ARIZONA HOUSE OF REPRESENTATIVES

INTERIM MEETING NOTICE
OPEN TO THE PUBLIC

HOUSE AD HOC COMMITTEE ON RELIGIOUS LIBERTY AND NONDISCRIMINATION

Date: **Thursday, March 17, 2022**

Time: **1 P.M.**

Place: **HHR 1**

Members of the public may access a livestream of the meeting here:
https://www.azleg.gov/videoplayer/?clientID=6361162879&eventID=2022031086

AGENDA

1. Welcome and Introductions
2. Presentation: Corrected draft of H.B. 2802
3. Invited Guests
4. Public Testimony

Members:

Representative Russell Bowers, Co-Chair
Representative Amish Shah, Co-Chair
Representative César Chávez
Representative Regina E. Cobb
Representative Timothy Dunn
Representative Jennifer Jermaine
Representative Quang Nguyen
Representative Jennifer Pawlik

03/14/2022
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People with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. If you require accommodations, please contact the Chief Clerk's Office at (602) 926-3032 or through Arizona Relay Service 7-1-1.

CORRECTED DRAFT
For Discussion Only

REFERENCE TITLE: antidiscrimination; public accommodations; employment; housing

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

H. B. 2802 (CORRECTED)

Introduced by
Representatives Bowers: Shah

AN ACT

AMENDING TITLE 32, CHAPTER 32, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-3230; AMENDING SECTIONS 41-1402, 41-1441 AND 41-1442, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 9, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1445; AMENDING SECTIONS 41-1461, 41-1463 AND 41-1464, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 9, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1469; AMENDING SECTIONS 41-1481, 41-1491, 41-1491.03, 41-1491.05, 41-1491.14, 41-1491.15, 41-1491.16, 41-1491.17, 41-1491.20 AND 41-1491.21, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 9, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1491.38; AMENDING SECTION 41-1493.01, ARIZONA REVISED STATUTES; RELATING TO CIVIL RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 32, chapter 32, article 1, Arizona Revised Statutes, is amended by adding section 32-3230, to read:

32-3230. Conversion therapy; unprofessional conduct; state preemption; definitions

A. IT IS UNPROFESSIONAL CONDUCT FOR A HEALTH PROVIDER TO PROVIDE CONVERSION THERAPY TO A PATIENT OR CLIENT WHO IS YOUNGER THAN EIGHTEEN YEARS OF AGE.

B. SUBSECTION A OF THIS SECTION DOES NOT APPLY TO EITHER:

1. A CLERGY MEMBER OR RELIGIOUS COUNSELOR WHO IS ACTING SUBSTANTIALLY IN A PASTORAL OR RELIGIOUS CAPACITY AND NOT IN THE CAPACITY OF A HEALTH PROVIDER.

2. A PARENT OR GRANDPARENT WHO IS ACTING SUBSTANTIALLY IN THE CAPACITY OF A PARENT OR GRANDPARENT AND NOT IN THE CAPACITY OF A HEALTH PROVIDER.

C. THE REGULATION OF CONVERSION THERAPY IS OF STATEWIDE CONCERN AND IS NOT SUBJECT TO FURTHER REGULATION BY A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE.

D. FOR THE PURPOSES OF THIS SECTION:

1. "CONVERSION THERAPY":

(a) MEANS ANY PRACTICE OR TREATMENT THAT SEEKS TO CHANGE THE SEXUAL ORIENTATION OR GENDER IDENTITY OF A PATIENT OR CLIENT, INCLUDING MENTAL HEALTH THERAPY THAT SEEKS TO CHANGE, ELIMINATE OR REDUCE BEHAVIORS, EXPRESSIONS, ATTRACTIONS OR FEELINGS RELATED TO THE PATIENT'S OR CLIENT'S SEXUAL ORIENTATION OR GENDER IDENTITY AS PART OF AN EFFORT TO CHANGE SEXUAL ORIENTATION OR GENDER IDENTITY.

(b) DOES NOT INCLUDE A PRACTICE OR TREATMENT THAT DOES NOT SEEK TO CHANGE A PATIENT'S OR CLIENT'S SEXUAL ORIENTATION OR GENDER IDENTITY, INCLUDING MENTAL HEALTH THERAPY THAT MEETS ANY OF THE FOLLOWING:

(i) IS NEUTRAL WITH RESPECT TO SEXUAL ORIENTATION AND GENDER IDENTITY.

(ii) PROVIDES ASSISTANCE TO A PATIENT OR CLIENT UNDERGOING GENDER TRANSITION.

(iii) PROVIDES ACCEPTANCE OF AND SUPPORT AND UNDERSTANDING TO A PATIENT OR CLIENT.

(iv) FACILITATES A PATIENT'S OR CLIENT'S ABILITY TO COPE, SOCIAL SUPPORT OR IDENTITY EXPLORATION AND DEVELOPMENT.

(v) ADDRESSES UNLAWFUL, UNSAFE, PREMARITAL OR EXTRAMARITAL SEXUAL ACTIVITIES IN A MANNER THAT IS NEUTRAL WITH RESPECT TO SEXUAL ORIENTATION.

(vi) DISCUSSES WITH A PATIENT OR CLIENT THE PATIENT'S OR CLIENT'S MORAL OR RELIGIOUS BELIEFS OR PRACTICES.

2. "GENDER IDENTITY" HAS THE SAME MEANING PRESCRIBED IN SECTION 41-1441.

3. "HEALTH PROVIDER" MEANS A PERSON WHO IS CERTIFIED OR LICENSED PURSUANT TO CHAPTER 14, 15, 17, 19.1, 25, 29 OR 33 OF THIS TITLE.

