitute respondent.

7 (a) The Director of the Arkansas Fair Housing Commission may join a
8 person not named in the complaint as an additional or substitute respondent
9 if, in the course of the investigation, the director determines that the
10 person may have committed a discriminatory housing practice.

11 (b) In addition to the information required in the notice under
12 subdivision (f)(3) of Section 18 of this act, the director shall include in a
13 notice to a respondent joined under this section an explanation of the basis
14 for the determination that the person is properly joined as a respondent.

15
16 SECTION 22. Conciliation.

17 (a) The Director of the Arkansas Fair Housing Commission shall, during
18 the period beginning with the filing of a complaint and ending with the
19 filing of a charge or a dismissal by the director or commission, to the
20 extent feasible, engage in conciliation with respect to the complaint.

21 (b) A conciliation agreement reached through conciliation is a written
22 agreement between a respondent, the complainant and the commission, requiring
23 approval from all three (3).

24 (c)(1) A conciliation agreement may provide for binding arbitration of
25 the dispute arising from the complaint.

26 (2) A conciliation agreement may authorize appropriate relief,
27 including monetary relief.

28 (d) A conciliation agreement shall be made public unless the
29 complainant and respondent agree otherwise, and the director determines that
30 disclosure is not necessary to further the purposes of this act.

31 (e) If the director has reasonable cause to believe that a respondent
32 has breached a conciliation agreement, the Attorney General shall be directed
33 to file a civil action for the enforcement of the conciliation agreement as
34 under Section 31 of this act.

35 (f) No statements or actions made within the course of conciliation
36 may be made public or used as evidence in a subsequent proceeding under this

1 act without the written consent of the persons concerned.

2 (g) After completion of the director's investigation, the director
3 shall make available to the aggrieved person and the respondent, at any time,
4 information derived from the investigation and the final report related to
5 that investigation.

6
7 SECTION 23. Temporary or preliminary relief.

8 (a) If the Director of the Arkansas Fair Housing Commission concludes
9 any time following the filing of a complaint that prompt judicial action is
10 necessary to carry out the purposes of this act, and after consultation with
11 the office of the Attorney General, the director may authorize the filing, by
12 the Attorney General, of a civil action in a court of competent jurisdiction
13 in the county where the respondent resides for appropriate temporary or
14 preliminary relief pending final disposition of the complaint.

15 (b) The filing of a civil action under this section does not affect
16 the initiation or continuation of administrative proceeding, entitled
17 "Administrative Hearing", under Section 32 of this act.

18
19 SECTION 24. Investigative report.

20 (a) The Director of the Arkansas Fair Housing Commission shall prepare
21 a final investigative report showing:

22 (1) The names and dates of contacts with witnesses;

23 (2) A summary of correspondence and other contacts with the
24 aggrieved person and the respondent showing the dates of the correspondence
25 and contacts;

26 (3) A summary description of other pertinent records;

27 (4) A summary of witness statements; and

28 (5) Answers to interrogatories.

29 (b) A final report under this section may be amended if additional
30 evidence is later discovered.

31
32 SECTION 25. Reasonable cause determination.

33 (a) The Director of the Arkansas Fair Housing Commission shall
34 determine, based on the facts and after consultation with the office of the
35 Attorney General, whether reasonable cause exists to believe that a
36 discriminatory housing practice occurred or is about to occur.

1 (b) The director shall make the determination under subsection (a) of
2 this section not later than the one hundredth (100th) day a complaint is filed
3 unless:

4 (1) It is impracticable to make the determination; or

5 (2) The director has approved a conciliation agreement relating
6 to the complaint.

7 (c) If it is impracticable to make the determination within the time
8 period provided by subsection (b) of this section, the director shall notify
9 the complainant and respondent in writing of the reasons for the delay.

10 (d) If the director determines that reasonable cause exists to believe
11 that a discriminatory housing practice occurred or is about to occur, the
12 director shall, except as provided by Section 27 of this act, immediately
13 issue a charge on behalf of the aggrieved person.

14
15 SECTION 26. Charge.

16 (a) A charge issued under Section 25 of this act shall:

17 (1) Consist of a short and plain statement of the facts on which
18 the director has found reasonable cause to believe that a discriminatory
19 housing practice occurred or is about to occur;

20 (2) Be based on the investigation; and

21 (3) Not necessarily be limited to the facts or grounds alleged
22 in the complaint.

23 (b) Not later than the tenth day after the director issues a charge,
24 the director shall send a copy of the charge with information concerning the
25 process of election of judicial determination, as under Section 30 of this
26 act to:

27 (1) Each respondent, together with a notice of the opportunity
28 for a hearing provided by Section 32; and

29 (2) Each aggrieved person on whose behalf the complaint was
30 filed.

