

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: H2/18/05 H2/21/05 S3/3/05*

2 85th General Assembly

# A Bill

3 Regular Session, 2005

HOUSE BILL 1598

4

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 Wilkinson*, Broadway, Higginbothom, Hill, J. Jeffress, T. Smith, Whitaker, Altes

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## For An Act To Be Entitled

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AN ACT TO DECLARE THAT A PERSON SHALL NOT BE

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DISCRIMINATED AGAINST BECAUSE OF MILITARY

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SERVICE; AND FOR OTHER PURPOSES.

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## Subtitle

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THE MILITARY SERVICE PROTECTION ACT.

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

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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 current honorable service or  
23 honorably discharged from service within six (6) months from the date of the  
24 alleged discrimination in any active or reserve component of the United  
25 States Armed Forces;

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

28                   (A) Is located in the state; and

29                   (B) Provides religious services to its congregation.

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31                   12-62-803. Applicability.

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

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

- 1                   (A) The State of Arkansas;
- 2                   (B) A state agency;
- 3                   (C) A political subdivision;
- 4                   (D) A city of the first class, a city of the second class,  
5 or an incorporated town;
- 6                   (E) A county;
- 7                   (F) A school district;
- 8                   (G) A public official; or
- 9                   (H) An agency, commission, board, committee, council, or  
10 department of any of the entities stated in subdivision (b)(1) of this  
11 section.

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

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

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17                   12-62-804. Construction.

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

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

25                   (2) When construing this subchapter as it relates to all other  
26 matters, a court may look for guidance to state and federal decisions  
27 interpreting the federal Civil Rights Act of 1871, as amended and codified in  
28 42 U.S.C. § 1983, as in effect on January 1, 2005.

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30                   12-62-805. Rights stated -- Cause of action created.

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

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

35                   (A) The right to obtain and hold employment without  
36 discrimination;

1                   (B) The right to the full enjoyment of any of the  
2 accommodations, advantages, facilities, or privileges of any place of public  
3 resort, accommodation, assemblage, or amusement;

4                   (C) The right to engage in property transactions without  
5 discrimination;

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

8                   (E) The right to vote and participate fully in the  
9 political process.

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

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

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

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

21                   (A) An order prohibiting the discriminatory practice;

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

24                   (C) An injunction to enjoin further violations;

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

26 and

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

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

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

35                   (B) The sum of fifty thousand dollars (\$50,000) in the  
36 case of an employer who employs more than fourteen (14) but fewer than one

1 hundred one (101) employees in each of twenty (20) or more calendar weeks in  
2 the current or preceding calendar year before the cause of action arose;

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

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

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

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18 12-62-806. Limitation of action.

19 (a) Except as provided under subsection (b) of this section, an action  
20 under this section shall be brought within one (1) year after the alleged  
21 violation or discriminatory conduct occurs.

22 (b) However, if a service member is deployed for active duty at any  
23 time during the one (1) year period, then an action under this section shall  
24 be brought within one (1) year after the end of his or her mobilization.

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26 12-62-807. Retaliation – Interference – Remedies.

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

29 (1) Opposed any act or practice made unlawful under this  
30 subchapter; or

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

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

36 (c) A person may avail himself or herself to the same procedures and

1 remedies available under § 12-62-805 for violations of this section.

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3 12-62-808. Defenses.

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

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

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

16 (2) A person covered by this subchapter from establishing,  
17 sponsoring, observing, or administering the terms of a bona fide benefit plan  
18 that are based on underwriting risks, classifying risks, or administering  
19 such risks that are based on or are not inconsistent with federal or state  
20 law; or

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

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

1 their military service. Therefore, an emergency is declared to exist and  
2 this act being immediately necessary for the preservation of the public  
3 peace, health, and safety shall become effective on:

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

5 (2) If the bill is neither approved nor vetoed by the Governor,  
6 the expiration of the period of time during which the Governor may veto the  
7 bill; or

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

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11 */s/ Wood*  
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