4. "SEXUAL ORIENTATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 41-1441.

Sec. 2. Section 41-1402, Arizona Revised Statutes, is amended to read:

41-1402. Powers and duties of the division

A. The division may:

1. Employ an executive director for the board and other necessary personnel whose compensation shall be as determined pursuant to section 38-611.

2. Subject to the provisions and restrictions of this chapter, cooperate with and enter into agreements with the United States equal employment opportunity commission, the United States department of housing and urban development and other United States agencies interested in practices governed by this chapter, accept monies from those agencies and carry out and perform the covenants and conditions of any written agreement with those agencies not inconsistent with or beyond this chapter.

3. Cooperate with and enter into agreements with state and local agencies not inconsistent with or beyond this chapter.

4. Intervene in a civil action brought under section 41-1481 by a complainant against a defendant other than the state.

5. After studying recommendations of the board, issue, amend or rescind procedural rules to carry out this chapter.

6. Make periodic surveys of the existence and effect of discrimination because of race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, age, disability, familial status or national origin in the enjoyment of civil rights by any person within this state as prescribed by this chapter.

7. Foster, through community effort, in cooperation with both public and private groups, the elimination of discrimination based on race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, age, disability, familial status or national origin.

8. Issue publications of results of studies, investigations and research as in its judgment will tend to promote goodwill and the elimination of discrimination between persons because of race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, age, disability, familial status or national origin.

9. Furnish persons subject to this chapter with such assistance as may be reasonably necessary to further compliance with this chapter.

B. The division shall:

1. Administer this chapter.

2. Report from time to time, but not less than once a year in December, to the legislature and the governor, describing its activities and accomplishments during the year, and file with each report a copy of

all recommendations of the division as to additional remedial action by legislative enactment or otherwise.

Sec. 3. Section 41-1441, Arizona Revised Statutes, is amended to read:

41-1441. Definitions

In this article, unless the context otherwise requires:

1. "GENDER IDENTITY" MEANS THE GENDER-RELATED IDENTITY, APPEARANCE OR MANNERISMS OR OTHER GENDER-RELATED CHARACTERISTICS OF AN INDIVIDUAL, REGARDLESS OF THE INDIVIDUAL'S DESIGNATED SEX AT BIRTH, THAT CAN BE SHOWN BY PROVIDING EVIDENCE, INCLUDING ANY OF THE FOLLOWING:

(a) MEDICAL HISTORY, CARE OR TREATMENT OF THE GENDER IDENTITY.

(b) CONSISTENT AND UNIFORM ASSERTION OF THE GENDER IDENTITY.

(c) OTHER EVIDENCE THAT THE GENDER IDENTITY IS SINCERELY HELD, PART OF A PERSON'S CORE IDENTITY AND IS NOT BEING ASSERTED FOR AN IMPROPER PURPOSE.

~~1.~~ 2. "Person" means an individual, corporation, partnership, unincorporated association, or other organization, and includes the owner, lessee, operator, proprietor, manager, superintendent, agent~~,~~ or employee of any place of public accommodation.

~~2.~~ 3. "Places of public accommodation" means all public places of entertainment, amusement or recreation, all public places where food or beverages are sold for consumption on the premises, all public places ~~which~~ THAT are conducted for the lodging of transients or for the benefit, use or accommodation of those seeking health or recreation and all establishments ~~which~~ THAT cater or offer their services, facilities or goods to or solicit patronage from the members of the general public. Any dwelling as defined in section 41-1491, or any private club, or any place ~~which~~ THAT is in its nature distinctly private is not a place of public accommodation.

4. "SEXUAL ORIENTATION" MEANS HOMOSEXUALITY, HETEROSEXUALITY OR BISEXUALITY.

Sec. 4. Section 41-1442, Arizona Revised Statutes, is amended to read:

41-1442. Discrimination in places of public accommodation; exceptions

A. Discrimination in places of public accommodation against any person because of race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, national origin or ancestry is contrary to the policy of this state and shall be deemed unlawful.

B. No person, directly or indirectly, shall refuse to, withhold from or deny to any person, nor aid in or incite the refusal to deny or withhold, accommodations, advantages, facilities or privileges thereof because of race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, national origin or ancestry, nor shall distinction be made with respect to any person based on race, color, religion, sex, SEXUAL

ORIENTATION, GENDER IDENTITY, national origin or ancestry in connection with the price or quality of any item, goods or services offered by or at any place of public accommodation.

C. Any person who is under the influence of alcohol or narcotics, who is guilty of boisterous conduct, who is of lewd or immoral character, who is physically violent or who violates any regulation of any place of public accommodation that applies to all persons regardless of race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, national origin or ancestry may be excluded from any place of public accommodation and nothing in this article shall be considered to limit the right of such exclusion.

D. Notwithstanding any other provision of this article and except as required by federal law, it is not an unlawful practice if a person fails to provide a trained and competent bilingual person who is skilled in interpreting a language other than English to assist a person who is seeking services at a place of public accommodation. Notwithstanding any other provision of this article and except as required by federal law, a person who offers a service at a place of public accommodation is not required to provide a person who is seeking the service any form or other documentation in that person's native language.

E. It is not an unlawful practice pursuant to this section for a person to fail to provide service at a place of public accommodation if by providing the service the person offering the service would violate a state or federal law or a rule that is adopted by a state or federal board, commission or agency that has jurisdiction over the person offering the service.

F. THIS SECTION DOES NOT APPLY TO DISCRIMINATION OR DISTINCTIONS BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY BY OR AT ANY OF THE FOLLOWING:

1. A BUILDING THAT IS USED PRIMARILY AS A DENOMINATIONAL HEADQUARTERS, CHURCH ADMINISTRATIVE OFFICE OR CHURCH CONFERENCE CENTER.

