

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

A Bill

HOUSE BILL 1352

5 By: Representative Tyler
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE CIVIL RIGHTS ACT OF 1993; AND FOR
9 OTHER PURPOSES.

Subtitle

12 TO AMEND THE CIVIL RIGHTS ACT OF 1993.
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16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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18 SECTION 1. Arkansas Code § 16-123-102 is amended to read as follows:
19 16-123-102. Definitions.

20 For the purposes of this subchapter:

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

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

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

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

30 (B) Current use of illegal drugs or psychoactive substance
31 use disorders resulting from illegal use of drugs; or

32 (C) Alcoholism;

33 (4) "Employee" does not include:

34 (A) Any individual employed by his or her parents, spouse,
35 or child;

36 (B) An individual participating in a specialized



1 employment training program conducted by a nonprofit sheltered workshop or
 2 rehabilitation facility; or

3 (C) An individual employed outside the State of Arkansas;

4 (5) "Employer" means a person or entity who employs nine (9) or
 5 more employees in the State of Arkansas in each of twenty (20) or more
 6 calendar weeks in the current or preceding calendar year, ~~or any agent of~~
 7 ~~such person;~~

8 (6) "National origin" includes ancestry;

9 (7) "Person" means an individual human being;

10 ~~(7)(8)~~ "Place of public resort, accommodation, assemblage, or
 11 amusement" means any place, store, or other establishment, either licensed or
 12 unlicensed, that supplies accommodations, goods, or services to the general
 13 public, or that solicits or accepts the patronage or trade of the general
 14 public, or that is supported directly or indirectly by government funds, but
 15 "place of public resort, accommodation, assemblage, or amusement" does not
 16 include:

17 (A) Any lodging establishment ~~which that~~ contains not more
 18 than five (5) rooms for rent and ~~which that~~ is actually occupied by the
 19 proprietor of ~~such the~~ establishment as a residence; or

20 (B) Any private club or other establishment not in fact
 21 open to the public; and

22 ~~(8)(9)~~ "Religion" means all aspects of religious belief,
 23 observance, and practice.

24
 25 SECTION 2. Arkansas Code § 16-123-103 is amended to add a new
 26 subsection to read as follows:

27 (f)(1) All employment-related claims under this subchapter must be
 28 brought under § 16-123-107 and may be brought only against an employer.

29 (2) The following persons may not be sued individually under
 30 this section:

31 (A) An agent of a business entity;

32 (B) An employee of a business entity;

33 (C) An officer of a business entity, unless the officer
 34 retains an ownership interest in and participates in direct management of the
 35 business entity; or

36 (D) A member of a corporate board of directors, unless the

1 member retains an ownership interest in and participates in the direct
2 management of the business entity.

3
4 SECTION 3. Arkansas Code § 16-123-107 is amended to read as follows:
5 16-123-107. Discrimination offenses.

6 (a) The right of an otherwise qualified person to be free from
7 discrimination because of race, religion, national origin, gender, or the
8 presence of any sensory, mental, or physical disability is recognized as and
9 declared to be a civil right. This right shall include, but not be limited
10 to:

11 (1) The right to obtain and hold employment without
12 discrimination and without retaliation against any employee because the
13 employee in good faith has opposed any act or practice made unlawful by this
14 section;

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

18 (3) The right to engage in property transactions without
19 discrimination;

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

22 (5) The right to vote and participate fully in the political
23 process.

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

29 (c)(1)(A) Any individual who is injured by employment discrimination
30 or retaliation for opposing any act or practice made unlawful by this section
31 by an employer in violation of subdivision (a)(1) of this section shall have
32 a civil action in a court of competent jurisdiction, which may issue an order
33 prohibiting the discriminatory practices and provide affirmative relief from
34 the effects of the practices, and award back pay, interest on back pay, and,
35 in the discretion of the court, the cost of litigation and a reasonable
36 attorney's fee.

1 (B) ~~No liability~~ Liability for back pay shall not accrue
2 from a date more than two (2) years ~~prior to~~ before the filing of an action.

3 (2)~~(A)~~ In addition to the remedies under subdivision (c)(1)(A)
4 of this section, any individual who is injured by intentional discrimination
5 or retaliation for opposing any act or practice made unlawful by this section
6 by an employer in violation of subdivision (a)(1) of this section shall be
7 entitled to recover compensatory damages and punitive damages. The total
8 compensatory and punitive damages awarded under this subdivision ~~(e)(2)(A)~~
9 shall not exceed:

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

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

18 ~~(iii)(C)~~ (C) The sum of one hundred thousand dollars
19 (\$100,000) in the case of an employer who employs more than one hundred (100)
20 and fewer than two hundred one (201) employees in each of twenty (20) or more
21 calendar weeks in the current or preceding calendar year;

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

26 ~~(v)(E)~~ (E) The sum of three hundred thousand dollars
27 (\$300,000) in the case of an employer who employs more than five hundred
28 (500) employees in each of twenty (20) or more calendar weeks in the current
29 or preceding calendar year.

30 (3) Any action based on employment discrimination or retaliation
31 for opposing any act or practice made unlawful by this section in violation
32 of subdivision (a)(1) of this section shall be brought within one (1) year
33 after the alleged employment discrimination occurred, or within ninety (90)
34 days of receipt of a "Right to Sue" letter or a notice of "Determination"
35 from the United States Equal Employment Opportunity Commission concerning the
36 alleged unlawful employment practice, whichever is later.

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SECTION 4. Arkansas Code 16-123-108 is amended to read as follows:
16-123-108. Retaliation – Interference – Remedies.

(a) Retaliation. ~~No~~ A person shall not discriminate against ~~any~~ an individual because ~~such~~ the individual in good faith has opposed any act or practice made unlawful by this subchapter or because ~~such~~ the individual in good faith made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) Interference, Coercion, or Intimidation. It shall be unlawful to coerce, intimidate, threaten, or interfere with ~~any~~ an individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this subchapter.

(c)(1) Remedies and Procedures. The remedies and procedures available in § 16-123-107(b) shall be available to aggrieved persons for violations of subsections (a) and (b) of this section.

(2) The remedies and procedures available in § 16-123-107(c) shall be available to aggrieved employees or former employees for violations of subsections (a) and (b) of this section.