

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 85th General Assembly  
3 Regular Session, 2005  
4

As Engrossed: H2/18/05

# A Bill

HOUSE BILL 1598

5 By: Representatives Wood, Roebuck, Adcock, Boyd, Bright, D. Creekmore, Dickinson, Dunn, L. Evans,  
6 George, R. Green, J. Johnson, Mack, Medley, Overbey, Pate, S. Prater, Pyle, Ragland, Reep, Rosenbaum,  
7 Thompson, Thyer, Walters  
8 By: Senators Broadway, Higginbotham, Hill, J. Jeffress, T. Smith, Whitaker, *Altes*

## For An Act To Be Entitled

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10  
11 AN ACT TO DECLARE THAT A PERSON SHALL NOT BE  
12 DISCRIMINATED AGAINST BECAUSE OF MILITARY  
13 SERVICE; AND FOR OTHER PURPOSES.  
14

### Subtitle

15  
16 THE MILITARY SERVICE PROTECTION ACT.  
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19

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

22 SECTION 1. Arkansas Code Title 12, Chapter 62 is amended to add an  
23 additional subchapter to read as follows:

24 12-62-801. Title.

25 This subchapter shall be known and may be cited as the "Military  
26 Service Protection Act".

27  
28 12-62-802. Definitions.

29 For the purposes of this subchapter:

30 (1)(A) "Back pay" means the amount of compensation that an  
31 employee would have earned if the employer had not engaged in conduct  
32 prohibited under this subchapter.

33 (B) "Back pay" shall not include any compensation that  
34 would have been earned before two (2) years from the date that the cause of  
35 action permitted under this subchapter is initially filed;

36 (2) "Compensatory damages" means damages for:



1                   (A) Back pay and interest on back pay;

2                   (B) Mental anguish;

3                   (C) Loss of dignity; or

4                   (D) Other intangible injuries;

5                   (3)(A) "Employee" means a person who performs work or service of  
6 any type for compensation on a full-time or part-time basis.

7                   (B) "Employee" includes applicants for positions to  
8 perform work or service for compensation.

9                   (C) "Employee" does not include:

10                   (i) Any individual employed by his or her parents,  
11 spouse, or child;

12                   (ii) An individual participating in a specialized  
13 employment training program conducted by a nonprofit sheltered workshop or  
14 rehabilitation facility;

15                   (iii) An individual employed outside the State of  
16 Arkansas; or

17                   (iv) An independent contractor;

18                   (4) "Employer" means a person or entity who employs five (5) or  
19 more employees in the State of Arkansas in each of twenty (20) or more  
20 calendar weeks in the current or preceding calendar year before the cause of  
21 action arose, or any agent of such person;

22                   (5) "Military service" means past or present honorable service  
23 in any active or reserve component of the United States Armed Forces; and

24                   (6) "Religious organization" means a church or other place of  
25 worship that:

26                   (A) Is located in the state; and

27                   (B) Provides religious services to its congregation.

28

29                   12-62-803. Applicability.

30                   (a) The provisions of this subchapter relating to employment shall not  
31 be applicable with respect to employment by a religious organization or other  
32 religious entity.

33                   (b)(1) This subchapter shall not be applicable to any of the  
34 following:

35                   (A) The State of Arkansas;

36                   (B) A state agency;

1 (C) A political subdivision;

2 (D) A city of the first class, a city of the second class,  
3 or an incorporated town;

4 (E) A county;

5 (F) A school district;

6 (G) A public official; or

7 (H) An agency, commission, board, committee, council, or  
8 department of any of the entities stated in subdivision (b)(1) of this  
9 section.

10 (2) This subchapter shall not be construed as creating a cause  
11 of action against an entity stated in subdivision (b)(1) of this section.

12 (b) This subchapter shall not apply to matters regulated by the  
13 Arkansas Insurance Code or the Trade Practices Act, § 23-66-201 et seq.

14

15 12-62-804. Construction.

16 (a) Nothing in this subchapter shall be construed to waive the  
17 sovereign immunity of the State of Arkansas.

18 (b)(1) When construing this subchapter as it relates to employment  
19 matters, a court may look for guidance to the Uniformed Services Employment  
20 and Reemployment Rights Act, as amended and codified in 38 U.S.C. § 4301 et  
21 seq., and as in effect on January 1, 2005, as well as federal decisions  
22 interpreting this law.

23 (2) When construing this subchapter as it relates to all other  
24 matters, a court may look for guidance to state and federal decisions  
25 interpreting the federal Civil Rights Act of 1871, as amended and codified in  
26 42 U.S.C. § 1983, as in effect on January 1, 2005.

27

28 12-62-805. Rights stated -- Cause of action created.

29 (a)(1) The right of an otherwise qualified person to be free from  
30 discrimination because of military service is recognized as and declared to  
31 be a civil right.

32 (2) This right shall include, but not be limited to:

33 (A) The right to obtain and hold employment without  
34 discrimination;

35 (B) The right to the full enjoyment of any of the  
36 accommodations, advantages, facilities, or privileges of any place of public

1 resort, accommodation, assemblage, or amusement;

2 (C) The right to engage in property transactions without  
3 discrimination;

4 (D) The right to engage in credit and other contractual  
5 transactions without discrimination; and

6 (E) The right to vote and participate fully in the  
7 political process.

8 (b) A person who is injured by an intentional act of discrimination in  
9 violation of subsection (a) of this section may bring a civil action in a  
10 circuit court of competent jurisdiction.