2. A PLACE OF WORSHIP, INCLUDING A CHURCH, SYNAGOGUE, MOSQUE OR CHAPEL AND ITS RELATED PROPERTIES THAT ARE USED PRIMARILY FOR RELIGIOUS PURPOSES.

3. A RELIGIOUS EDUCATIONAL INSTITUTION AND ITS RELATED PROPERTIES THAT ARE USED PRIMARILY FOR RELIGIOUS PURPOSES.

4. IN CONNECTION WITH A RELIGIOUS CELEBRATION OR EXERCISE, A FACILITY THAT IS SUPERVISED BY A PRIEST, PASTOR, RABBI, IMAM OR MINISTER OF ANY FAITH OR RELIGIOUS CERTIFYING BODY AND THAT IS PRINCIPALLY USED FOR PROVIDING FOOD AND BEVERAGES IN COMPLIANCE WITH RELIGIOUS DIETARY REQUIREMENTS.

5. ONLINE OPERATIONS OR ACTIVITIES OF AN ORGANIZATION EXEMPT UNDER THIS SECTION.

G. IF A PLACE OF PUBLIC ACCOMMODATION PROVIDES EQUIVALENT TREATMENT, SERVICES, FACILITIES AND BENEFITS WITHOUT VIOLATING ANY RIGHTS OR PROTECTIONS BASED ON ANY OTHER PROTECTED CLASS STATUS UNDER THIS SECTION, A PLACE OF PUBLIC ACCOMMODATION:

1. INCLUDING A FITNESS CENTER, SPA OR SIMILAR PLACE WHOSE SERVICES OR FACILITIES ARE INTENDED FOR THE EXCLUSIVE USE OF PERSONS OF THE SAME SEX, MAY NOT BE PREVENTED FROM PROVIDING THOSE SERVICES OR FACILITIES EXCLUSIVELY TO PERSONS OF THAT SEX OR PROHIBITED FROM TEMPORARILY RESTRICTING ACCESS TO A FITNESS CENTER, SPA, POOL OR SIMILAR PLACE, BASED ON A PERSON'S SEX.

2. SHALL PROVIDE REASONABLE ACCOMMODATIONS TO A PATRON WHO REQUESTS GREATER PRIVACY WITHIN A FACILITY INTENDED FOR THE EXCLUSIVE USE OF PERSONS OF THE SAME SEX.

H. IF SEPARATION BY SEX IS NECESSARY TO THE ESSENTIAL OPERATION OF A PROGRAM OR ACTIVITY WITHIN A NONPROFIT FACILITY THAT OFFERS FREE LODGING FOR TRANSIENTS OR VULNERABLE INDIVIDUALS, THIS ARTICLE SHALL NOT PREVENT ANY SUCH FACILITY FROM CONSIDERING AN INDIVIDUAL'S SEX FOR PARTICIPATION IN SUCH PROGRAM OR ACTIVITY, PROVIDED THAT, WHERE APPROPRIATE, TO ACCOMPLISH THE PURPOSE OF THE PROGRAM OR ACTIVITY INDIVIDUALS ARE TREATED IN ACCORDANCE WITH THEIR GENDER IDENTITY.

Sec. 5. Title 41, chapter 9, article 3, Arizona Revised Statutes, is amended by adding section 41-1445, to read:

41-1445. Discrimination; places of public accommodation; sexual orientation; gender identity; state preemption

THE REGULATION OF DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY IS OF STATEWIDE CONCERN. THE REGULATION OF DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY BY THIS STATE SUPERSEDES ANY CONTRARY ORDINANCE, REGULATION, STANDARD OR OTHER LEGAL ACTION BY A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE.

Sec. 6. Section 41-1461, Arizona Revised Statutes, is amended to read:

41-1461. Definitions

In this article, unless the context otherwise requires:

1. "Auxiliary aids and services" includes:

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

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

(c) Acquisition or modification of equipment or devices.

(d) Other similar services and actions.

2. "Because of sex" and "on the basis of sex" includes because of or on the basis of pregnancy or childbirth or related medical conditions.

3. "Being regarded as having such a physical or mental impairment":

(a) Means an individual who establishes that the individual has been subjected to an action prohibited under this article because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(b) Does not mean an impairment that is transitory and minor. For the purposes of this subdivision, "transitory impairment" means an impairment with an actual or expected duration of six months or less.

4. "Covered entity" means an employer, employment agency, labor organization or joint labor-management committee.

5. "Disability" means, with respect to an individual, except any impairment caused by current use of illegal drugs, any of the following:

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

(b) A record of such a physical or mental impairment.

(c) Being regarded as having such a physical or mental impairment.

6. "Employee":

(a) Means an individual employed by an employer.

(b) FOR PURPOSES OF CLAIMS OF DISCRIMINATION BASED ON THE FAILURE TO ACCOMMODATE A RELIGIOUS OBSERVANCE OR PRACTICE, MEANS AN INDIVIDUAL EMPLOYED BY AN EMPLOYER OR A PROSPECTIVE EMPLOYEE OF THE EMPLOYER WHO, WITH OR WITHOUT REASONABLE ACCOMMODATION, IS QUALIFIED TO PERFORM THE ESSENTIAL FUNCTIONS OF THE EMPLOYMENT POSITION.

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

7. "Employer":

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

(b) Does not include either:

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

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

8. "Employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of that person.

