

State of Arizona  
House of Representatives  
Fifty-fourth Legislature  
Second Regular Session  
2020

# HOUSE BILL 2642

AN ACT

AMENDING SECTIONS 41-1403, 41-1405, 41-1461, 41-1463, 41-1464, 41-1481 AND 41-1492.09, ARIZONA REVISED STATUTES; RELATING TO CIVIL RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-1403, Arizona Revised Statutes, is amended to  
3 read:

4 41-1403. Right to examine and copy evidence; summoning  
5 witnesses and documents and taking testimony;  
6 right to counsel; court aid; process; service and  
7 return; fees of witnesses

8 A. In connection with the investigation of a charge filed under  
9 this chapter, the division or its duly authorized employees shall at all  
10 reasonable times have access to, for the purpose of examination, and have  
11 the right to copy any evidence of any person being investigated, ~~provided~~  
12 ~~such~~ IF THE evidence relates to unlawful practices covered by this chapter  
13 and is relevant to the charge under investigation.

14 B. For the purpose of all hearings and investigations conducted by  
15 the board or division:

16 1. The division, on its own initiative, or ~~upon~~ ON application of  
17 any party to the proceeding, may issue subpoenas compelling the attendance  
18 and testimony of witnesses or requiring the production for examination or  
19 copying of documents ~~provided such~~ IF THE evidence relates to unlawful  
20 practices covered by this chapter and is relevant to the charge ~~which~~ THAT  
21 is the subject matter of the hearing or investigation. Within ~~five~~  
22 ~~FOURTEEN~~ days after the service of a subpoena on any person requiring the  
23 production of any evidence in ~~his~~ THE PERSON'S possession or under ~~his~~ THE  
24 PERSON'S control, ~~such~~ THE person may petition the division to revoke,  
25 limit or modify the subpoena. The division shall revoke, limit or modify  
26 ~~such~~ THE subpoena if in its opinion the evidence required does not relate  
27 to unlawful practices covered by this chapter, is not relevant to the  
28 charge ~~which~~ THAT is the subject matter of the hearing or investigation,  
29 does not describe with sufficient particularity the evidence whose  
30 production is required, or is unduly burdensome or oppressive. Any member  
31 of the division, or any agent designated by the division may administer  
32 oaths or affirmations, examine witnesses and receive ~~such~~ THE evidence.

33 2. Any person appearing before the division or the board ~~shall have~~  
34 HAS the right to be represented by counsel.

35 3. The superior court, ~~upon~~ ON application by the division or by  
36 the person subpoenaed, ~~shall have~~ HAS jurisdiction to issue an order ~~(a)~~  
37 requiring ~~such~~ THE person to appear before the division, the board or the  
38 duly authorized agent of either, there to produce evidence relating to the  
39 matter under investigation if so ordered, or ~~(b)~~ revoking, limiting or  
40 modifying the subpoena or conditioning issuance of the subpoena ~~upon~~ ON  
41 payment of costs or expenses incurred to comply with the subpoena if in  
42 the court's opinion the evidence required does not relate to unlawful  
43 practices covered by this chapter, is not relevant to the charge ~~which~~  
44 THAT is the subject matter of the hearing or investigation, does not  
45 describe with sufficient particularity the evidence whose production is

1 required or is unduly burdensome or oppressive. Any failure to obey ~~such~~  
2 THE order of the court may be punished by ~~such~~ THE court as a contempt.

3 4. Charges, orders, ~~and~~ and other process and papers of the division,  
4 the board, or the agent of either, may be served either personally or by  
5 registered mail. The verified return by the individual so serving the  
6 same, setting forth the manner of ~~such~~ THE service, shall be proof of  
7 service. The return post office receipt when registered and mailed as  
8 provided in this paragraph shall be proof of service. Witnesses  
9 subpoenaed shall be paid the same fees and mileage that are paid witnesses  
10 in the superior court and witnesses whose depositions are taken and the  
11 persons taking the same shall be entitled to the same fees as are paid for  
12 like service in the superior court.

13 Sec. 2. Section 41-1405, Arizona Revised Statutes, is amended to  
14 read:

15 41-1405. Reasonable accommodation or reasonable modification  
16 not required under certain conditions

17 A covered entity under article 4 or 8 of this chapter is not  
18 required to provide a reasonable accommodation or a reasonable  
19 modification to policies, practices or procedures to an individual who  
20 meets the definition of disability solely under section 41-1461, paragraph  
21 ~~4~~ 5, subdivision (c) or who meets the definition of being regarded as  
22 having such a physical or mental impairment under section 41-1492.

