

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SENATE BILL 1232

AN ACT

AMENDING SECTIONS 32-2422, 32-2441, 32-2612 AND 32-2622, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 9, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 41-1404 AND 41-1405; AMENDING SECTIONS 41-1461 AND 41-1463, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 9, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1468; AMENDING SECTIONS 41-1491, 41-1492 AND 41-1492.02, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 9, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1492.12; RELATING TO DISCRIMINATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-2422, Arizona Revised Statutes, is amended to
3 read:

4 32-2422. Qualification of applicant for agency license:
5 substantiation of work experience

6 A. An applicant as a qualifying party for an agency license under this
7 chapter shall:

8 1. Be at least twenty-one years of age.

9 2. Be a citizen or legal resident of the United States who is
10 authorized to seek employment in the United States.

11 3. Not have been convicted of any felony or currently be under
12 indictment for a felony.

13 4. Within the five years immediately preceding the application for an
14 agency license, not have been convicted of any misdemeanor act involving:

15 (a) Personal violence or force against another person or threatening
16 to commit any act of personal violence or force against another person.

17 (b) Misconduct involving a deadly weapon as provided in section
18 13-3102.

19 (c) Dishonesty or fraud.

20 (d) Arson.

21 (e) Theft.

22 (f) Domestic violence.

23 (g) A violation of title 13, chapter 34 or 34.1 or an offense that has
24 the same elements as an offense listed in title 13, chapter 34 or 34.1.

25 (h) Sexual misconduct.

26 5. Not be on parole, on community supervision, on work furlough, on
27 home arrest, on release on any other basis or named in an outstanding arrest
28 warrant.

29 6. Not be serving a term of probation pursuant to a conviction for any
30 act of personal violence or domestic violence, as defined in section 13-3601,
31 or an offense that has the same elements as an offense listed in section
32 13-3601.

33 7. Not be either of the following:

34 (a) Adjudicated mentally incompetent.

35 (b) Found to constitute a danger to self or others pursuant to section
36 36-540.

37 8. Not have a disability as defined in section 41-1461, unless that
38 person is a qualified individual ~~with a disability~~ as defined in section
39 41-1461.

40 9. Not have been convicted of acting or attempting to act as a private
41 investigation agency or a private investigator without a license if a license
42 was required.

43 10. Have had a minimum of three years of full-time investigative
44 experience or the equivalent of three years of full-time investigative
45 experience that consists of actual work performed as an investigator for a

1 private concern, for the federal government or for a state, county or
2 municipal government.

3 B. If the applicant for an agency license is a firm, partnership,
4 association or corporation, the qualifications required by subsection A OF
5 THIS SECTION are required of the individual in active management who shall be
6 the qualifying party of the firm, partnership, association or corporation.

7 C. Applicants for an agency license shall substantiate investigative
8 work experience claimed as years of qualifying experience and provide the
9 exact details as to the character and nature of the experience on a form
10 prescribed by the department and certified by the employers. On written
11 request, an employer shall submit to the employee a written certification of
12 prior work experience within thirty days. The written certification is
13 subject to independent verification by the director. If an employer goes out
14 of business, the employer shall provide all employees with a complete and
15 accurate record of their work history. If applicants are unable to supply
16 written certification from an employer in whole or in part, applicants may
17 offer written certification from persons other than an employer covering the
18 same subject matter for consideration by the department. The burden of
19 proving the minimum years of experience is on the applicant.

20 D. The department may deny an agency license if the department
21 determines that the applicant does not meet the requirements of this section.

22 Sec. 2. Section 32-2441, Arizona Revised Statutes, is amended to read:
23 32-2441. Qualification of applicant for associate or employee
24 registration

25 An applicant for an associate or employee registration certificate
26 shall:

- 27 1. Be at least eighteen years of age.
- 28 2. Be a citizen or legal resident of the United States who is
29 authorized to seek employment in the United States.
- 30 3. Not have been convicted of any felony or currently be under
31 indictment for a felony.
- 32 4. Within the five years immediately preceding the application for an
33 associate or employee registration certificate, not have been convicted of
34 any misdemeanor act involving:
 - 35 (a) Personal violence or force against another person or threatening
36 to commit any act of personal violence or force against another person.
 - 37 (b) Misconduct involving a deadly weapon as provided in section
38 13-3102.
 - 39 (c) Dishonesty or fraud.
 - 40 (d) Arson.
 - 41 (e) Theft.
 - 42 (f) Domestic violence.
 - 43 (g) A violation of title 13, chapter 34 or 34.1 or an offense that has
44 the same elements as an offense listed in title 13, chapter 34 or 34.1.
 - 45 (h) Sexual misconduct.

1 or an offense that has the same elements as an offense listed in section
2 13-3601.

3 7. Not be either of the following:

4 (a) Adjudicated mentally incompetent.

5 (b) Found to constitute a danger to self or others or to be
6 persistently or acutely disabled or gravely disabled pursuant to section
7 36-540.

8 8. Not have a disability as defined in section 41-1461, unless that
9 person is a qualified individual ~~with a disability~~ as defined in section
10 41-1461.

11 9. Not have been convicted of acting or attempting to act as a
12 security guard or a security guard agency without a license if a license was
13 required.

14 B. The qualifying party for an agency license and the resident
15 manager, if a resident manager is required pursuant to section 32-2616, shall
16 have at least three years of full-time experience as a manager, supervisor or
17 administrator of a security guard agency or three years of full-time
18 supervisory experience with any federal, United States military, state,
19 county or municipal law enforcement agency. The qualifying party for an
20 agency license and the resident manager, if a resident manager is required
21 pursuant to section 32-2616, must substantiate managerial work experience
22 claimed as years of qualifying experience and provide the exact details as to
23 the character and nature of the experience on a form prescribed by the
24 department and certified by the employer. On written request, an employer
25 shall submit to the employee a written certification of prior work experience
26 within thirty calendar days. The written certification is subject to
27 independent verification by the department. If an employer goes out of
28 business, the employer shall provide registered employees with a complete and
29 accurate record of their work history. If an applicant is unable to supply
30 written certification from an employer in whole or in part, the applicant may
31 offer written certification from persons other than an employer covering the
32 same subject matter for consideration by the department. The burden of
33 proving the minimum years of experience is on the applicant.

