

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 2300

BY: ROSS

AS INTRODUCED

AN ACT RELATING TO DISCRIMINATION AND EXCESSIVE FORCE; AMENDING 25 O.S. 1991, SECTION 1901, WHICH RELATES TO HANDICAP DISCRIMINATION; AUTHORIZING ADDITIONAL CATEGORIES OF PERSONS AND THE OKLAHOMA HUMAN RIGHTS COMMISSION TO PURSUE CERTAIN CIVIL ACTIONS IN DISTRICT COURT; PROVIDING FOR JURY TRIALS; AUTHORIZING CERTAIN DAMAGES; PROVIDING FOR ATTORNEY FEES; PROVIDING FOR STATUTE OF LIMITATIONS ON SUCH ACTIONS; PROVIDING SANCTIONS FOR PEACE OFFICERS USING EXCESSIVE FORCE; DEFINING TERM; REQUIRING THE ADOPTION OF CERTAIN POLICIES AND GUIDELINES; REQUIRING PEACE OFFICERS TO REPORT INCIDENTS OF EXCESSIVE FORCE; SPECIFYING SUCH REPORT; PROVIDING PENALTIES FOR FAILURE TO REPORT OR MAKING MATERIALLY FALSE STATEMENTS; PROHIBITING CERTAIN USES OF SUCH REPORT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 25 O.S. 1991, Section 1901, is amended to read as follows:

Section 1901. A. If a charge for discrimination in employment on the basis of race, color, religion, sex, national origin, age, or handicap is filed under the provisions of Sections 1101 through 1801 of ~~Title 25 of the Oklahoma Statutes~~ this title and is not resolved to the satisfaction of the charging party within one hundred eighty (180) days from the filing of such charge, the charging party may commence an action for redress against any person who is alleged to have discriminated against the charging party and against any person named as respondent in the charge, such action to be commenced in the district court of this state for the county in which the unlawful employment practice is alleged to have been committed. Upon request of the charging party, the Oklahoma Human Rights Commission shall commence the action in district court pursuant to this section for redress of such grievances on behalf of the charging party.

B. Either party in any such action shall be entitled to a jury trial of any facts in dispute in the action.

C. If it is determined in such action that the defendant or defendants in such action have discriminated against the charging party on the basis of race, color, religion, sex, national origin, age or handicap as charged in the petition, the aggrieved party shall be entitled to nominal or actual damages. Actual damages shall include, but are not limited to, reinstatement or hiring, with or without back pay, or any other legal or equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two (2) years prior to the filing of the charge with the Oklahoma Human Rights Commission. Interim earnings or amounts earnable with reasonable diligence by the person discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the hiring or reinstatement or

promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused employment or advancement or was suspended or discharged for legitimate reasons other than discrimination on account of race, color, religion, sex, national origin, age, or handicap.

D. In any action or proceeding under this section the court shall allow a prevailing party a reasonable attorneys fee.

E. No action shall be maintainable in district court as herein provided more than two (2) years after a timely filing of a charge with the Oklahoma Human Rights Commission.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 34.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Any peace officer, as defined in Section 648 of Title 21 of the Oklahoma Statutes, who uses excessive force in pursuance of such officer's law enforcement duties shall be subject to the criminal laws of this state to the same degree as any other citizen.

B. As used in this act, "excessive force" means physical force which exceeds the degree of physical force permitted by law or the policies and guidelines of the law enforcement entity. The use of excessive force shall be presumed when a peace officer continues to apply physical force in excess of the force permitted by law or said policies and guidelines to a person who has been rendered incapable of resisting arrest.

C. Each law enforcement entity which employs any peace officer shall adopt policies or guidelines concerning the use of force by peace officers which shall be complied with by peace officers in carrying out the duties of such officers within the jurisdiction of the law enforcement entity.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 34.2 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Any peace officer who, in pursuance of such officer's law enforcement duties, witnesses another peace officer, in pursuance of such other peace officer's law enforcement duties in carrying out an arrest of any person, placing any person under detention, taking any person into custody, booking any person, or in the process of crowd control or riot control, use physical force which exceeds the degree of physical force permitted by law or by the policies and guidelines of the law enforcement entity shall report such use of excessive force to such officer's immediate supervisor.

B. At a minimum, the report required by this section shall include:

1. The date, time, and place of the occurrence;
2. The identity, if known, and description of the participants;
3. A description of the events and the force used; and
4. Whether such excessive force appeared to be racially or ethnically motivated.

C. A copy of an arrest report or other similar report required as a part of a peace officer's duties can be substituted for the report required by this section, as long as it includes the information specified in subsection B of this section. The report shall be made in writing within ten (10) days of the occurrence of the use of such force.

D. Any peace officer who fails to report such use of excessive force in the manner prescribed in this section, or who knowingly makes a materially false statement which the officer does not believe to be true in any report made pursuant to this section, upon conviction, shall be guilty of a misdemeanor.

E. No report filed pursuant to this section shall be used as evidence against a peace officer in a criminal proceeding without a valid court order unless there is other credible evidence which corroborates such report.

SECTION 4. This act shall become effective July 1, 1992.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-2-7775

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