9. "EXEMPT RELIGIOUS ORGANIZATION" MEANS ANY OF THE FOLLOWING:

(a) A CHURCH OR ITS INTEGRATED AUXILIARIES, A CONVENTION OR ASSOCIATION OF CHURCHES OR A RELIGIOUS ORDER DESCRIBED IN SECTION 6033 OF THE INTERNAL REVENUE CODE OF 1986.

(b) A RELIGIOUS ORGANIZATION DESCRIBED IN SECTIONS 501 AND 509 OF THE INTERNAL REVENUE CODE OF 1986.

(c) A RELIGIOUS EDUCATIONAL INSTITUTION THAT IS ELIGIBLE FOR EXEMPTION UNDER THE CIVIL RIGHTS ACT OF 1964 (P.L. 88-352; 78 STAT. 241; 42 UNITED STATES CODE SECTION 2000a).

(d) A RELIGIOUS CORPORATION, ASSOCIATION OR SOCIETY DESCRIBED IN THE CIVIL RIGHTS ACT OF 1964 (P.L. 88-352; 78 STAT. 241; 42 UNITED STATES CODE SECTION 2000a) THAT IS ELIGIBLE FOR TAX-EXEMPT STATUS UNDER SECTION 501(c) OF THE INTERNAL REVENUE CODE OF 1986 AND THAT ONLY EMPLOYS INDIVIDUALS OF THE EMPLOYER'S RELIGION, UNLESS THE EMPLOYEE DEMONSTRATES THAT THE EMPLOYER HAS NOT APPLIED WITH REASONABLE CONSISTENCY ITS RELIGIOUS STANDARD CITED AS THE REASON FOR THE ADVERSE EMPLOYMENT ACTION.

(e) AN ASSOCIATION EXCLUSIVELY COMPOSED OF EMPLOYERS THAT ARE EXEMPT UNDER THIS SECTION.

10. "GENDER IDENTITY" MEANS THE GENDER RELATED IDENTITY, APPEARANCE OR MANNERISMS OR OTHER GENDER-RELATED CHARACTERISTICS OF AN INDIVIDUAL, REGARDLESS OF THE INDIVIDUAL'S DESIGNATED SEX AT BIRTH, THAT CAN BE SHOWN BY PROVIDING EVIDENCE, INCLUDING ANY OF THE FOLLOWING:

(a) MEDICAL HISTORY, CARE OR TREATMENT OF THE GENDER IDENTITY.

(b) CONSISTENT AND UNIFORM ASSERTION OF THE GENDER IDENTITY.

(c) OTHER EVIDENCE THAT THE GENDER IDENTITY IS SINCERELY HELD, PART OF A PERSON'S CORE IDENTITY AND IS NOT BEING ASSERTED FOR AN IMPROPER PURPOSE.

~~9.~~ 11. "Labor organization":

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

(b) Includes:

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

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

12. "LEAVE OF GENERAL USAGE" MEANS LEAVE THAT IS PROVIDED UNDER AN EMPLOYER'S POLICIES OR PROGRAMS THAT AN EMPLOYEE MAY TAKE BY ADJUSTING OR ALTERING THE EMPLOYEE'S WORK SCHEDULE OR ASSIGNMENT AS DETERMINED BY THE EMPLOYER AND FOR WHICH THE EMPLOYEE MAY DETERMINE THE REASON FOR USING THE LEAVE.

~~10.~~ 13. "Major life activities" includes:

(a) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.

(b) The operation of a major bodily function, including functions of the immune system, normal cell growth and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

14. "PERFORM THE ESSENTIAL FUNCTIONS":

(a) INCLUDES CARRYING OUT THE CORE REQUIREMENTS OF AN EMPLOYMENT POSITION.

(b) DOES NOT INCLUDE CARRYING OUT PRACTICES RELATING TO CLOTHING, TAKING TIME OFF OR OTHER PRACTICES THAT MAY HAVE A TEMPORARY OR TANGENTIAL IMPACT ON THE ABILITY TO PERFORM JOB FUNCTIONS IF ANY OF THE PRACTICES DESCRIBED IN THIS PARAGRAPH RESTRICT AN EMPLOYEE'S ABILITY TO WEAR RELIGIOUS CLOTHING, MAINTAIN RELIGIOUS GROOMING STANDARDS OR TAKE TIME OFF FOR A RELIGIOUS DAY OR HOLIDAY.

~~11.~~ 15. "Person" means one or more individuals, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy or receivers.

~~12.~~ 16. "Qualified individual" means a person with a disability who, with or without reasonable accommodation, is capable of performing the essential functions of the employment position that the individual holds or desires.

~~13.~~ 17. "Reasonable accommodation":

(a) Includes:

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

~~(b)~~ (ii) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers, taped texts or other effective methods of making visually delivered materials available to individuals with visual impairments, the

provision of auxiliary aids and services or interpreters and other similar services and actions for individuals with disabilities.

(b) MUST REMOVE THE CONFLICT BETWEEN EMPLOYMENT REQUIREMENTS AND THE RELIGIOUS OBSERVANCE OR PRACTICE OF AN EMPLOYEE TO BE CONSIDERED REASONABLE. A CONFLICT WILL NOT BE CONSIDERED REMOVED IF THE EMPLOYER REFUSES TO ALLOW THE EMPLOYEE TO USE LEAVE OF GENERAL USAGE BECAUSE THE LEAVE WILL BE USED TO ACCOMMODATE THE EMPLOYEE'S RELIGIOUS OBSERVANCE OR PRACTICE.

~~14.~~ 18. "Religion" means all aspects of religious observance and practice, as well as belief. Unlawful practices as prohibited by this article include practices with respect to religion unless an employer demonstrates that the employer is unable, AFTER INITIATING AND ENGAGING IN AN AFFIRMATIVE AND BONA FIDE EFFORT, to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

19. "SEXUAL ORIENTATION" MEANS HOMOSEXUALITY, HETEROSEXUALITY OR BISEXUALITY.