34 C. The department may deny an agency license if the department
35 determines that the applicant is unfit based on a conviction, citation or
36 encounter with law enforcement for a statutory violation.

37 Sec. 4. Section 32-2622, Arizona Revised Statutes, is amended to read:

38 32-2622. Qualifications of applicant for associate, security
39 guard or armed security guard registration
40 certificate

41 A. An applicant for an associate or a security guard registration
42 certificate issued pursuant to this article shall:

43 1. Be at least eighteen years of age.

44 2. Be a citizen or legal resident of the United States who is
45 authorized to seek employment in the United States.

- 1 3. Not have been convicted of any felony or currently be under
2 indictment for a felony.
- 3 4. Within the five years immediately preceding the application for an
4 associate, security guard or armed security guard registration certificate,
5 not have been convicted of any misdemeanor act involving:
- 6 (a) Personal violence or force against another person or threatening
7 to commit any act of personal violence or force against another person.
- 8 (b) Misconduct involving a deadly weapon as provided in section
9 13-3102.
- 10 (c) Dishonesty or fraud.
- 11 (d) Arson.
- 12 (e) Theft.
- 13 (f) Domestic violence.
- 14 (g) A violation of title 13, chapter 34 or 34.1 or an offense that has
15 the same elements as an offense listed in title 13, chapter 34 or 34.1.
- 16 (h) Sexual misconduct.
- 17 5. Not be on parole, on community supervision, on work furlough, on
18 home arrest, on release on any other basis or named in an outstanding arrest
19 warrant.
- 20 6. Not be serving a term of probation pursuant to a conviction for any
21 act of personal violence or domestic violence, as defined in section 13-3601,
22 or an offense that has the same elements as an offense listed in section
23 13-3601.
- 24 7. Not be either of the following:
- 25 (a) Adjudicated mentally incompetent.
- 26 (b) Found to constitute a danger to self or others pursuant to section
27 36-540.
- 28 8. Not have a disability as defined in section 41-1461, unless that
29 person is a qualified individual ~~with a disability~~ as defined in section
30 41-1461.
- 31 9. Not have been convicted of acting or attempting to act as an
32 associate security guard or armed security guard without a license if a
33 license was required.
- 34 B. An applicant for an armed security guard registration certificate
35 issued pursuant to this chapter shall:
- 36 1. Meet the requirements of subsection A of this section.
- 37 2. Successfully complete all background screening and training
38 requirements.
- 39 3. Not be a prohibited possessor as defined in section 13-3101 or as
40 described in 18 United States Code section 922.
- 41 4. Not have been discharged from the armed services of the United
42 States under other than honorable conditions.
- 43 5. Not have been convicted of any crime involving domestic violence as
44 defined in section 13-3601.

1 (b) Does not include an elected public official of this state or any
2 political subdivision of this state, any person chosen by an elected official
3 to be on the elected official's personal staff, an appointee on the
4 policymaking level or an immediate adviser with respect to the exercise of
5 the constitutional or legal powers of the office, unless the person or
6 appointee is subject to the civil service laws of this state or any political
7 subdivision of this state.

8 ~~4.~~ 6. "Employer":

9 (a) Means a person who has fifteen or more employees for each working
10 day in each of twenty or more calendar weeks in the current or preceding
11 calendar year, and any agent of that person, except that to the extent that
12 any person is alleged to have committed any act of sexual harassment,
13 employer means, for purposes of administrative and civil actions regarding
14 those allegations of sexual harassment, a person who has one or more
15 employees in the current or preceding calendar year.

16 (b) Does not include either:

17 (i) The United States or any department or agency of the United
18 States, a corporation wholly owned by the government of the United States or
19 an Indian tribe.

20 (ii) A bona fide private membership club, other than a labor
21 organization, that is exempt from taxation under section 501(c) of the
22 internal revenue code of 1954.

23 ~~5.~~ 7. "Employment agency" means any person regularly undertaking with
24 or without compensation to procure employees for an employer or to procure
25 for employees opportunities to work for an employer and includes an agent of
26 that person.

27 ~~6.~~ 8. "Labor organization":

28 (a) Means a labor organization and any agent of a labor organization.

29 (b) Includes:

30 (i) Any organization of any kind, any agency or employee
31 representation committee, group, association or plan in which fifteen or more
32 employees participate and that exists for the purpose, in whole or in part,
33 of dealing with employers concerning grievances, labor disputes, wages, rates
34 of pay, hours or other terms or conditions of employment.

35 (ii) Any conference, general committee, joint or system board or joint
36 council that is subordinate to a national or international labor
37 organization.

38 9. "MAJOR LIFE ACTIVITIES" INCLUDES:

39 (a) CARING FOR ONESELF, PERFORMING MANUAL TASKS, SEEING, HEARING,
40 EATING, SLEEPING, WALKING, STANDING, LIFTING, BENDING, SPEAKING, BREATHING,
41 LEARNING, READING, CONCENTRATING, THINKING, COMMUNICATING AND WORKING.

42 (b) THE OPERATION OF A MAJOR BODILY FUNCTION, INCLUDING FUNCTIONS OF
43 THE IMMUNE SYSTEM, NORMAL CELL GROWTH AND DIGESTIVE, BOWEL, BLADDER,
44 NEUROLOGICAL, BRAIN, RESPIRATORY, CIRCULATORY, ENDOCRINE AND REPRODUCTIVE
45 FUNCTIONS.