23 Sec. 3. Section 41-1461, Arizona Revised Statutes, is amended to  
24 read:

25 41-1461. Definitions

26 In this article, unless the context otherwise requires:

27 1. "Auxiliary aids and services" includes:

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

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

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

35 (d) Other similar services and actions.

36 2. "BECAUSE OF SEX" AND "ON THE BASIS OF SEX" INCLUDES BECAUSE OF  
37 OR ON THE BASIS OF PREGNANCY OR CHILDBIRTH OR RELATED MEDICAL CONDITIONS.

38 ~~2~~ 3. "Being regarded as having such a physical or mental  
39 impairment":

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

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

4 ~~3.~~ 4. "Covered entity" means an employer, employment agency, labor  
5 organization or joint labor-management committee.

6 ~~4.~~ 5. "Disability" means, with respect to an individual, except  
7 any impairment caused by current use of illegal drugs, any of the  
8 following:

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

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

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

13 ~~5.~~ 6. "Employee":

14 (a) Means an individual employed by an employer.

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

22 ~~6.~~ 7. "Employer":

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

30 (b) Does not include either:

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

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

37 ~~7.~~ 8. "Employment agency" means any person regularly undertaking  
38 with or without compensation to procure employees for an employer or to  
39 procure for employees opportunities to work for an employer and includes  
40 an agent of that person.

41 ~~8.~~ 9. "Labor organization":

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

1 (b) Includes:

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

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

10 ~~9~~ 10. "Major life activities" includes:

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

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

19 ~~10~~ 11. "Person" means one or more individuals, governmental  
20 agencies, political subdivisions, labor unions, partnerships,  
21 associations, corporations, legal representatives, mutual companies,  
22 joint-stock companies, trusts, unincorporated organizations, trustees,  
23 trustees in bankruptcy or receivers.

24 ~~11~~ 12. "Qualified individual" means a person with a disability  
25 who, with or without reasonable accommodation, is capable of performing  
26 the essential functions of the employment position that the individual  
27 holds or desires.

28 ~~12~~ 13. "Reasonable accommodation" includes:

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

31 (b) Job restructuring, part-time or modified work schedules,  
32 reassignment to a vacant position, acquisition or modification of  
33 equipment or devices, appropriate adjustment or modification of  
34 examinations, training materials or policies, the provision of qualified  
35 readers, taped texts or other effective methods of making visually  
36 delivered materials available to individuals with visual impairments, the  
37 provision of auxiliary aids and services or interpreters and other similar  
38 services and actions for individuals with disabilities.

39 ~~13~~ 14. "Religion" means all aspects of religious observance and  
40 practice, as well as belief. Unlawful practices as prohibited by this  
41 article include practices with respect to religion unless an employer  
42 demonstrates that the employer is unable to reasonably accommodate ~~to~~ an  
43 employee's or prospective employee's religious observance or practice  
44 without undue hardship on the conduct of the employer's business.

1           ~~14.~~ 15. "Undue hardship":

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

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

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

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

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

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

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

23           Sec. 4. Section 41-1463, Arizona Revised Statutes, is amended to  
24 read:

25           41-1463. Discrimination; unlawful practices; definition

26           A. Nothing contained in this article shall be interpreted to  
27 require that the less qualified be preferred over the better qualified  
28 simply because of race, color, religion, sex, age or national origin or on  
29 the basis of disability.

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

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

36           2. To limit, segregate or classify employees or applicants for  
37 employment in any way ~~which~~ THAT would deprive or tend to deprive any  
38 individual of employment opportunities or otherwise adversely affect the  
39 individual's status as an employee, because of the individual's race,  
40 color, religion, sex, age or national origin or on the basis of  
41 disability.

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

1 C. It is an unlawful employment practice for an employment agency  
2 to fail or refuse to refer for employment or otherwise to discriminate  
3 against any individual because of the individual's race, color, religion,  
4 sex, age or national origin or on the basis of disability or to classify  
5 or refer for employment any individual on the basis of the individual's  
6 race, color, religion, sex, age or national origin or on the basis of  
7 disability.