~~15.~~ 20. "Undue hardship":

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

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

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

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

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

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

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

(vi) THAT AN EMPLOYER SHALL NOT BE REQUIRED TO PROVIDE AN ACCOMMODATION THAT WILL RESULT IN THE VIOLATION OF FEDERAL OR STATE LAW, INCLUDING THE DENIAL OF EQUAL TREATMENT IN A PUBLIC ACCOMMODATION, OR RESULT IN LIABILITY FOR A HOSTILE WORK ENVIRONMENT.

Sec. 7. Section 41-1463, Arizona Revised Statutes, is amended to read:

41-1463. Discrimination; unlawful practices; definition

A. ~~Nothing contained in~~ This article shall NOT be interpreted to require that the less qualified be preferred over the better qualified simply because of race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, age or national origin or on the basis of disability.

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

1. To fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions or privileges of employment because of the individual's race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, age or national origin or on the basis of disability.

2. To limit, segregate or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, age or national origin or on the basis of disability.

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

4. TO FAIL TO PROVIDE A REASONABLE ACCOMMODATION TO AN EMPLOYEE WHO REQUESTS GREATER PRIVACY WITHIN A FACILITY INTENDED FOR THE EXCLUSIVE USE OF PERSONS OF THE SAME SEX IF EQUIVALENT FACILITIES AND BENEFITS ARE MADE AVAILABLE WITHOUT REGARD TO A PROTECTED CLASSIFICATION UNDER THIS SECTION. THIS PARAGRAPH DOES NOT REQUIRE THE CONSTRUCTION OF NEW OR ADDITIONAL FACILITIES.

C. It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against any individual because of the individual's race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, age or national origin or on the basis of disability or to classify or refer for employment any individual on the basis of the individual's race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, age or national origin or on the basis of disability.

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

1. To exclude or to expel from its membership or otherwise to discriminate against any individual because of the individual's race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, age or national origin or on the basis of disability.

2. To limit, segregate or classify its membership or applicants for membership or to classify or fail or refuse to refer for employment any individual in any way that would deprive or tend to deprive the individual of employment opportunities or would limit those employment opportunities or otherwise adversely affect the individual's status as an employee or as an applicant for employment because of the individual's race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, age or national origin or on the basis of disability.

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

E. It is an unlawful employment practice for any employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs, to discriminate against any individual because of the individual's race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, age or national origin or on the basis of disability in admission to or employment in any program established to provide apprenticeship or other training and, if the individual is an otherwise qualified individual, to fail or refuse to reasonably accommodate the individual's disability.

F. With respect to a qualified individual, it is an unlawful employment practice for a covered entity to:

1. Participate in any contractual or other arrangement or relationship that has the effect of subjecting a qualified individual who applies with or who is employed by the covered entity to unlawful employment discrimination on the basis of disability.

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

3. Exclude or otherwise deny equal jobs or benefits to an individual qualified for the job or benefits because of the known disability of an individual with whom the individual qualified for the job or benefits is known to have a relationship or association.

4. Not make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual who is an applicant or employee unless the covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity or the individual only meets the definition of disability as prescribed in section 41-1461, paragraph 5, subdivision (c).

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

6. Use qualification standards, employment tests or other selection criteria, including those based on an individual's uncorrected vision, that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job related for the position in question and is consistent with business necessity.

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

G. Women who are affected by pregnancy or childbirth or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and subsection J, paragraph 3 of this section may not be interpreted to allow otherwise.

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

1. For an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or classify or refer for employment any individual or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of the individual's religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY or national origin in those certain instances when religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, PROVIDED THAT IF SEX IS A BONA FIDE OCCUPATIONAL QUALIFICATION INDIVIDUALS ARE RECOGNIZED AS QUALIFIED BASED ON THEIR GENDER IDENTITY.

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

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

(a) The occupancy of the position or access to the premises in or on which any part of the duties of the position are performed or are to be performed is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any executive order of the president of the United States.

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

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

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

(b) To observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, deferred compensation or insurance plan, which is not a subterfuge to evade the purposes of the age discrimination provisions of this article, except that no employee benefit plan may excuse the failure to hire any individual and no seniority system or employee benefit plan may require or allow the involuntary retirement of any individual specified by section 41-1465 because of the individual's age.

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

5. FOR AN EXEMPT RELIGIOUS ORGANIZATION TO TAKE ANY ACTION OTHERWISE PROHIBITED BY SUBSECTIONS B, C, D OR E OF THIS SECTION OR SECTION 41-1464, SUBSECTION B BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY.

I. For the purposes of this article, unlawful employment practice does not include any action or measure taken by an employer, labor organization, joint labor-management committee or employment agency with respect to an individual who is a member of the communist party of the United States or of any other organization required to register as a communist-action or communist-front organization by final order of the subversive activities control board pursuant to the subversive activities control act of 1950.

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

1. For an employer to apply different standards of compensation or different terms, conditions or privileges of employment pursuant to a bona

fide seniority or merit system or a system that measures earnings by quantity or quality of production or to employees who work in different locations, if these differences are not the result of an intention to discriminate because of race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY or national origin.

2. For an employer to give and act on the results of any professionally developed ability test if the test, its administration or action on the results is not designed, intended or used to discriminate because of race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY or national origin.

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

K. ~~Nothing contained in~~ This chapter ~~applies~~ DOES NOT APPLY to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of the business or enterprise under which a preferential treatment is given to any individual because the individual is an Indian living on or near a reservation.