1 ~~7-~~ 10. "Person" means one or more individuals, governmental agencies,
2 political subdivisions, labor unions, partnerships, associations,
3 corporations, legal representatives, mutual companies, joint-stock companies,
4 trusts, unincorporated organizations, trustees, trustees in bankruptcy or
5 receivers.

6 ~~8-~~ 11. "Qualified individual ~~with a disability~~" means a person with a
7 disability who, with or without reasonable accommodation, is capable of
8 performing the essential functions of the employment position that the
9 individual holds or desires.

10 ~~9-~~ 12. "Reasonable accommodation" includes:

11 (a) Making existing facilities used by employees readily accessible to
12 and usable by individuals with disabilities.

13 (b) Job restructuring, part-time or modified work schedules,
14 reassignment to a vacant position, acquisition or modification of equipment
15 or devices, appropriate adjustment or modification of examinations, training
16 materials or policies, the provision of qualified readers, **TAPED TEXTS OR**
17 **OTHER EFFECTIVE METHODS OF MAKING VISUALLY DELIVERED MATERIALS AVAILABLE TO**
18 **INDIVIDUALS WITH VISUAL IMPAIRMENTS, THE PROVISION OF AUXILIARY AIDS AND**
19 **SERVICES** or interpreters and other similar ~~accommodations~~ **SERVICES AND**
20 **ACTIONS** for individuals with disabilities.

21 ~~10-~~ 13. "Religion" means all aspects of religious observance and
22 practice, as well as belief. Unlawful practices as prohibited by this
23 article include practices with respect to religion unless an employer
24 demonstrates that the employer is unable to reasonably accommodate to an
25 employee's or prospective employee's religious observance or practice without
26 undue hardship on the conduct of the employer's business.

27 ~~11-~~ 14. "Undue hardship":

28 (a) Means an action requiring significant difficulty or expense when
29 considered in light of the factors set forth in subdivision (b) of this
30 paragraph.

31 (b) When determining whether an accommodation would impose an undue
32 hardship on a covered entity, factors to be considered include:

33 (i) The nature and cost of the accommodations needed under this
34 article.

35 (ii) The overall financial resources of the facility or facilities
36 involved in the provision of the reasonable accommodation, the number of
37 persons employed at the facility, the effect on expenses and resources of the
38 facility and any other impact of the accommodation on the operation of the
39 facility.

40 (iii) The overall financial resources of the covered entity, the
41 overall size of the business of the covered entity with respect to the number
42 of its employees and the number, type and location of its facilities.

43 (iv) The type of operation or operations of the covered entity,
44 including the composition, structure and functions of the workforce of the
45 covered entity.

1 (v) The geographic separateness and the administrative or fiscal
2 relationship of the facility to the covered entity.

3 Sec. 7. Section 41-1463, Arizona Revised Statutes, is amended to read:
4 41-1463. Discrimination; unlawful practices; definition

5 A. Nothing contained in this article shall be interpreted to require
6 that the less qualified be preferred over the better qualified simply because
7 of race, color, religion, sex, age, ~~disability~~ or national origin **OR ON THE**
8 **BASIS OF DISABILITY**.

9 B. It is an unlawful employment practice for an employer:

10 1. To fail or refuse to hire or to discharge any individual or
11 otherwise to discriminate against any individual with respect to the
12 individual's compensation, terms, conditions or privileges of employment
13 because of the individual's race, color, religion, sex, age, ~~disability~~ or
14 national origin **OR ON THE BASIS OF DISABILITY**.

15 2. To limit, segregate or classify employees or applicants for
16 employment in any way which would deprive or tend to deprive any individual
17 of employment opportunities or otherwise adversely affect the individual's
18 status as an employee, because of the individual's race, color, religion,
19 sex, age, ~~disability~~ or national origin **OR ON THE BASIS OF DISABILITY**.

20 3. To fail or refuse to hire, to discharge, or to otherwise
21 discriminate against any individual based on the results of a genetic test
22 received by the employer, notwithstanding subsection I, paragraph 2 of this
23 section.

24 C. It is an unlawful employment practice for an employment agency to
25 fail or refuse to refer for employment or otherwise to discriminate against
26 any individual because of the individual's race, color, religion, sex,
27 age, ~~disability~~ or national origin **OR ON THE BASIS OF DISABILITY** or to
28 classify or refer for employment any individual on the basis of the
29 individual's race, color, religion, sex, age, ~~disability~~ or national origin
30 **OR ON THE BASIS OF DISABILITY**.

31 D. It is an unlawful employment practice for a labor organization:

32 1. To exclude or to expel from its membership or otherwise to
33 discriminate against any individual because of the individual's race, color,
34 religion, sex, age, ~~disability~~ or national origin **OR ON THE BASIS OF**
35 **DISABILITY**.

36 2. To limit, segregate or classify its membership or applicants for
37 membership or to classify or fail or refuse to refer for employment any
38 individual in any way which would deprive or tend to deprive the individual
39 of employment opportunities or would limit those employment opportunities or
40 otherwise adversely affect the individual's status as an employee or as an
41 applicant for employment because of the individual's race, color, religion,
42 sex, age, ~~disability~~ or national origin **OR ON THE BASIS OF DISABILITY**.

43 3. To cause or attempt to cause an employer to discriminate against an
44 individual in violation of this section.

1 E. It is an unlawful employment practice for any employer, labor
2 organization or joint labor-management committee controlling apprenticeship
3 or other training or retraining programs, including on-the-job training
4 programs, to discriminate against any individual because of the individual's
5 race, color, religion, sex, age, ~~disability~~ or national origin **OR ON THE**
6 **BASIS OF DISABILITY** in admission to or employment in any program established
7 to provide apprenticeship or other training and, if the individual is an
8 otherwise qualified individual ~~with a disability~~, to fail or refuse to
9 reasonably accommodate the individual's disability.

10 F. With respect to ~~an~~ **A QUALIFIED** individual ~~with a disability~~, it is
11 an unlawful employment practice for a covered entity to:

12 1. Participate in any contractual or other arrangement or relationship
13 that has the effect of subjecting a qualified individual ~~with a disability~~
14 who applies with or who is employed by the covered entity to unlawful
15 employment discrimination **ON THE BASIS OF DISABILITY**.

