

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

As Engrossed: H3/8/11
A Bill

HOUSE BILL 1352

5 By: Representative Tyler
6

7 **For An Act To Be Entitled**

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

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11
12 **Subtitle**

13 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) "Entity" means a business, governmental, or nonprofit
9 organization;

10 ~~(6)(7)~~ "National origin" includes ancestry;

11 (8) "Person" means an individual human being;

12 ~~(7)(9)~~ "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 that~~ contains not more
20 than five (5) rooms for rent and ~~which that~~ is actually occupied by the
21 proprietor of ~~such the~~ establishment as a residence; or

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

24 ~~(8)(10)~~ "Religion" means all aspects of religious belief,
25 observance, and practice.

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

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

31 (2) The following persons may not be sued individually under
32 this section:

33 (A) An agent of a covered entity;

34 (B) An employee of a covered entity;

35 (C) An officer of a covered entity, unless the officer

1 retains an ownership interest in and participates in direct management of the
2 covered entity and was a decision maker in the employment action being
3 challenged; or

4 (D) A member of a covered board of directors, unless the
5 member retains an ownership interest in and participates in the direct
6 management of the covered entity and was a decision maker in the employment
7 action being challenged.

8
9 SECTION 3. Arkansas Code § 16-123-105 is amended to read as follows
10 16-123-105. Civil rights offenses.

11 (a) Every person who, under color of any statute, ordinance,
12 regulation, custom, or usage of this state or any of its political
13 subdivisions subjects, or causes to be subjected, any person or entity within
14 the jurisdiction thereof to the deprivation of any rights, privileges, or
15 immunities secured by the Arkansas Constitution shall be liable to the party
16 injured in an action in circuit court for legal and equitable relief or other
17 proper redress.

18 (b) In the discretion of the court, a party held liable under this
19 section shall ~~also~~ pay the injured party's cost of litigation and a
20 reasonable attorney's fee in an amount to be fixed by the court.

21 (c) When construing this section, a court may look for guidance to
22 state and federal decisions interpreting the federal Civil Rights Act of
23 1871, as amended and codified in 42 U.S.C. § 1983, as in effect on January 1,
24 1993, which decisions and act shall have persuasive authority only.

25
26 SECTION 4. Arkansas Code § 16-123-107 is amended to read as follows:
27 16-123-107. Discrimination offenses.

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

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

1 (2) 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 (3) The right to engage in property transactions without
5 discrimination;

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

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

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

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

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

25 (2)~~(A)~~ In addition to the remedies under subdivision (c)(1)(A)
26 of this section, any individual who is injured by intentional discrimination
27 or retaliation for opposing any act or practice made unlawful by this section
28 by an employer in violation of subdivision (a)(1) of this section shall be
29 entitled to recover compensatory damages and punitive damages. The total
30 compensatory and punitive damages awarded under this subdivision ~~(e)(2)(A)~~
31 shall not exceed:

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

36 ~~(ii)(B)~~ (B) The sum of fifty thousand dollars (\$50,000) in the

1 case of an employer who employs more than fourteen (14) and fewer than one
2 hundred one (101) employees in each of twenty (20) or more calendar weeks in
3 the current or preceding calendar year;

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

8 ~~(iv)~~(D) The sum of two hundred thousand dollars (\$200,000)
9 in the case of an employer who employs more than two hundred (200) and 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; and

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

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

23
24 *SECTION 5.* Arkansas Code 16-123-108 is amended to read as follows:
25 16-123-108. Retaliation – Interference – Remedies.

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

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

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

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

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8 /s/Tyler
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