L. ~~Nothing contained in~~ This article or article 6 of this chapter ~~requires~~ DOES NOT REQUIRE any employer, employment agency, labor organization or joint labor-management committee subject to this article to grant preferential treatment to any individual or group because of the race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY or national origin of the individual or group on account of an imbalance that may exist with respect to the total number or percentage of persons of any race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization or admitted to or employed in any apprenticeship or other training program, in comparison with the total number or percentage of persons of that race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY or national origin in any community, state, section or other area, or in the available workforce in any community, state, section or other area.

M. The age discrimination prohibitions of this article ~~may not be construed to~~ DO NOT prohibit compulsory retirement of any employee who has attained sixty-five years of age and who, for the ~~two year~~ TWO-YEAR period immediately before retirement, is employed in a bona fide executive or high policymaking position, if the employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan or any combination of plans of the employer for the employee, that equals, in the aggregate, at least

$44,000. In applying the retirement benefit test of this subsection, if any retirement benefit is in a form other than a straight life annuity, with no ancillary benefits, or if employees contribute to the plan or make rollover contributions, the benefit shall be adjusted in accordance with rules adopted by the division so the benefit is the equivalent of a straight life annuity, with no ancillary benefits, under a plan to which employees do not contribute and under which no rollover contributions are made.

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

O. This article does not alter the standards for determining eligibility for benefits under this state's workers' compensation laws or under state and federal disability benefit programs.

P. For the purposes of this section and section 41-1481, with respect to employers or employment practices involving a disability, "individual" means a qualified individual.

Sec. 8. Section 41-1464, Arizona Revised Statutes, is amended to read:

41-1464. Other unlawful employment practices; opposition to unlawful practices; filing of charges; participation in proceedings; notices and advertisements for employment

A. It is an unlawful employment practice for an employer to discriminate against any of the employer's employees or applicants for employment, for an employment agency or joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs, to discriminate against any individual or for a labor organization to discriminate against any member or applicant for membership because the employee, the member, the applicant or the individual in an apprenticeship or other training or retraining program has opposed any practice that is an unlawful employment practice under this article or has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under article 6 of this chapter.

B. It is an unlawful employment practice for an employer, labor organization, employment agency or joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by an employer or membership in or any classification or referral for employment by a labor organization, ~~or relating to~~ any classification or referral for employment by an employment agency or ~~relating to~~ admission

or ~~to~~ employment in any program established to provide apprenticeship or other training by a joint labor-management committee indicating any preference, limitation, specification or discrimination based on race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY or national origin, except that a notice or advertisement may indicate a preference, limitation, specification or discrimination based on religion, sex or national origin when religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY or national origin is a bona fide occupational qualification for employment, PROVIDED THAT IF SEX IS A BONA FIDE OCCUPATIONAL QUALIFICATION, INDIVIDUALS ARE RECOGNIZED AS QUALIFIED BASED ON THEIR GENDER IDENTITY.

C. It is unlawful for an employer, labor organization or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by an employer or membership in or any classification or referral for employment by a labor organization or relating to any classification or referral for employment by an employment agency, indicating any preference, limitation, specification or discrimination based on age, except that the notice or advertisement may indicate a preference, limitation, specification or discrimination based on age when age is a bona fide occupational qualification for employment.

Sec. 9. Title 41, chapter 9, article 4, Arizona Revised Statutes, is amended by adding section 41-1469, to read:

41-1469. Unlawful employment practices; sexual orientation; gender identity; state preemption

THE REGULATION OF UNLAWFUL EMPLOYMENT PRACTICES BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY IS OF STATEWIDE CONCERN. THE REGULATION OF UNLAWFUL EMPLOYMENT PRACTICES BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY BY THIS STATE SUPERSEDES ANY CONTRARY ORDINANCE, REGULATION, STANDARD OR OTHER LEGAL ACTION BY A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE. IF A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE DEFINES EMPLOYER TO INCLUDE A PERSON WHO HAS FEWER THAN FIFTEEN EMPLOYEES AS OF THE EFFECTIVE DATE OF THIS SECTION, THE COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY CONTINUE ENFORCING THE ORDINANCE, REGULATION OR STANDARD AGAINST AN EMPLOYER.

Sec. 10. Section 41-1481, Arizona Revised Statutes, is amended to read:

41-1481. Filing charges; investigation; findings; conciliation; compliance proceedings; appeals; attorney fees; violation; classification

A. A charge under this section shall be filed within one hundred eighty days after the alleged unlawful employment practice occurred. A charge is deemed filed on receipt by the division from or on behalf of a person claiming to be aggrieved or, if filed by a member of the division, when executed by the member on oath or affirmation. A charge is deemed filed by or on behalf of a person claiming to be aggrieved if received

from the United States equal employment opportunity commission. A charge shall be in writing on oath or affirmation and shall contain the information, including the date, place and circumstances of the alleged unlawful employment practice, and be in the form as the division requires. The division shall not make charges public.