16 2. Use standards, criteria or methods of administration that have the
17 effect of discriminating on the basis of disability or that perpetuate the
18 discrimination of others who are subject to common administrative control.

19 3. Exclude or otherwise deny equal jobs or benefits to ~~a qualified~~ **AN**
20 individual **QUALIFIED FOR THE JOB OR BENEFITS** because of the known disability
21 of an individual with whom the ~~qualified~~ individual **QUALIFIED FOR THE JOB OR**
22 **BENEFITS** is known to have a relationship or association.

23 4. Not make reasonable accommodations to the known physical or mental
24 limitations of an otherwise qualified individual ~~with a disability~~ who is an
25 applicant or employee unless the covered entity can demonstrate that the
26 accommodation would impose an undue hardship on the operation of the business
27 of the covered entity **OR THE INDIVIDUAL ONLY MEETS THE DEFINITION OF**
28 **DISABILITY AS PRESCRIBED IN SECTION 41-1461, PARAGRAPH 4, SUBDIVISION (c)**.

29 5. Deny employment opportunities to a job applicant or employee who is
30 an otherwise qualified individual ~~with a disability~~ if the denial is based on
31 the need of the covered entity to make reasonable accommodation to the
32 physical or mental impairment of the applicant or employee.

33 6. Use qualification standards, employment tests or other selection
34 criteria, **INCLUDING THOSE BASED ON AN INDIVIDUAL'S UNCORRECTED VISION**, that
35 screen out or tend to screen out an individual with a disability or a class
36 of individuals with disabilities, unless the standard, test or other
37 selection criteria, as used by the covered entity, is shown to be job related
38 for the position in question and is consistent with business necessity.

39 7. Fail to select and administer tests relating to employment in the
40 most effective manner to ensure that, when the test is administered to a job
41 applicant or employee who has a disability that impairs sensory, manual or
42 speaking skills, the test results accurately reflect the skills, ~~OR~~ aptitude
43 or whatever other factor of the applicant or employee that the test purports
44 to measure, rather than reflecting the impaired sensory, manual or speaking

1 skills of the applicant or employee, except if the skills are the factors
2 that the test purports to measure.

3 G. Notwithstanding any other provision of this article, it is not an
4 unlawful employment practice:

5 1. For an employer to hire and employ employees, for an employment
6 agency to classify or refer for employment any individual, for a labor
7 organization to classify its membership or classify or refer for employment
8 any individual, or for an employer, labor organization or joint
9 labor-management committee controlling apprenticeship or other training or
10 retraining programs to admit or employ any individual in any such program, on
11 the basis of the individual's religion, sex or national origin in those
12 certain instances when religion, sex or national origin is a bona fide
13 occupational qualification reasonably necessary to the normal operation of
14 that particular business or enterprise.

15 2. For any school, college, university or other educational
16 institution or institution of learning to hire and employ employees of a
17 particular religion if the school, college, university or other educational
18 institution or institution of learning is in whole or in substantial part
19 owned, supported, controlled or managed by a particular religion or religious
20 corporation, association or society, or if the curriculum of the school,
21 college, university or other educational institution or institution of
22 learning is directed toward the propagation of a particular religion.

23 3. For an employer to fail or refuse to hire or employ any individual
24 for any position, for an employment agency to fail or refuse to refer any
25 individual for employment in any position or for a labor organization to fail
26 or refuse to refer any individual for employment in any position, if both of
27 the following apply:

28 (a) The occupancy of the position or access to the premises in or upon
29 which any part of the duties of the position are performed or are to be
30 performed is subject to any requirement imposed in the interest of the
31 national security of the United States under any security program in effect
32 pursuant to or administered under any statute of the United States or any
33 executive order of the President of the United States.

34 (b) The individual has not fulfilled or has ceased to fulfill that
35 requirement.

36 4. With respect to age, for an employer, employment agency or labor
37 organization:

38 (a) To take any action otherwise prohibited under subsection B, C or D
39 of this section if age is a bona fide occupational qualification reasonably
40 necessary to the normal operation of the particular business or if the
41 differentiation is based on reasonable factors other than age.

42 (b) To observe the terms of a bona fide seniority system or any bona
43 fide employee benefit plan such as a retirement, pension, deferred
44 compensation or insurance plan, which is not a subterfuge to evade the
45 purposes of the age discrimination provisions of this article, except that no

1 employee benefit plan may excuse the failure to hire any individual and no
2 seniority system or employee benefit plan may require or permit the
3 involuntary retirement of any individual specified by section 41-1465 because
4 of the individual's age.

5 (c) To discharge or otherwise discipline an individual for good cause.

6 H. As used in this article, unlawful employment practice does not
7 include any action or measure taken by an employer, labor organization, joint
8 labor-management committee or employment agency with respect to an individual
9 who is a member of the communist party of the United States or of any other
10 organization required to register as a communist-action or communist-front
11 organization by final order of the subversive activities control board
12 pursuant to the subversive activities control act of 1950.

13 I. Notwithstanding any other provision of this article, it is not an
14 unlawful employment practice:

15 1. For an employer to apply different standards of compensation or
16 different terms, conditions or privileges of employment pursuant to a bona
17 fide seniority or merit system or a system which measures earnings by
18 quantity or quality of production or to employees who work in different
19 locations, provided that these differences are not the result of an intention
20 to discriminate because of race, color, religion, sex or national origin.

21 2. For an employer to give and act upon the results of any
22 professionally developed ability test provided that the test, its
23 administration or action upon the results is not designed, intended or used
24 to discriminate because of race, color, religion, sex or national origin.

25 3. For any employer to differentiate upon the basis of sex or
26 disability in determining the amount of the wages or compensation paid or to
27 be paid to employees of the employer if the differentiation is authorized by
28 the provisions of section 6(d) or section 14 of the fair labor standards act
29 of 1938, as amended (29 United States Code section 206(d)).

