

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: H3/23/05

A Bill

HOUSE BILL 2751

5 By: Representative L. Smith
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS CIVIL RIGHTS ACT OF
10 1993 TO ADD SEXUAL ORIENTATION AS A BASIS FOR A
11 CIVIL RIGHTS VIOLATION; AND FOR OTHER PURPOSES.
12

Subtitle

13 AN ACT TO AMEND THE ARKANSAS CIVIL
14 RIGHTS ACT OF 1993 TO ADD SEXUAL
15 ORIENTATION AS A BASIS FOR A CIVIL
16 RIGHTS VIOLATION.
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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 § 16-123-102 is amended to read as follows:
23 16-123-102. Definitions.

24 For the purposes of this subchapter:

25 (1) "Because of gender" means, but is not limited to, on account
26 of pregnancy, childbirth, or related medical conditions;

27 (2) "Compensatory damages" means damages for mental anguish,
28 loss of dignity, and other intangible injuries, but "compensatory damages"
29 does not include punitive damages;

30 (3) "Disability" means a physical or mental impairment that
31 substantially limits a major life function, but "disability" does not
32 include:

33 (A) Compulsive gambling, kleptomania, or pyromania;

34 (B) Current use of illegal drugs or psychoactive substance
35 use disorders resulting from illegal use of drugs; or

36 (C) Alcoholism;



- 1 (4) "Employee" does not include:
- 2 (A) Any individual employed by his or her parents, spouse,
- 3 or child;
- 4 (B) An individual participating in a specialized
- 5 employment training program conducted by a nonprofit sheltered workshop or
- 6 rehabilitation facility; or
- 7 (C) An individual employed outside the State of Arkansas;
- 8 (5) "Employer" means a person who employs nine (9) or more
- 9 employees in the State of Arkansas in each of twenty (20) or more calendar
- 10 weeks in the current or preceding calendar year, or any agent of such person;
- 11 (6) "National origin" includes ancestry;
- 12 (7) "Place of public resort, accommodation, assemblage, or
- 13 amusement" means any place, store, or other establishment, either licensed or
- 14 unlicensed, that supplies accommodations, goods, or services to the general
- 15 public, or that solicits or accepts the patronage or trade of the general
- 16 public, or that is supported directly or indirectly by government funds, but
- 17 "place of public resort, accommodation, assemblage, or amusement" does not
- 18 include:
- 19 (A) Any lodging establishment which contains not more than
- 20 five (5) rooms for rent and which is actually occupied by the proprietor of
- 21 such establishment as a residence; or
- 22 (B) Any private club or other establishment not in fact
- 23 open to the public; ~~and~~
- 24 (8) "Religion" means all aspects of religious belief,
- 25 observance, and practice; and
- 26 (9) "Sexual orientation" means heterosexuality, homosexuality,
- 27 or bisexuality.

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29 SECTION 2. Arkansas Code § 16-123-106 is amended to read as follows:

30 16-123-106. Hate offenses.

- 31 (a) An action for injunctive relief or civil damages, or both, shall
- 32 lie for any person who is subjected to acts of:
- 33 (1) Intimidation or harassment; or
- 34 (2) Violence directed against his or her person; or
- 35 (3) Vandalism directed against his or her real or personal
- 36 property, where such acts are motivated by racial, religious, ~~or~~ ethnic

1 animosity, or animosity based on sexual orientation.

2 (b) Any aggrieved party who initiates and prevails in an action
3 authorized by this section shall be entitled to damages, including punitive
4 damages, and in the discretion of the court to an award of the cost of the
5 litigation, and a reasonable attorney's fee in an amount to be fixed by the
6 court.

7 (c) This section shall not apply to speech or conduct protected by the
8 First Amendment of the United States Constitution or Article 2, § 6, of the
9 Arkansas Constitution.

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11 SECTION 3. Arkansas Code § 16-123-106 is amended to read as follows:
12 16-123-107. Discrimination offenses.

13 (a) The right of an otherwise qualified person to be free from
14 discrimination because of race, religion, national origin, gender, sexual
15 orientation, or the presence of any sensory, mental, or physical disability
16 is recognized as and declared to be a civil right. This right shall include,
17 but not be limited to:

18 (1) The right to obtain and hold employment without
19 discrimination;

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

23 (3) The right to engage in property transactions without
24 discrimination;

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

27 (5) The right to vote and participate fully in the political
28 process.

29 (b) Any person who is injured by an intentional act of discrimination
30 in violation of subdivisions (a)(2)-(5) of this section shall have a civil
31 action in a court of competent jurisdiction to enjoin further violations, to
32 recover compensatory and punitive damages, and, in the discretion of the
33 court, to recover the cost of litigation and a reasonable attorney's fee.

34 (c)(1)(A) Any individual who is injured by employment discrimination
35 by an employer in violation of subdivision (a)(1) of this section shall have
36 a civil action in a court of competent jurisdiction, which may issue an order

1 prohibiting the discriminatory practices and provide affirmative relief from
2 the effects of the practices, and award back pay, interest on back pay, and,
3 in the discretion of the court, the cost of litigation and a reasonable
4 attorney's fee.

5 (B) No liability for back pay shall accrue from a date
6 more than two (2) years prior to the filing of an action.

7 (2)(A) In addition to the remedies under subdivision (c)(1)(A)
8 of this section, any individual who is injured by intentional discrimination
9 by an employer in violation of subdivision (a)(1) of this section shall be
10 entitled to recover compensatory damages and punitive damages. The total
11 compensatory and punitive damages awarded under this subdivision (c)(2)(A)
12 shall not exceed:

13 (i) The sum of fifteen thousand dollars (\$15,000) in
14 the case of an employer who employs fewer than fifteen (15) employees in each
15 of twenty (20) or more calendar weeks in the current or preceding calendar
16 year;

17 (ii) The sum of fifty thousand dollars (\$50,000) in
18 the case of an employer who employs more than fourteen (14) and fewer than
19 one hundred one (101) employees in each of twenty (20) or more calendar weeks
20 in the current or preceding calendar year;

21 (iii) The sum of one hundred thousand dollars
22 (\$100,000) in the case of an employer who employs more than one hundred (100)
23 and fewer than two hundred one (201) employees in each of twenty (20) or more
24 calendar weeks in the current or preceding calendar year;

25 (iv) The sum of two hundred thousand dollars
26 (\$200,000) in the case of an employer who employs more than two hundred (200)
27 and fewer than five hundred one (501) employees in each of twenty (20) or
28 more calendar weeks in the current or preceding calendar year; and

29 (v) The sum of three hundred thousand dollars
30 (\$300,000) in the case of an employer who employs more than five hundred
31 (500) employees in each of twenty (20) or more calendar weeks in the current
32 or preceding calendar year.

33 (3) Any action based on employment discrimination in violation
34 of subdivision (a)(1) of this section shall be brought within one (1) year
35 *after the alleged employment discrimination occurred, or within ninety (90)*
36 *days of receipt of a "Right to Sue" letter or a notice of "Determination"*

1 from the United States Equal Employment Opportunity Commission concerning the
2 alleged unlawful employment practice, whichever is later.

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/s/ L. Smith