B. Whenever a charge is filed by or on behalf of a person claiming to be aggrieved or by a member of the division, referred to as the charging party, alleging that an employer, employment agency, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs, has engaged in an unlawful employment practice, the division shall serve notice of and a copy of the charge on the employer, employment agency, labor organization or joint labor-management committee, referred to as the respondent, within ten days and shall investigate the charge. If the division determines after the investigation that there is not reasonable cause to believe that the charge is true, the division shall enter an order determining the same and dismissing the charge and shall notify the charging party and the respondent of its action. If the division determines after the investigation that there is reasonable cause to believe that the charge is true, the division shall enter an order containing its findings of fact and shall endeavor to eliminate the alleged unlawful employment practice by informal methods of conference, conciliation and persuasion. Any party to the informal proceeding may be represented by counsel. Counsel need not be a member of the state bar if counsel is licensed to practice law in any other state or territory of the United States. Nothing said or done during and as a part of the informal endeavors may be made public by the division or its officers or employees or used as evidence in a subsequent proceeding without the written consent of the persons concerned. If a civil action resulting from a charge is commenced in any federal or state court, evidence collected by or submitted to the division during the investigation of the charge and the source of the evidence shall be subject to discovery by the parties to the civil action. Any person who makes public information in violation of this subsection is guilty of a class 1 misdemeanor. The division shall make its determination on reasonable cause as promptly as possible and as far as practicable not later than sixty days ~~from~~ AFTER the filing of the charge. If more than two years have elapsed after the alleged unlawful employment practice occurred, and if the charging party has received a notice of right to sue, the division may cease investigation of a charge without reaching a determination.

C. All conciliation agreements shall provide that the charging party waives, releases and covenants not to sue the respondent or claim against the respondent in any forum with respect to the matters ~~which~~ THAT were alleged as charges filed with the division, subject to performance by

the respondent of the promises and representations contained in the conciliation agreement. The charging party or the respondent may prepare a conciliation agreement that the division shall submit to the other party and that, if accepted by the other party, shall be accepted by the division.

D. If within thirty days after the division has made a determination that reasonable cause exists to believe that the charge is true the division has not accepted a conciliation agreement to which the charging party and the respondent are parties, the division may bring a civil action against the respondent, other than the state, named in the charge. The charging party shall have the right to intervene in a civil action brought by the division. If a charge filed with the division pursuant to subsection A of this section is dismissed by the division or if within ninety days ~~from~~ AFTER the filing of such charge the division has not filed a civil action under this section or has not entered into a conciliation agreement with the charging party, the division shall so notify the charging party. After providing the notice a civil action may be brought against the respondent named in the charge by the charging party or, if that charge was filed by a member of the division, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. ~~In no event shall any~~ AN action MAY NOT be brought pursuant to this article more than one year after the charge to which the action relates has been filed. On application by the complainant and in the circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs or security. On timely application, the court may in its discretion allow the division to intervene in civil actions in which the state is not a defendant on certification that the case is of general public importance. ~~Upon~~ ON request the court may stay further proceedings for not more than sixty days pending the further efforts of the parties or the division to obtain voluntary compliance.

E. Whenever a charge is filed with the division and the division concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this article or article 4 of this chapter, the division may bring an action for appropriate temporary or preliminary relief pending final disposition of the charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Arizona rules of civil procedure. The court having jurisdiction over the proceedings shall assign such action for hearing at the earliest practicable date and cause the action to be expedited in every way.

F. The court shall assign any action brought under this article for hearing at the earliest practicable date and cause the action to be in every way expedited. If the action has not been scheduled for trial

within one hundred twenty days after issue has been joined, the judge may appoint a master pursuant to rule 53 of the Arizona rules of civil procedure.

G. If the court finds that the defendant has intentionally engaged in or is intentionally engaging in an unlawful employment practice alleged in the complaint, the court may enjoin the defendant from engaging in the unlawful employment practice and order the affirmative action as may be appropriate. Affirmative action may include~~, but is not limited to,~~ reinstatement or hiring of employees with or without back pay payable by the employer, employment agency or labor organization responsible for the unlawful employment practice or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years before the filing of the charge with the division. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall reduce the back pay otherwise allowable. An order of the court shall not require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement or promotion of an individual as an employee or the payment to the individual of any back pay if the individual was refused admission, suspended or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, age, disability or national origin or a violation of section 41-1464.

H. In any case in which an employer, employment agency or labor organization fails to comply with an order of a court issued in a civil action brought under this section, a party to the action or the division on the written request of a person aggrieved by such failure may commence proceedings to compel compliance with the order.

I. Any civil action brought under this section and any proceedings brought under subsection H of this section are subject to appeal as provided in sections 12-120.21, 12-120.22 and 12-120.24.

J. In any action or proceeding under this section the court may allow the prevailing party, other than the division, a reasonable attorney fee as part of the costs.

Sec. 11. Section 41-1491, Arizona Revised Statutes, is amended to read:

41-1491. Definitions

In this article, unless the context otherwise requires:

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

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

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

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

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

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

5. "Disability" means a mental or physical impairment that substantially limits at least one major life activity, a record of such an impairment or being regarded as having such an impairment. Disability does not include current illegal use of or addiction to any drug or illegal or federally controlled substance. Disability shall be defined and construed as the term is defined and construed by the Americans with disabilities act of 1990 (P.L. 101-336) and the ADA amendments act of 2008 (P.L. 110-325; 122 Stat. 3553).

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

7. "Dwelling" means either:

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

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

8. "Family" includes a single individual.

9. "GENDER IDENTITY" MEANS THE GENDER RELATED IDENTITY, APPEARANCE OR MANNERISMS OR OTHER GENDER-RELATED CHARACTERISTICS OF AN INDIVIDUAL, REGARDLESS OF THE INDIVIDUAL'S DESIGNATED SEX AT BIRTH, THAT CAN BE SHOWN BY PROVIDING EVIDENCE, INCLUDING ANY OF THE FOLLOWING:

(a) MEDICAL HISTORY, CARE OR TREATMENT OF THE GENDER IDENTITY.

(b) CONSISTENT AND UNIFORM ASSERTION OF THE GENDER IDENTITY.

(c) OTHER EVIDENCE THAT THE GENDER IDENTITY IS SINCERELY HELD, PART OF A PERSON'S CORE IDENTITY AND IS NOT BEING ASSERTED FOR AN IMPROPER PURPOSE.