30 J. Nothing contained in this chapter applies to any business or
31 enterprise on or near an Indian reservation with respect to any publicly
32 announced employment practice of the business or enterprise under which a
33 preferential treatment is given to any individual because the individual is
34 an Indian living on or near a reservation.

35 K. Nothing contained in this article or article 6 of this chapter
36 requires any employer, employment agency, labor organization or joint
37 labor-management committee subject to this article to grant preferential
38 treatment to any individual or group because of the race, color, religion,
39 sex or national origin of the individual or group on account of an imbalance
40 which may exist with respect to the total number or percentage of persons of
41 any race, color, religion, sex or national origin employed by any employer,
42 referred or classified for employment by any employment agency or labor
43 organization, admitted to membership or classified by any labor organization
44 or admitted to or employed in any apprenticeship or other training program,
45 in comparison with the total number or percentage of persons of that race,

1 color, religion, sex or national origin in any community, state, section or
2 other area, or in the available work force in any community, state, section
3 or other area.

4 L. Nothing in the age discrimination prohibitions of this article may
5 be construed to prohibit compulsory retirement of any employee who has
6 attained sixty-five years of age and who, for the two year period immediately
7 before retirement, is employed in a bona fide executive or high policymaking
8 position, if the employee is entitled to an immediate nonforfeitable annual
9 retirement benefit from a pension, profit sharing, savings or deferred
10 compensation plan or any combination of plans of the employer for the
11 employee, which equals, in the aggregate, at least forty-four thousand
12 dollars. In applying the retirement benefit test of this subsection, if any
13 retirement benefit is in a form other than a straight life annuity, with no
14 ancillary benefits, or if employees contribute to the plan or make rollover
15 contributions, the benefit shall be adjusted in accordance with rules adopted
16 by the division so the benefit is the equivalent of a straight life annuity,
17 with no ancillary benefits, under a plan to which employees do not contribute
18 and under which no rollover contributions are made.

19 M. A covered entity may require that an individual with a disability
20 shall not pose a direct threat to the health or safety of other individuals
21 in the workplace. For the purposes of this subsection, "direct threat" means
22 a significant risk to the health or safety of others that cannot be
23 eliminated by reasonable accommodation.

24 N. THIS ARTICLE DOES NOT ALTER THE STANDARDS FOR DETERMINING
25 ELIGIBILITY FOR BENEFITS UNDER THIS STATE'S WORKER'S COMPENSATION LAWS OR
26 UNDER STATE AND FEDERAL DISABILITY BENEFIT PROGRAMS.

27 ~~N.~~ O. For the purposes of this section and section 41-1481, with
28 respect to employers or employment practices involving a disability,
29 "individual" means a qualified individual ~~with a disability~~.

30 Sec. 8. Title 41, chapter 9, article 4, Arizona Revised Statutes, is
31 amended by adding section 41-1468, to read:

32 41-1468. Interpretation of disability and substantially limits;
33 definitions

34 A. A PERSON SHALL DEFINE AND CONSTRUE A DISABILITY IN FAVOR OF BROAD
35 COVERAGE OF INDIVIDUALS UNDER THIS ARTICLE TO THE MAXIMUM EXTENT PERMITTED BY
36 THE TERMS OF THIS ARTICLE.

37 B. A PERSON SHALL INTERPRET SUBSTANTIALLY LIMITS CONSISTENTLY WITH THE
38 FINDINGS AND PURPOSES OF THE ADA AMENDMENTS ACT OF 2008 (P.L. 110-325; 122
39 STAT. 3553).

40 C. AN IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE MAJOR LIFE ACTIVITY
41 NEED NOT LIMIT OTHER MAJOR LIFE ACTIVITIES IN ORDER TO BE CONSIDERED A
42 DISABILITY.

43 D. AN IMPAIRMENT THAT IS EPISODIC OR IN REMISSION IS A DISABILITY IF
44 IT WOULD SUBSTANTIALLY LIMIT A MAJOR LIFE ACTIVITY WHEN ACTIVE.

1 E. THE DETERMINATION OF WHETHER AN IMPAIRMENT SUBSTANTIALLY LIMITS A
2 MAJOR LIFE ACTIVITY SHALL BE MADE WITHOUT REGARD TO THE AMELIORATIVE EFFECTS
3 OF MITIGATING MEASURES SUCH AS:

4 1. MEDICATION, MEDICAL SUPPLIES, EQUIPMENT OR APPLIANCES, LOW-VISION
5 DEVICES, EXCLUDING ORDINARY EYEGLASSES OR CONTACT LENSES, PROSTHETICS,
6 INCLUDING LIMBS AND DEVICES, HEARING AIDS AND COCHLEAR IMPLANTS OR OTHER
7 IMPLANTABLE HEARING DEVICES, MOBILITY DEVICES OR OXYGEN THERAPY EQUIPMENT AND
8 SUPPLIES.

9 2. USE OF ASSISTIVE TECHNOLOGY.

10 3. REASONABLE ACCOMMODATIONS OR AUXILIARY AIDS OR SERVICES.

11 4. LEARNED BEHAVIORAL OR ADAPTIVE NEUROLOGICAL MODIFICATIONS.

12 F. THE AMELIORATIVE EFFECTS OF THE MITIGATING MEASURES OF ORDINARY
13 EYEGLASSES OR CONTACT LENSES SHALL BE CONSIDERED IN DETERMINING WHETHER AN
14 IMPAIRMENT SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY.

15 G. FOR THE PURPOSES OF THIS SECTION:

16 1. "LOW-VISION DEVICES" MEANS DEVICES THAT MAGNIFY, ENHANCE OR
17 OTHERWISE AUGMENT A VISUAL IMAGE.

