

Arkansas Civil Rights Act of 1993
§§16-123-101 et seq.

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16-123-101. Title.

This subchapter shall be referred to as the "Arkansas Civil Rights Act of 1993".

HISTORY: Acts 1993, No. 962, § 1.

16-123-102. Definitions.

For the purposes of this subchapter:

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

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

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

(A) Compulsive gambling, kleptomania, or pyromania;

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

(C) Alcoholism;

(4) "Employee" does not include:

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

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

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

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

(6) "National origin" includes ancestry;

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

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

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

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

16-123-103. Applicability.

(a) The provisions of this subchapter relating to employment shall not be applicable with respect to employment by a religious corporation, association, society, or other religious entity.

(b) It shall not constitute employment discrimination under this subchapter for an employer to refuse to accommodate the religious observance or practice of an employee or prospective employee if the employer demonstrates that he is unable to reasonably make such accommodation without undue hardship on the conduct of the employer's business.

(c) A defendant may avoid liability under this subchapter by showing that his or her actions were based on legitimate, nondiscriminatory factors and not on unjustified reasons.

(d) Provided the conduct at issue is based on a bona fide business judgment and is not a pretext for prohibited discrimination, nothing in this subchapter shall be construed to prohibit or restrict:

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

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

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

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

16-123-104. Construction.

Nothing in this subchapter shall be construed to waive the sovereign immunity of the State of Arkansas.

16-123-105. Civil rights offenses.

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

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

(c) When construing this section, a court may look for guidance to state and federal decisions interpreting the federal Civil Rights Act of 1871, as amended and codified in 42

U.S.C. § 1983, as in effect on January 1, 1993, which decisions and act shall have persuasive authority only.

16-123-106. Hate offenses.

(a) An action for injunctive relief or civil damages, or both, shall lie for any person who is subjected to acts of:

- (1) Intimidation or harassment; or
- (2) Violence directed against his person; or
- (3) Vandalism directed against his real or personal property,

where such acts are motivated by racial, religious, or ethnic animosity.

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

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

16-123-107. Discrimination offenses.

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

- (1) The right to obtain and hold employment without discrimination;
- (2) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;
- (3) The right to engage in property transactions without discrimination;
- (4) The right to engage in credit and other contractual transactions without discrimination; and
- (5) The right to vote and participate fully in the political process.

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

attorney's fee.

(c) (1) (A) Any individual who is injured by employment discrimination by an employer in violation of subdivision (a)(1) of this section shall have a civil action in a court of competent jurisdiction, which may issue an order prohibiting the discriminatory practices and provide affirmative relief from the effects of the practices, and award back pay, interest on back pay, and, in the discretion of the court, the cost of litigation and a reasonable attorney's fee.

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

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

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

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

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

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

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

(3) Any action based on employment discrimination in violation of subdivision (a)(1) of this section shall be brought within one (1) year after the alleged employment discrimination occurred, or within ninety (90) days of receipt of a "Right to Sue" letter or a notice of "Determination" from the United States Equal Employment Opportunity Commission concerning the alleged unlawful employment practice, whichever is later.

16-123-108. Retaliation -- Interference -- Remedies.

(a) Retaliation. No person shall discriminate against any individual because such individual in good faith has opposed any act or practice made unlawful by this subchapter or because such 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 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) 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.