11 (c)(1) An employee who is discriminated against by an employer in  
12 violation of subdivision (a)(2)(A) of this section may bring a civil action  
13 in a circuit court of competent jurisdiction.

14 (2) The employee may seek back pay and interest on back pay in  
15 addition to the other remedies provided for under this section.

16 (d)(1) Subject to the limitations on damages in subdivision (d)(2) of  
17 this section, a person may seek the following relief for a violation of a  
18 civil right under this subchapter:

19 (A) An order prohibiting the discriminatory practice;

20 (B) Affirmative relief from the effects of the practice,  
21 including, but not limited to, reemployment;

22 (C) An injunction to enjoin further violations;

23 (D) An order to recover compensatory and punitive damages;

24 and

25 (E) An order to recover the cost of litigation and a  
26 reasonable attorney's fee, in the discretion of the court.

27 (2) The total compensatory and punitive damages awarded under  
28 this section shall not exceed:

29 (A) The sum of fifteen thousand dollars (\$15,000) in the  
30 case of an employer who employs no less than five (5) but fewer than fifteen  
31 (15) employees in each of twenty (20) or more calendar weeks in the current  
32 or preceding calendar year before the cause of action arose;

33 (B) The sum of fifty thousand dollars (\$50,000) in the  
34 case of an employer who employs more than fourteen (14) but fewer than one  
35 hundred one (101) employees in each of twenty (20) or more calendar weeks in  
36 the current or preceding calendar year before the cause of action arose;

1                   (C) The sum of one hundred thousand dollars (\$100,000) in  
2 the case of an employer who employs more than one hundred (100) but fewer  
3 than two hundred one (201) employees in each of twenty (20) or more calendar  
4 weeks in the current or preceding calendar year before the cause of action  
5 arose;

6                   (D) The sum of two hundred thousand dollars (\$200,000) in  
7 the case of an employer who employs more than two hundred (200) but fewer  
8 than five hundred one (501) employees in each of twenty (20) or more calendar  
9 weeks in the current or preceding calendar year before the cause of action  
10 arose; and

11                   (E) The sum of three hundred thousand dollars (\$300,000)  
12 in the case of an employer who employs more than five hundred (500) employees  
13 in each of twenty (20) or more calendar weeks in the current or preceding  
14 calendar year before the cause of action arose.

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16                   12-62-806. Limitation of action.

17                   An action under this subchapter shall be brought within three (3) years  
18 after the alleged violation or discriminatory conduct occurs.

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20                   12-62-807. Retaliation – Interference – Remedies.

21                   (a) It is unlawful under this subchapter for a person or entity to  
22 retaliate or discriminate against a person because the person, in good faith:

23                   (1) Opposed any act or practice made unlawful under this  
24 subchapter; or

25                   (2) Made a claim, testified, assisted, or participated in any  
26 manner in an investigation, proceeding, or hearing under this subchapter.

27                   (b) It is unlawful to coerce, intimidate, threaten, or interfere with  
28 a person in his or her exercise of any rights granted or protected under this  
29 subchapter.

30                   (c) A person may avail himself or herself to the same procedures and  
31 remedies available under § 12-62-805 for violations of this section.

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33                   12-62-808. Defenses.

34                   (a) It is a defense under this subchapter if an employer establishes  
35 that the employer's actions were based on legitimate, nondiscriminatory  
36 factors and not on reasons related to military service.

1           (b) Provided the conduct at issue is based on a bona fide business  
2 judgment and is not a pretext for discrimination that is prohibited under  
3 this subchapter, this subchapter shall not be construed to prohibit or  
4 restrict:

5           (1) An insurer, hospital, medical service company, health  
6 maintenance organization, or any agent or entity that administers benefit  
7 plans, or any bank, savings and loan, or other lender from underwriting  
8 insurance or lending risks or administering such risks that are based on or  
9 are not inconsistent with federal or state law;

10           (2) A person covered by this subchapter from establishing,  
11 sponsoring, observing, or administering the terms of a bona fide benefit plan  
12 that are based on underwriting risks, classifying risks, or administering  
13 such risks that are based on or are not inconsistent with federal or state  
14 law; or

15           (3) A person covered by this subchapter from establishing,  
16 sponsoring, observing, or administering the terms of a bona fide benefit plan  
17 that is not subject to federal or state laws which regulate insurance.

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19           SECTION 2. EMERGENCY CLAUSE. It is found and determined by the  
20 General Assembly of the State of Arkansas that since September 11, 2001, the  
21 country has an increased need for soldiers to protect against terrorist acts  
22 and threats to our national security posed by other countries; that members  
23 of the National Guard and Reserves risk their lives to protect and defend our  
24 country at home and abroad; that military service is honorable and citizens  
25 who choose to serve their country deserve respect and to be treated fairly;  
26 that members of the National Guard and Reserves are being denied employment  
27 and being discriminated against in other ways because of their status as  
28 soldiers; and that this act is immediately necessary to protect the citizens  
29 who choose to honor their country by serving in the military from being  
30 denied employment or being discriminated against in other ways because of  
31 their military service. Therefore, an emergency is declared to exist and  
32 this act being immediately necessary for the preservation of the public  
33 peace, health, and safety shall become effective on:

34           (1) The date of its approval by the Governor;

35           (2) If the bill is neither approved nor vetoed by the Governor,  
36 the expiration of the period of time during which the Governor may veto the

1 bill; or

2 (3) If the bill is vetoed by the Governor and the veto is  
3 overridden, the date the last house overrides the veto.

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5 */s/ Wood, et al*

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