18 2. "ORDINARY EYEGLASSES OR CONTACT LENSES" MEANS LENSES THAT ARE
19 INTENDED TO FULLY CORRECT VISUAL ACUITY OR ELIMINATE REFRACTIVE ERROR.

20 Sec. 9. Section 41-1491, Arizona Revised Statutes, is amended to read:

21 41-1491. Definitions

22 In this article, unless the context otherwise requires:

23 1. "Aggrieved person" includes any person who either:

24 (a) Claims to have been injured by a discriminatory housing practice.

25 (b) Believes that he will be injured by a discriminatory housing
26 practice that is about to occur.

27 2. "Complainant" means a person, including the attorney general, who
28 files a complaint under section 41-1491.22.

29 3. "Conciliation" means the attempted resolution of issues raised by a
30 complaint or by the investigation of the complaint through informal
31 negotiations involving the aggrieved person, the respondent and the attorney
32 general.

33 4. "Conciliation agreement" means a written agreement setting forth
34 the resolution of the issues in conciliation.

35 5. "Disability" means a mental or physical impairment that
36 substantially limits at least one major life activity, a record of such an
37 impairment or being regarded as having such an impairment. Disability does
38 not include current illegal use of or addiction to any drug or illegal or
39 federally controlled substance. Disability shall be defined **AND CONSTRUED** as
40 the term is defined **AND CONSTRUED** by the Americans with disabilities act of
41 1990 (P.L. 101-336) **AND THE ADA AMENDMENTS ACT OF 2008 (P.L. 110-325; 122**
42 **STAT. 3553).**

43 6. "Discriminatory housing practice" means an act prohibited by
44 sections 41-1491.14 through 41-1491.21.

1 7. "Dwelling" means either:

2 (a) Any building, structure or part of a building or structure that is
3 occupied as, or designed or intended for occupancy as, a residence by one or
4 more families.

5 (b) Any vacant land that is offered for sale or lease for the
6 construction or location of a building, structure or part of a building or
7 structure described by subdivision (a) of this paragraph.

8 8. "Family" includes a single individual.

9 9. "Person" means one or more individuals, corporations, partnerships,
10 associations, labor organizations, legal representatives, mutual companies,
11 joint stock companies, trusts, unincorporated organizations, trustees,
12 receivers, fiduciaries, banks, credit unions and financial institutions.

13 10. "Respondent" means either:

14 (a) The person accused of a violation of this article in a complaint
15 of a discriminatory housing practice.

16 (b) Any person identified as an additional or substitute respondent
17 under section 41-1491.25 or an agent of an additional or substitute
18 respondent.

19 11. "To rent" includes to lease, to sublease, to let or to otherwise
20 grant for a consideration the right to occupy premises not owned by the
21 occupant.

22 Sec. 10. Section 41-1492, Arizona Revised Statutes, is amended to
23 read:

24 41-1492. Definitions

25 In this article, unless the context otherwise requires:

26 1. "Americans with disabilities act" means 42 United States Code
27 sections 12101 through 12213 and 47 United States Code sections 225 and 611
28 **AND THE ADA AMENDMENTS ACT OF 2008 (P.L. 110-325; 122 STAT. 3553).**

29 2. "Auxiliary aids and services" includes:

30 (a) Qualified interpreters or other effective methods of making
31 aurally delivered materials available to individuals with hearing
32 impairments.

33 (b) Qualified readers, taped text or other effective methods of making
34 visually delivered materials available to individuals with visual
35 impairments.

36 (c) Acquisition or modification of equipment or devices.

37 (d) Other similar services and actions.

38 3. **"BEING REGARDED AS HAVING SUCH A PHYSICAL OR MENTAL IMPAIRMENT":**

39 **(a) MEANS AN INDIVIDUAL WHO ESTABLISHES THAT THE INDIVIDUAL HAS BEEN**
40 **SUBJECTED TO AN ACTION PROHIBITED UNDER THIS ARTICLE BECAUSE OF AN ACTUAL OR**
41 **PERCEIVED PHYSICAL OR MENTAL IMPAIRMENT WHETHER OR NOT THE IMPAIRMENT LIMITS**
42 **OR IS PERCEIVED TO LIMIT A MAJOR LIFE ACTIVITY.**

1 (b) DOES NOT MEAN AN IMPAIRMENT THAT IS TRANSITORY AND MINOR. FOR THE
2 PURPOSES OF THIS SUBDIVISION, "TRANSITORY IMPAIRMENT" MEANS AN IMPAIRMENT
3 WITH AN ACTUAL OR EXPECTED DURATION OF SIX MONTHS OR LESS.

4 ~~3-~~ 4. "Commercial facilities" means facilities that are intended for
5 nonresidential use and that do not meet the definition of either a public
6 accommodation or a public entity. Commercial facilities do not include
7 railroad locomotives, railroad freight cars, railroad cabooses, railroad
8 cars, railroad rights-of-way or facilities that are covered or expressly
9 exempted from coverage under this article.

10 ~~4-~~ 5. "Demand responsive system" means any system of providing the
11 transportation of individuals by a vehicle, other than a system that is a
12 fixed route system.

13 ~~5-~~ 6. "Disability" means, with respect to an individual, any of the
14 following:

15 (a) A physical or mental impairment that substantially limits one or
16 more of the major life activities of the individual.

17 (b) A record of such an impairment.

18 (c) Being regarded as having such an impairment.

19 ~~6-~~ 7. "Fixed route system" means a system of providing the
20 transportation of individuals by, other than by aircraft, a vehicle that is
21 operated along a prescribed route according to a fixed schedule.

22 8. "MAJOR LIFE ACTIVITIES" INCLUDES:

23 (a) CARING FOR ONESELF, PERFORMING MANUAL TASKS, SEEING, HEARING,
24 EATING, SLEEPING, WALKING, STANDING, LIFTING, BENDING, SPEAKING, BREATHING,
25 LEARNING, READING, CONCENTRATING, THINKING, COMMUNICATING AND WORKING.