31
32 SECTION 27. Land use law.

33 If the Director of the Arkansas Fair Housing Commission determines the
34 matter involves the legality of a state or local zoning ordinance or other
35 land use law or ordinance, the director shall not issue a charge, but shall
36 immediately refer the matter to the Attorney General for appropriate action.

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SECTION 28. Dismissal.

(a) If the Director of the Arkansas Fair Housing Commission determines that no reasonable cause exists to believe that a discriminatory housing practice occurred or is about to occur, the director shall promptly dismiss the complaint.

(b) The director shall disclose each dismissal under this section both to the public and to all affected parties.

SECTION 29. Pending civil trial.

The Director of the Arkansas Fair Housing Commission shall not issue a charge under this section regarding an alleged discriminatory housing practice after the commencement of a civil action commenced under federal or state law or this act seeking determination with respect to an alleged discriminatory housing practice.

SECTION 30. Election of judicial determination.

(a) After a charge has been issued under Section 26 of this act, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in that charge decided in a civil action.

(b) The election shall be made no later than the twentieth (20th) day after the date of receipt by the electing person of service under Section 26 of this act, or, in the case of the Arkansas Fair Housing Commission, not later than the twentieth (20th) day after the date the charge was issued.

(c) The person making the election shall give notice to the commission and to all other complainants and respondents to whom the charge relates.

SECTION 31. Attorney General – "Action for Enforcement".

(a) If a timely election is made by a complainant under Section 30, the Arkansas Fair Housing Commission shall authorize and the Attorney General shall file and maintain, on behalf of the aggrieved party, a civil action in a court of competent jurisdiction in the county where the respondent resides seeking appropriate relief under this section.

(b) If the commission determines, as under Section 22 of this act, and after consultation with the office of the Attorney General, that a

1 conciliation agreement has been breached by the respondent, the Attorney
2 General shall file a civil action on behalf of the aggrieved person in a
3 court of competent jurisdiction in the county where the respondent resides
4 seeking enforcement of the conciliation agreement.

5 (c) Venue for an action under this section is in the court of
6 competent jurisdiction in the county where the respondent resides.

7 (d) An aggrieved person may intervene in the action.

8 (e) If the court finds that a discriminatory housing practice has
9 occurred or is about to occur, the court may grant, as relief, any relief
10 that a court may grant in a civil action under this act.

11
12 SECTION 32. Administrative hearing.

13 (a) If a timely election to commence a civil action is not made under
14 Section 30 of this act, the Arkansas Fair Housing Commission shall provide
15 for an administrative hearing on the charge.

16 (1) The administrative hearing will be adjudicated by the
17 commission.

18 (2) No officer, employee, or agent of the State of Arkansas
19 engaged in the performance of investigative, conciliatory, or prosecutorial
20 functions in connection with the proceeding shall, in that proceeding or any
21 factually related proceeding under this act, participate in or advise on the
22 decision of the commission, except as a witness or counsel during the
23 proceedings.

24 (b) Except as provided in this section, the Arkansas Administrative
25 Procedure Act governs a hearing and an appeal of a hearing under this
26 section.

27
28 SECTION 33. Administrative penalties.

29 (a) If the Arkansas Fair Housing Commission determines at a hearing
30 under Section 32 of this act that a respondent has engaged in or is about to
31 engage in a discriminatory housing practice, the commission may order the
32 appropriate relief, including actual damages, reasonable attorney's fees and
33 court costs.

34 (b) To vindicate the public interest, the commission may assess a
35 civil penalty against the respondent in an amount that does not exceed:

36 (1) Eleven thousand dollars (\$11,000) if the respondent has not

1 been adjudged by order of the commission or a court to have committed a prior
2 discriminatory housing practice;

3 (2) Except as provided by subsection (c) of this section,
4 twenty-seven thousand five hundred dollars(\$27,500) if the respondent has
5 been adjudged by order of the commission or a court to have committed one (1)
6 other discriminatory housing practice during the five (5) year period ending
7 on the date of the filing of this charge; and

8 (3) Except as provided by subsection (c) of this section, fifty-
9 five thousand dollars (\$55,000) if the respondent has been adjudged by order
10 of the commission or a court to have committed three (3) or more
11 discriminatory housing practices during the five (5) year period ending on
12 the date of the filing of the charge.

13 (c) If the acts constituting the discriminatory housing practice that
14 is the object of the charge are committed by the same individual who has been
15 previously adjudged to have committed acts constituting a discriminatory
16 housing practice, the civil penalties in subdivisions (b)(2) and (3) of this
17 section may be imposed without regard to the period of time within which any
18 other discriminatory housing practice occurred.