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

~~10.~~ 11. "Respondent" means either:

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

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

12. "SEXUAL ORIENTATION" MEANS HOMOSEXUALITY, HETEROSEXUALITY OR BISEXUALITY.

~~11.~~ 13. "To rent" includes to lease, to sublease, to let or to otherwise grant for a consideration the right to occupy premises not owned by the occupant.

Sec. 12. Section 41-1491.03, Arizona Revised Statutes, is amended to read:

41-1491.03. Religious organization and private club exemption; definition

A. This article does not prohibit a religious organization, association or society, ~~or~~ a nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society OR A RELIGIOUS EDUCATIONAL INSTITUTION from:

1. Limiting the sale, rental or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion.

2. Giving preference to persons of the same religion OR TO PERSONS THAT ADHERE TO ITS RELIGION, unless membership in the religion is restricted because of race, color or national origin.

B. This article does not prohibit a private club that is not open to the public and that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose from limiting the rental or occupancy of that lodging to its members or from giving preference to its members.

C. FOR THE PURPOSES OF THIS SECTION, "RELIGION" HAS THE SAME MEANING PRESCRIBED IN SECTION 41-1461.

Sec. 13. Section 41-1491.05, Arizona Revised Statutes, is amended to read:

41-1491.05. Appraisal exemption

This article does not prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, disability, familial status or national origin.

Sec. 14. Section 41-1491.14, Arizona Revised Statutes, is amended to read:

41-1491.14. Discrimination in sale or rental

A. A person may not refuse to sell or rent after a bona fide offer has been made or refuse to negotiate for the sale or rental of or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, familial status or national origin.

B. A person may not discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in providing services or facilities in connection with the sale or rental, because of race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, familial status or national origin.

C. This section does not prohibit discrimination against a person because the person has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance.

Sec. 15. Section 41-1491.15, Arizona Revised Statutes, is amended to read:

41-1491.15. Publication of sales or rentals

A person may not make, print or publish or cause to be made, printed or published any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, disability, familial status or national origin or an intention to make such a preference, limitation or discrimination.

Sec. 16. Section 41-1491.16, Arizona Revised Statutes, is amended to read:

41-1491.16. Inspection of dwelling

A person may not represent to any person because of race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, disability, familial status or national origin that a dwelling is not available for inspection for sale or rental if the dwelling is available for inspection.

Sec. 17. Section 41-1491.17, Arizona Revised Statutes, is amended to read:

41-1491.17. Entry into neighborhood

A person, for profit, may not induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, disability, familial status or national origin.

Sec. 18. Section 41-1491.20, Arizona Revised Statutes, is amended to read:

41-1491.20. Residential real estate related transaction; definition

A. A person whose business includes engaging in residential real estate related transactions may not discriminate against a person in making a real estate related transaction available or in the terms or conditions of a real estate related transaction because of race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, disability, familial status or national origin.

B. ~~In~~ FOR THE PURPOSES OF this section, "residential real estate related transaction" means:

1. Making or purchasing loans or providing other financial assistance either:

(a) To purchase, construct, improve, repair or maintain a dwelling.

(b) To secure residential real estate.

2. Selling, brokering or appraising residential real property.

Sec. 19. Section 41-1491.21, Arizona Revised Statutes, is amended to read:

41-1491.21. Brokerage services

A person may not deny any person access to, or membership or participation in, a multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings or may not discriminate against a person in the terms or conditions of access, membership or participation in such an organization, service or facility because of race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, disability, familial status or national origin.

Sec. 20. Title 41, chapter 9, article 7, Arizona Revised Statutes, is amended by adding section 41-1491.38, to read:

41-1491.38. Discrimination; sale or rental of a dwelling; sexual orientation; gender identity; state preemption

THE REGULATION OF DISCRIMINATION IN THE SALE OR RENTAL OF A DWELLING BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY IS OF STATEWIDE CONCERN. THE REGULATION OF DISCRIMINATION IN THE SALE OR RENTAL OF A DWELLING BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY BY THIS STATE SUPERSEDES ANY CONTRARY ORDINANCE, REGULATION, STANDARD OR OTHER LEGAL ACTION BY A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE.

Sec. 21. Section 41-1493.01, Arizona Revised Statutes, is amended to read:

41-1493.01. Free exercise of religion protected; definition

A. Free exercise of religion is a fundamental right that applies in this state even if laws, rules or other government actions are facially neutral.

B. Except as provided in subsection C OF THIS SECTION, government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability.

C. Government may substantially burden a person's exercise of religion only if ~~it~~ THE GOVERNMENT OR A PRIVATE LITIGANT demonstrates that application of the burden to the person is both:

1. In furtherance of a compelling governmental interest.

2. The least restrictive means of furthering that compelling governmental interest.

D. A person whose religious exercise is burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief ~~against a government~~. A party who prevails in any action to enforce this article against a BRANCH, DEPARTMENT OR AGENCY OF government shall recover attorney fees and costs.

E. In this section, the term substantially burden is intended solely to ensure that this article is not triggered by trivial, technical or de minimis infractions.

F. FOR THE PURPOSES OF THIS SECTION, "GOVERNMENT" INCLUDES ANY BRANCH, DEPARTMENT, COURT OR AGENCY OF GOVERNMENT OR THE ENFORCEMENT OR APPLICATION OF ANY LAW, RULE OR POLICY BY ANY BRANCH, DEPARTMENT, COURT OR AGENCY OF GOVERNMENT.

Sec. 22. Short title

This act may be cited as the "Equality and Fairness for All Arizonans Act".