26 (b) THE OPERATION OF A MAJOR BODILY FUNCTION, INCLUDING FUNCTIONS OF
27 THE IMMUNE SYSTEM, NORMAL CELL GROWTH AND DIGESTIVE, BOWEL, BLADDER,
28 NEUROLOGICAL, BRAIN, RESPIRATORY, CIRCULATORY, ENDOCRINE AND REPRODUCTIVE
29 FUNCTIONS.

30 ~~7-~~ 9. "Over-the-road bus" means a bus characterized by an elevated
31 passenger deck located over a baggage compartment.

32 ~~8-~~ 10. "Private entity" means any entity other than a public entity.

33 ~~9-~~ 11. "Public accommodation" includes any:

34 (a) Inn, hotel, motel or other place of lodging, except for an
35 establishment located within a building that contains not more than five
36 rooms for rent or hire and that is actually occupied by the proprietor of the
37 establishment as the residence of the proprietor.

38 (b) Restaurant, bar or other establishment serving food or drink.

39 (c) Motion picture house, theater, concert hall, stadium or other
40 place of exhibition or entertainment.

41 (d) Auditorium, convention center, lecture hall or other place of
42 public gathering.

43 (e) Bakery, grocery store, clothing store, hardware store, shopping
44 center or other sales or retail establishment.

1 (f) Laundromat, dry cleaner, bank, barber shop, beauty shop, travel
2 service, shoe repair service, funeral parlor, gas station, office of an
3 accountant or lawyer, pharmacy, insurance office, professional office of a
4 health care provider, hospital or other service establishment.

5 (g) Terminal, depot or other station used for specified public
6 transportation.

7 (h) Museum, library, gallery or other place of public display or
8 collection.

9 (i) Park, zoo, amusement park or other place of recreation.

10 (j) Nursery, elementary, secondary, undergraduate or postgraduate
11 private school or other place of education.

12 (k) Day care center, senior citizen center, homeless shelter, food
13 bank, adoption agency or other social service center establishment.

14 (l) Gymnasium, health spa, bowling alley, golf course or other place
15 of exercise or recreation.

16 ~~10-~~ 12. "Public entity" means any:

17 (a) State or local government.

18 (b) Department, agency, special purpose district or other
19 instrumentality of a state or local government, including the legislature.

20 ~~11-~~ 13. "Rail" or "railroad" has the meaning given the term "railroad"
21 in section 202(e) of the federal railroad safety act of 1970 (45 United
22 States Code section 431(e)).

23 ~~12-~~ 14. "Readily achievable" means easily accomplishable and able to
24 be carried out without much difficulty or expense. In determining whether an
25 action is readily achievable, factors to be considered include:

26 (a) The nature and cost of the action needed under this article.

27 (b) The overall financial resources of the facility or facilities
28 involved in the action, the number of persons employed at the facility, the
29 effect on expenses and resources or the impact otherwise of such action on
30 the operation of the facility.

31 (c) The overall financial resources of the covered entity.

32 (d) The overall size of the business of a covered entity with respect
33 to the number of its employees.

34 (e) The number, type and location of the covered entity's facilities.

35 (f) The type of operation or operations of the covered entity,
36 including the composition, structure and functions of the facilities in
37 question to the covered entity.

38 ~~13-~~ 15. "Specified public transportation" means transportation by bus,
39 rail or any other conveyance, other than aircraft, that provides the general
40 public with general or special service, including charter service, on a
41 regular and continuing basis.

42 ~~14-~~ 16. "State" means the state of Arizona.

43 ~~15-~~ 17. "Vehicle" does not include a rail passenger car, railroad
44 locomotive, railroad freight car, railroad caboose or railroad car covered
45 under this article.

1 AN INDIVIDUAL with whom the individual or entity is known to have a
2 relationship or association.

3 G. For THE purposes of ~~this~~ subsection A OF THIS SECTION,
4 "~~discriminatory~~" "DISCRIMINATED AGAINST" includes:

5 1. The imposition or application of eligibility criteria that screen
6 out or tend to screen out an individual with a disability or any class of
7 individuals with disabilities from fully and equally enjoying any goods,
8 services, facilities, privileges, advantages or accommodations, unless these
9 criteria can be shown to be necessary for the provision of the goods,
10 services, facilities, privileges, advantages or accommodations being offered.

11 2. A failure to make reasonable modifications in policies, practices
12 or procedures, if these modifications are necessary to afford these goods,
13 services, facilities, privileges, advantages or accommodations to individuals
14 with disabilities, unless the entity can demonstrate that making these
15 modifications would fundamentally alter the nature of these goods, services,
16 facilities, privileges, advantages or accommodations.

17 3. A failure to take such steps as may be necessary to ensure that no
18 individual with a disability is excluded, denied services, segregated or
19 otherwise treated differently than other individuals because of the absence
20 of REASONABLE MODIFICATIONS IN POLICIES, PRACTICES OR PROCEDURES OR auxiliary
21 aids and services, unless the entity can demonstrate that taking these steps
22 would fundamentally alter the nature of the goods, service, facility,
23 privilege, advantage or accommodation being offered or would result in an
24 undue burden.

25 4. A failure to remove architectural barriers and communication
26 barriers that are structural in nature in existing facilities and
27 transportation barriers in existing vehicles and rail passenger cars used by
28 an establishment for transporting individuals not including barriers that can
29 only be removed through the retrofitting of vehicles or rail passenger cars
30 by the installation of a hydraulic or other lift if the removal is readily
31 achievable.

32 5. If an entity can demonstrate that the removal of a barrier under
33 paragraph 4 of this subsection is not readily achievable, a failure to make
34 these goods, services, facilities, privileges, advantages or accommodations
35 available through alternative methods if these methods are readily
36 achievable.