19 (d) In addition to all other penalties set forth in this act, the
20 commission may require the respondent to complete up to thirty (30) classroom
21 hours of fair housing education courses designated by the commission or up to
22 thirty (30) hours of community service designated by the commission, or both.

23
24 SECTION 34. Effect of a commission order.

25 An Arkansas Fair Housing Commission order under Section 33 of this act
26 does not affect any contract, sale, encumbrance, or lease that:

27 (1) Was consummated before the commission issued the order; and

28 (2) Involved a bona fide purchaser, encumbrancer, or tenant who
29 did not have actual notice of the charge filed under this act.

30
31 SECTION 35. Licensed or regulated businesses.

32 If the Arkansas Fair Housing Commission issues an order with respect to
33 a discriminatory housing practice that occurred in the course of a business
34 subject to a licensing or regulation by a government agency, the commission
35 shall, not later than the thirty (30) days after the issuance of the order,
36 send copies of the findings of fact, conclusions of law, and the order to the

1 governmental agency.

2
3 SECTION 36. Cooperation with state and federal agencies.

4 (a) The Arkansas Fair Housing Commission is encouraged to cooperate
5 with the Secretary of Housing and Urban Development and the Attorney General
6 of the United States in the enforcement of the Fair Housing Act of 1968,
7 which begins at 42 U.S.C. § 3601, as in effect January 1, 2001, and may
8 assist the Secretary or Attorney General of the United States in any way
9 consistent with the policies of this act.

10 (b) The commission shall treat a complaint referred by the Secretary
11 of Housing and Urban Development or the Attorney General of the United States
12 under the Fair Housing Act of 1968, as in effect January 1, 2001, as a
13 complaint filed under this act.

14
15 SECTION 37. Civil action.

16 (a) An aggrieved person may file a civil action in a court of
17 competent jurisdiction in the county where the respondent resides not later
18 than two (2) years after the occurrence or the termination of an alleged
19 discriminatory housing practice, or the breach of a conciliation agreement
20 entered into under this act, whichever occurs last, to obtain appropriate
21 relief with respect to the discriminatory housing practice or enforcement of
22 a conciliation agreement.

23 (b)(1) The two (2) year period does not include any time during which
24 an administrative proceeding under this act is pending with respect to a
25 complaint or charge under this act based on the discriminatory housing
26 practice.

27 (2) This subsection does not apply to actions arising from a
28 breach of a conciliation agreement.

29 (c) Except as otherwise provided in subsection (e) of this section, an
30 aggrieved person may file an action under this section whether or not a
31 complaint has been filed under Section 18, and without regard to the status
32 of any complaint filed under that section.

33 (d) If the Arkansas Fair Housing Commission has obtained a
34 conciliation agreement with the consent of an aggrieved person, the aggrieved
35 person may not file an action under this section with respect to the alleged
36 discriminatory housing practice that forms the basis for the complaint except

1 to enforce the terms of the agreement.

2 (e) If a timely election was not made under Section 30, or an
3 administrative hearing has begun considering a charge issued by the
4 commission, an aggrieved person may not file a civil action under this
5 section with respect to the alleged discriminatory housing practice forming
6 the basis of that charge.

7
8 SECTION 38. Court appointed attorney.

9 On application by a person alleging a discriminatory housing practice
10 or by a person against whom a discriminatory housing practice is alleged, the
11 court may appoint an attorney for the person to the extent provided by
12 applicable law concerning indigents in civil actions.

13
14 SECTION 39. Relief.

15 In a civil action under this act, if the court finds that a
16 discriminatory housing practice has occurred or is about to occur, the court
17 may award to the plaintiff:

18 (1) Compensatory and punitive damages;

19 (2) Reasonable attorney's fees;

20 (3) Court costs; and

21 (4) Subject to Section 40 of this act, any permanent or
22 temporary injunction, temporary restraining order, or other order, including
23 an order enjoining the defendant from engaging in the discriminatory housing
24 practice or ordering affirmative action as may be appropriate.

25
26 SECTION 40. Effect if relief granted.

27 Relief granted under this act does not affect a contract, sale
28 encumbrance, or lease that:

29 (a) Was consummated before the granting of the relief; and

30 (b) Involved a bona fide purchaser, encumbrancer, or tenant who did
31 not have actual notice of the filing of a complaint under this act or a civil
32 action under this act.

33
34 SECTION 41. Intervention by Attorney General of Arkansas.