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

9 1. To exclude or to expel from its membership or otherwise to  
10 discriminate against any individual because of the individual's race,  
11 color, religion, sex, age or national origin or on the basis of  
12 disability.

13 2. To limit, segregate or classify its membership or applicants for  
14 membership or to classify or fail or refuse to refer for employment any  
15 individual in any way ~~which~~ THAT would deprive or tend to deprive the  
16 individual of employment opportunities or would limit those employment  
17 opportunities or otherwise adversely affect the individual's status as an  
18 employee or as an applicant for employment because of the individual's  
19 race, color, religion, sex, age or national origin or on the basis of  
20 disability.

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

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

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

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

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

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

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

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

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

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

27           G. WOMEN WHO ARE AFFECTED BY PREGNANCY OR CHILDBIRTH OR RELATED  
28 MEDICAL CONDITIONS SHALL BE TREATED THE SAME FOR ALL EMPLOYMENT-RELATED  
29 PURPOSES, INCLUDING RECEIPT OF BENEFITS UNDER FRINGE BENEFIT PROGRAMS, AS  
30 OTHER PERSONS NOT SO AFFECTED BUT SIMILAR IN THEIR ABILITY OR INABILITY TO  
31 WORK, AND SUBSECTION J, PARAGRAPH 3 OF THIS SECTION MAY NOT BE INTERPRETED  
32 TO ALLOW OTHERWISE.

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

35           1. For an employer to hire and employ employees, for an employment  
36 agency to classify or refer for employment any individual, for a labor  
37 organization to classify its membership or classify or refer for  
38 employment any individual, or for an employer, labor organization or  
39 joint labor-management committee controlling apprenticeship or other  
40 training or retraining programs to admit or employ any individual in any  
41 such program, on the basis of the individual's religion, sex or national  
42 origin in those certain instances when religion, sex or national origin is  
43 a bona fide occupational qualification reasonably necessary to the normal  
44 operation of that particular business or enterprise.



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

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

15           (a) The occupancy of the position or access to the premises in or  
16 ~~upon~~ ON which any part of the duties of the position are performed or are  
17 to be performed is subject to any requirement imposed in the interest of  
18 the national security of the United States under any security program in  
19 effect pursuant to or administered under any statute of the United States  
20 or any executive order of the president of the United States.

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

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

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

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

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

39           ~~H. I. As used in~~ FOR THE PURPOSES OF this article, unlawful  
40 employment practice does not include any action or measure taken by an  
41 employer, labor organization, joint labor-management committee or  
42 employment agency with respect to an individual who is a member of the  
43 communist party of the United States or of any other organization required  
44 to register as a communist-action or communist-front organization by final

1 order of the subversive activities control board pursuant to the  
2 subversive activities control act of 1950.

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

5 1. For an employer to apply different standards of compensation or  
6 different terms, conditions or privileges of employment pursuant to a bona  
7 fide seniority or merit system or a system ~~which~~ THAT measures earnings by  
8 quantity or quality of production or to employees who work in different  
9 locations, ~~provided that~~ IF these differences are not the result of an  
10 intention to discriminate because of race, color, religion, sex or  
11 national origin.

12 2. For an employer to give and act ~~upon~~ ON the results of any  
13 professionally developed ability test ~~provided that~~ IF the test, its  
14 administration or action ~~upon~~ ON the results is not designed, intended or  
15 used to discriminate because of race, color, religion, sex or national  
16 origin.

17 3. For any employer to differentiate ~~upon~~ ON the basis of sex or  
18 disability in determining the amount of the wages or compensation paid or  
19 to be paid to employees of the employer if the differentiation is  
20 authorized by the provisions of section 6(d) or section 14 of the fair  
21 labor standards act of 1938, as amended (29 United States Code section  
22 206(d)).

23 ~~J.~~ K. Nothing contained in this chapter applies to any business or  
24 enterprise on or near an Indian reservation with respect to any publicly  
25 announced employment practice of the business or enterprise under which a  
26 preferential treatment is given to any individual because the individual  
27 is an Indian living on or near a reservation.