37 ~~G.~~ H. It is discriminatory for a private entity that operates a fixed
38 route system and that is not subject to section 304 of the Americans with
39 disabilities act to purchase or lease a vehicle with a seating capacity in
40 excess of sixteen passengers, including the driver, for use on this system,
41 for which a solicitation is made after ~~the effective date of this article~~
42 SEPTEMBER 30, 1992, that is not readily accessible to and usable by
43 individuals with disabilities including individuals who use wheelchairs. If
44 a private entity that operates a fixed route system and that is not subject
45 to section 41-1492.04 purchases or leases a vehicle with a seating capacity

1 of sixteen passengers or less, including the driver, for use on such system
2 after ~~the effective date of this article~~ SEPTEMBER 30, 1992 that is not
3 readily accessible to or usable by individuals with disabilities, it is
4 discriminatory for this entity to fail to operate this system so that, if
5 viewed in its entirety, this system ensures a level of service to individuals
6 with disabilities, including individuals who use wheelchairs, equivalent to
7 the level of service provided to individuals without disabilities. Fixed
8 route and demand response systems do not apply to over-the-road buses. For
9 THE purposes of this subsection, "discriminatory" includes:

10 1. A failure of a private entity that operates a demand responsive
11 system and that is not subject to section 41-1492.04 to operate the system so
12 that, if viewed in its entirety, the system ensures a level of service to
13 individuals with disabilities, including individuals who use wheelchairs,
14 equivalent to the level of service provided to individuals without
15 disabilities.

16 2. The purchase or lease by the entity for use on the system of a
17 vehicle with a seating capacity in excess of sixteen passengers, including
18 the driver, for which solicitations are made after ~~the effective date of this~~
19 ~~article~~ SEPTEMBER 30, 1992, that is not readily accessible to and usable by
20 individuals with disabilities, including individuals who use wheelchairs,
21 unless the entity can demonstrate that the system, if viewed in its entirety,
22 provides a level of service to individuals with disabilities equivalent to
23 that provided to individuals without disabilities.

24 3. The purchase or lease of an over-the-road bus that does not comply
25 with section 306(a)(2) of the Americans with disabilities act by a private
26 entity that provides transportation of individuals and that is not primarily
27 engaged in the business of transporting people and any other failure of the
28 entity to comply with section 306(a)(2) of the Americans with disabilities
29 act.

30 ~~H-~~ I. Nothing in this article requires an entity to permit an
31 individual to participate in or benefit from the goods, services, facilities,
32 privileges, advantages and accommodations of the entity if the individual
33 poses a direct threat to the health or safety of others. ~~I-~~ FOR THE PURPOSES
34 OF this subsection, "direct threat" means a significant risk to the health or
35 safety of others that cannot be eliminated by modification of policies,
36 practices or procedures or by the provision of auxiliary aids or services.

37 Sec. 12. Title 41, chapter 9, article 8, Arizona Revised Statutes, is
38 amended by adding section 41-1492.12, to read:

39 41-1492.12. Interpretation of disability and substantially
40 limits; definitions

41 A. A PERSON SHALL DEFINE AND CONSTRUE A DISABILITY IN FAVOR OF BROAD
42 COVERAGE OF INDIVIDUALS UNDER THIS ARTICLE TO THE MAXIMUM EXTENT PERMITTED BY
43 THE TERMS OF THIS ARTICLE.

- 1 B. A PERSON SHALL INTERPRET SUBSTANTIALLY LIMITS CONSISTENTLY WITH THE
2 FINDINGS AND PURPOSES OF THE ADA AMENDMENTS ACT OF 2008 (P.L. 110-325; 122
3 STAT. 3553).
- 4 C. AN IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE MAJOR LIFE ACTIVITY
5 NEED NOT LIMIT OTHER MAJOR LIFE ACTIVITIES IN ORDER TO BE CONSIDERED A
6 DISABILITY.
- 7 D. AN IMPAIRMENT THAT IS EPISODIC OR IN REMISSION IS A DISABILITY IF
8 IT WOULD SUBSTANTIALLY LIMIT A MAJOR LIFE ACTIVITY WHEN ACTIVE.
- 9 E. THE DETERMINATION OF WHETHER AN IMPAIRMENT SUBSTANTIALLY LIMITS A
10 MAJOR LIFE ACTIVITY SHALL BE MADE WITHOUT REGARD TO THE AMELIORATIVE EFFECTS
11 OF MITIGATING MEASURES SUCH AS:
- 12 1. MEDICATION, MEDICAL SUPPLIES, EQUIPMENT OR APPLIANCES, LOW-VISION
13 DEVICES, EXCLUDING ORDINARY EYEGASSES OR CONTACT LENSES, PROSTHETICS,
14 INCLUDING LIMBS AND DEVICES, HEARING AIDS AND COCHLEAR IMPLANTS OR OTHER
15 IMPLANTABLE HEARING DEVICES, MOBILITY DEVICES OR OXYGEN THERAPY EQUIPMENT AND
16 SUPPLIES.
- 17 2. USE OF ASSISTIVE TECHNOLOGY.
- 18 3. REASONABLE ACCOMMODATIONS OR AUXILIARY AIDS OR SERVICES.
- 19 4. LEARNED BEHAVIORAL OR ADAPTIVE NEUROLOGICAL MODIFICATIONS.
- 20 F. THE AMELIORATIVE EFFECTS OF THE MITIGATING MEASURES OF ORDINARY
21 EYEGASSES OR CONTACT LENSES SHALL BE CONSIDERED IN DETERMINING WHETHER AN
22 IMPAIRMENT SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY.
- 23 G. FOR THE PURPOSES OF THIS SECTION:
- 24 1. "LOW-VISION DEVICES" MEANS DEVICES THAT MAGNIFY, ENHANCE OR
25 OTHERWISE AUGMENT A VISUAL IMAGE.
- 26 2. "ORDINARY EYEGASSES OR CONTACT LENSES" MEANS LENSES THAT ARE
27 INTENDED TO FULLY CORRECT VISUAL ACUITY OR ELIMINATE REFRACTIVE ERROR.