35 (a) At the request of the Arkansas Fair Housing Commission, the
36 Attorney General may intervene in an action if the commission certifies and

1 the Attorney General concurs that the case is of general public importance.

2 (b) The Attorney General may obtain the same relief available under
3 Section 42 of this act.

4
5 SECTION 42. Pattern and practice cases.

6 (a) At the request of the Arkansas Fair Housing Commission, the
7 Attorney General may file a civil action in a court of competent jurisdiction
8 in the county where the respondent resides for appropriate relief if the
9 Attorney General has reasonable cause to believe that:

10 (1) A person is engaged in a pattern or practice of resistance
11 to the full enjoyment of any right granted by this act; or

12 (2) A person has been denied any right granted by this act and
13 that denial raises an issue of general public importance.

14 (b) In an action under this section the court may:

15 (1) Award preventive relief, including a permanent or temporary
16 injunction, restraining order, or other order against the person responsible
17 for a violation of this act as necessary to assure the full enjoyment of the
18 right granted by this act;

19 (2) Award other appropriate relief, including monetary damages,
20 reasonable attorney's fees, and court costs; and

21 (3) To vindicate the public interest, assess a civil penalty
22 against the respondent in an amount that does not exceed:

23 (A) Fifty thousand dollars (\$50,000) for a first (1st)
24 violation; and

25 (B) One hundred thousand dollars (\$100,000) for a second
26 (2nd) or subsequent violation.

27 (c) A person may intervene in an action under this section if the
28 person is:

29 (1) An aggrieved person to the discriminatory housing
30 practice; or

31 (2) A party to a conciliation agreement concerning the
32 discriminatory housing practice.

33
34 SECTION 43. Subpoena enforcement.

35 The Arkansas Fair Housing Commission, on behalf of itself or other
36 party at whose request a subpoena is issued under this act, may enforce the

1 subpoena in appropriate proceedings in a court of competent jurisdiction in
2 the county where the respondent resides.

3
4 SECTION 44. Prevailing party.

5 A court in a civil action brought under this act or the Arkansas Fair
6 Housing Commission in an administrative hearing under Section 32 of this act,
7 may award reasonable attorney's fees to the prevailing party and assess costs
8 against the non-prevailing party.

9
10 SECTION 45. Intimidation or interference.

11 (a) A person commits an offense if the person, whether or not acting
12 under color of law, intentionally intimidates or interferes with or attempts
13 to intimidate or interfere with a person:

14 (1) Because of the person's race, color, religion, sex,
15 disability, familial status, or national origin and because the person is or
16 has been selling, purchasing, renting, financing, occupying, or contracting,
17 or negotiating for the sale, purchase, rental, financing, or occupation of
18 any dwelling, or applying for or participating in a service, organization, or
19 facility relating to the business of selling or renting dwellings; or

20 (2) Because the person is or has been, or to intimidate the
21 person from:

22 (A) Participating, without discrimination because of race,
23 color, religion, sex, disability, familial status, or national origin, in an
24 activity, service, organization, or facility described in subdivision(a)(1)
25 of this section;

26 (B) Affording another person opportunity or protection to
27 so participate; or

28 (C) Lawfully aiding or encouraging other persons to
29 participate, without discrimination because of race, color, religion, sex,
30 disability, familial status, or facility described in subdivision(a)(1) of
31 this section.

32 (b) An offense under this section is a Class A misdemeanor.

33
34 SECTION 46. Incentives for self-testing and self-correction.

35 (a)(1) A report or result of a self-test, as that term is defined by
36 regulation of the Director of the Arkansas Fair Housing Commission, shall be

1 considered to be privileged under subdivision (2) of this section if a
2 person:

3 (A) Conducts, or authorizes an independent third party to
4 conduct, a self-test of any aspect of a residential real estate related
5 lending transaction or any part of that transaction by that person, in order
6 to determine the level or effectiveness of compliance with this act by that
7 person; and

8 (B) Has identified any possible violation of this act by
9 that person and has taken, or is taking, appropriate corrective action to
10 address any such possible violation.

11 (2) If a person meets the conditions specified in subdivision
12 (a)(1) of this section with respect to a self-test, any report or results of
13 that self-test:

14 (A) Shall be privileged; and

15 (B) Shall not be obtained or used by the commission or any
16 applicant, department, or agency in any:

17 (i) Proceeding or civil action in which one (1) or
18 more violations of this act are alleged; or

19 (ii) Examination or investigation relating to
20 compliance with this act.

