

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Second Extraordinary Session, 2021

A Bill

SENATE BILL 12

By: Senators T. Garner, B. Ballinger, Beckham, Hester, M. Johnson, Rapert
By: Representatives Lowery, Miller, Pilkington

For An Act To Be Entitled

AN ACT CONCERNING THE PROPAGATION OF DIVISIVE CONCEPTS; TO PROHIBIT THE PROPAGATION OF DIVISIVE CONCEPTS IN CERTAIN PUBLIC ENTITIES, INCLUDING WITHOUT LIMITATION PUBLIC SCHOOLS AND EDUCATION SERVICE COOPERATIVES; TO PROVIDE FOR A PENALTY FOR VIOLATING THE LAW CONCERNING THE PROPAGATION OF DIVISIVE CONCEPTS; TO ALLOW THE ARKANSAS STATE CLAIMS COMMISSION TO HAVE JURISDICTION OVER CLAIMS OF VIOLATIONS OF THE LAW PROHIBITING THE PROPAGATION OF DIVISIVE CONCEPTS; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO PROHIBIT THE PROPAGATION OF DIVISIVE CONCEPTS IN CERTAIN PUBLIC ENTITIES; TO PROVIDE FOR A PENALTY FOR VIOLATING THE LAW CONCERNING THE PROPAGATION OF DIVISIVE CONCEPTS; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. Arkansas Code § 25-1-901(1)(A), concerning the definitions used in relation to the prohibition on the propagation of divisive concepts, is amended to read as follows:

(1)(A) "Divisive concept" means the concept that:



- (i) One race or sex is inherently superior to another race or sex;
- (ii) The State of Arkansas or the United States is fundamentally racist or sexist;
- (iii) An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
- (iv) An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex;
- (v) An individual's moral character is necessarily determined by his or her race or sex;
- (vi) An individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex; or
- ~~(vii) Any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex; or~~
- ~~(viii) Meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race.~~

SECTION 2. Arkansas Code § 25-1-901(4), concerning the definitions used in relation to the prohibition on the propagation of divisive concepts, is amended to read as follows:

(4)(A) "State entity" means an instrumentality or subdivision of state government, including:

- (i) The Department of Agriculture;
- (ii) The Department of Commerce;
- (iii) The Department of Corrections;
- (iv) The Department of Education;
- (v) The Department of Energy and Environment;
- (vi) The Department of Finance and Administration;
- (vii) The Department of Health;
- (viii) The Department of Human Services;
- (ix) The Department of Inspector General;

(x) The Department of Labor and Licensing;
 (xi) The Department of the Military;
 (xii) The Department of Parks, Heritage, and
 Tourism;
 (xiii) The Department of Public Safety;
 (xiv) The Department of Transformation and Shared
 Services; ~~and~~
 (xv) The Department of Veterans Affairs;
(xvi) A public school;
(xvii) An open-enrollment public charter school; and
(xviii) An education service cooperative established
under § 6-13-1002.

(B) "State entity" does not include:
 (i) Political subdivisions of the state;
 (ii) ~~Public schools;~~
~~(iii) Charter schools;~~
~~(iv) Institutions of higher education;~~
~~(v)(iii) The offices of constitutional officers; or~~
~~(vi)(iv) Law enforcement training certified by the~~
 Arkansas Commission on Law Enforcement Standards and Training.

SECTION 3. Arkansas Code Title 25, Chapter 1, Subchapter 9, is amended to add an additional section to read as follows:

25-1-907. Cause of action – Penalty.

(a)(1) Any individual may bring a claim or action before the Arkansas State Claims Commission against a state entity that violates this subchapter.

(2) A claim or action brought under this section shall be filed with the commission within one (1) year from the date of the violation.

(b)(1) A state entity that is determined under a final order of the commission to have violated this subchapter is subject to a penalty of ten thousand dollars (\$10,000) for each day of each violation of the subchapter.

(2) A penalty under this section shall be paid to the Director of the Arkansas State Claims Commission and credited to the Division of Elementary and Secondary Education Fund Account to be used exclusively for the Succeed Scholarship Program, § 6-41-901 et seq.

(c) An individual who brings a claim or action under this section that

is determined to be a valid claim or action shall be awarded his or her attorney's fees, witness fees, and any other costs or fees incurred directly in bring the claim or action before the commission.

SECTION 4. Arkansas Code § 19-5-304(1)(B), concerning the Division of Elementary and Secondary Education Fund Account, is amended to read as follows:

(B) The Division of Elementary and Secondary Education Fund Account shall consist of:

(i) Those general revenues as may be provided by the Revenue Stabilization Law, § 19-5-101 et seq.; ~~and~~

(ii) Nonrevenue income derived from services provided by those programs supported from the Division of Elementary and Secondary Education Fund Account, including any rental property located on the State Capitol grounds owned by the Division of Elementary and Secondary Education; and

(iii) Revenues from penalties under § 25-1-907;

SECTION 5. Arkansas Code § 19-10-204(a), concerning the claims and actions over which the Arkansas State Claims Commission has jurisdiction, is amended to add an additional subdivision to read as follows:

(5) A claim or action under § 25-1-907.

SECTION 6. Arkansas Code § 19-10-204(b)(1), concerning the claims and actions over which the Arkansas State Claims Commission does not have jurisdiction, is amended to read as follows:

(1) Against a municipality, county, school district, or any other political subdivision of the state, except as provided under subdivision (a)(5) of this section;

SECTION 7. Arkansas Code § 19-10-213(a), concerning payment by a state agency of a claim or action determined to be valid by the Arkansas State Claims Commission, is amended to read as follows:

(a)(1) When a claim or action is determined to be a valid claim or action ~~against the state~~ under this chapter and the claim or action is to be paid from funds not in the State Treasury, the Director of the Arkansas State

Claims Commission shall notify the state agency or other public entity against which the claim or action is to be charged of the amount of the claim or action.

(2)(A) Upon receipt of the notification under subdivision (a)(1) of this section, the state agency or other public entity shall deliver a check to the director who shall deposit the funds as a nonrevenue receipt into the Miscellaneous Revolving Fund from which the director shall disburse the amount of the claim or action to the claimant.

(B) For a claim or action under § 25-1-907, the director shall disburse any:

(i) Attorney's fees, witness fees, and other costs or fees awarded by the Arkansas State Claims Commission to the claimant; and

(ii) Penalty amounts to the Division of Elementary and Secondary Education Fund Account.

SECTION 8. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the effective date for Acts 2021, No. 1100, concerning the prohibition against state entities propagating divisive concepts, is January 1, 2022; that this act extends the prohibition against propagating divisive concepts to public schools, open-enrollment public charter schools, and education service cooperatives; that the second semester of the 2021-2022 school year for elementary and secondary schools begins in January 2022; that the law prohibiting the propagation of divisive concepts should become effective for all entities subject to the law at the same time; and that this act is necessary because the propagation of divisive concepts in schools is harming children in the state and the propagation of divisive concepts in state entities is having a negative effect on recruiting staff for state agencies. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on January 1, 2022.