21 (b)(1) No provision of this act may be construed to prevent an
22 aggrieved person, complainant, department, or agency from obtaining or using
23 a report or results of any self-test in any proceeding or civil action in
24 which a violation of this act is alleged, or in any examination or
25 investigation of compliance with this act if:

26 (A) The person to whom the self-test relates or any person
27 with lawful access to the report or the results:

28 (i) Voluntarily releases or discloses all, or any
29 part of, the report or results to the commission, aggrieved person,
30 complainant, department, or agency, or to the general public; or

31 (ii) Refers to or describes the report or results as
32 a defense to charges of violations of this act against the person to whom the
33 self-test relates; or

34 (B) The report or results are sought in conjunction with
35 an adjudication or admission of a violation of this act for the sole purpose
36 of determining an appropriate penalty or remedy.

1 (2) Any report or results of a self-test that are disclosed for
2 the purpose specified in subdivision (b)(1)(B) of this section:

3 (A) Shall be used only for the particular proceeding in
4 which the adjudication or admission referred to in subdivision (b)(1)(B) of
5 this section is made; and

6 (B) Shall not be used in any other action or proceeding.

7 (c) An aggrieved person, complainant, department, agency, or the
8 commission that challenges a privilege asserted under this section may seek a
9 determination of the existence and application of that privilege in:

10 (1) A court of competent jurisdiction; or

11 (2) An administrative law proceeding with appropriate
12 jurisdiction.

13
14 SECTION 47. Fair housing education program.

15 (a) The Director of the Arkansas Fair Housing Commission, through
16 contracts with local governments or their agencies, public or private
17 nonprofit organizations or institutions, or other public or private entities
18 that are formulating or carrying out programs to prevent or eliminate
19 discriminatory housing practices shall establish a state-wide education and
20 outreach program.

21 (b) The program shall be designed to provide a centralized,
22 coordinated effort for the development and dissemination of fair housing
23 media products, including:

24 (1) Public service announcements, both audio and video;

25 (2) Television, radio and print advertisements;

26 (3) Posters; and

27 (4) Pamphlets and brochures.

28 (c) The director shall encourage cooperation with real estate industry
29 organizations in the state-wide education and outreach program.

30 (d) The director shall encourage the dissemination of educational
31 information and technical assistance to support compliance with the housing
32 adaptability and accessibility guidelines contained in the Fair Housing Act
33 Amendments of 1988.

34
35 SECTION 48. Education Fund.

36 (a) There is hereby established on the books of the Treasurer of

1 State, Auditor of State, and Chief Fiscal Officer of the State a fund to be
2 known as the Arkansas Fair Housing Commission Trust Fund.

3 (b) The fund shall consist of:

4 (1) Funds received by the Arkansas Fair Housing Commission and
5 any other moneys as may be provided by the General Assembly, there to be used
6 for the administration and operations of the commission; and

7 (2) Any administrative or civil penalty levied and collected
8 pursuant to this act to be solely used for fair housing education of the
9 public and the operational expenses of the commission.

10
11 SECTION 49. Violations - bodily injury - penalties.

12 (a) It is unlawful for a person, whether or not acting under color of
13 law, by force or threat of force, to willfully injure, intimidate or
14 interfere with, or attempt to injure, intimidate or interfere with:

15 (1) Any person because of his or her race, color, religion, sex,
16 disability, as defined in Section 3 of this act, familial status, as defined
17 in Section 3 of this act, or national origin or because the person is or has
18 been selling, purchasing, renting, financing, occupying or contracting or
19 negotiating for the sale purchase, rental, financing, or occupation of any
20 dwelling, or applying for or participating in any service, organizations, or
21 facility relating to the business of selling or renting dwelling;

22 (2) Any person because he or she is or has been, or in order to
23 intimidate the person or any other person or any class of persons from:

24 (A) Participating, without discrimination on account of
25 race, color, religions, sex, disability, as defined in Section 3 of this act,
26 familial status, as defined in Section 3 of this act, or national origin, in
27 any of the activities, services, organizations or facilities described in
28 subdivision (a)(1) of this section; or

29 (B) Affording any person or class of persons opportunity
30 or protection so to participate; or

31 (3) Any citizen because he or she is or has been, or in order to
32 discourage the citizen or any other citizen from lawfully aiding or
33 encouraging other persons to participate, without discrimination on account
34 of race, color, religion, sex, disability, as defined in Section 3 of this
35 act, familial status, as defined in Section 3 of this act, or national
36 origin, in any of the activities, services, organizations or facilities

1 described in subdivision (a)(1) of this section, or participating lawfully in
2 speech or peaceful assembly opposing any denial of the opportunity to so
3 participate.

4 (b) A violation of this section is a Class A misdemeanor.

5 (c) For any violation of this act, the available penalties shall be
6 solely as set forth in this act.

7 /s/ B. Walker, et al.

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