28 ~~K.~~ L. Nothing contained in this article or article 6 of this  
29 chapter requires any employer, employment agency, labor organization or  
30 joint labor-management committee subject to this article to grant  
31 preferential treatment to any individual or group because of the race,  
32 color, religion, sex or national origin of the individual or group on  
33 account of an imbalance ~~which~~ THAT may exist with respect to the total  
34 number or percentage of persons of any race, color, religion, sex or  
35 national origin employed by any employer, referred or classified for  
36 employment by any employment agency or labor organization, admitted to  
37 membership or classified by any labor organization or admitted to or  
38 employed in any apprenticeship or other training program, in comparison  
39 with the total number or percentage of persons of that race, color,  
40 religion, sex or national origin in any community, state, section or other  
41 area, or in the available ~~work force~~ WORKFORCE in any community, state,  
42 section or other area.

43 ~~L.~~ M. ~~Nothing in~~ The age discrimination prohibitions of this  
44 article may NOT be construed to prohibit compulsory retirement of any  
45 employee who has attained sixty-five years of age and who, for the two

1 year period immediately before retirement, is employed in a bona fide  
2 executive or high policymaking position, if the employee is entitled to an  
3 immediate nonforfeitable annual retirement benefit from a pension, profit  
4 sharing, savings or deferred compensation plan or any combination of plans  
5 of the employer for the employee, ~~which~~ THAT equals, in the aggregate, at  
6 least ~~forty-four thousand dollars~~ \$44,000. In applying the retirement  
7 benefit test of this subsection, if any retirement benefit is in a form  
8 other than a straight life annuity, with no ancillary benefits, or if  
9 employees contribute to the plan or make rollover contributions, the  
10 benefit shall be adjusted in accordance with rules adopted by the division  
11 so the benefit is the equivalent of a straight life annuity, with no  
12 ancillary benefits, under a plan to which employees do not contribute and  
13 under which no rollover contributions are made.

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

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

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

25 Sec. 5. Section 41-1464, Arizona Revised Statutes, is amended to  
26 read:

27 41-1464. Other unlawful employment practices; opposition to  
28 unlawful practices; filing of charges;  
29 participation in proceedings; notices and  
30 advertisements for employment

31 A. It is an unlawful employment practice for an employer to  
32 discriminate against any of ~~his~~ THE EMPLOYER'S employees or applicants for  
33 employment, for an employment agency or joint labor-management committee  
34 controlling apprenticeship or other training or retraining programs,  
35 including on-the-job training programs, to discriminate against any  
36 individual or for a labor organization to discriminate against any member  
37 or applicant for membership because the EMPLOYEE, THE member, ~~or~~ THE  
38 applicant OR THE INDIVIDUAL IN AN APPRENTICESHIP OR OTHER TRAINING OR  
39 RETRAINING PROGRAM has opposed any practice ~~which~~ THAT is an unlawful  
40 employment practice under this article or has made a charge, testified,  
41 assisted or participated in any manner in an investigation, proceeding or  
42 hearing under article 6 of this chapter.

43 B. It is AN unlawful employment practice for an employer, labor  
44 organization, employment agency or joint labor-management committee  
45 controlling apprenticeship or other training or retraining programs,

1 including on-the-job training programs, to print or publish or cause to be  
2 printed or published any notice or advertisement relating to employment by  
3 ~~such~~ an employer or membership in or any classification or referral for  
4 employment by ~~such~~ a labor organization or relating to any classification  
5 or referral for employment by ~~such~~ an employment agency or relating to  
6 admission or to employment in any program established to provide  
7 apprenticeship or other training by ~~such~~ a joint labor-management  
8 committee indicating any preference, limitation, specification or  
9 discrimination based on race, color, religion, sex or national origin,  
10 except that ~~such~~ a notice or advertisement may indicate a preference,  
11 limitation, specification or discrimination based on religion, sex or  
12 national origin when religion, sex or national origin is a bona fide  
13 occupational qualification for employment.

14 C. It is unlawful for an employer, labor organization or employment  
15 agency to print or publish or cause to be printed or published any notice  
16 or advertisement relating to employment by an employer or membership in or  
17 any classification or referral for employment by a labor organization ~~or~~  
18 ~~relating to any classification or referral for employment by a labor~~  
19 ~~organization~~ or relating to any classification or referral for employment  
20 by an employment agency, indicating any preference, limitation,  
21 specification or discrimination based on age, except ~~such~~ **THAT THE**  
22 notice or advertisement may indicate a preference, limitation,  
23 specification or discrimination based on age when age is a bona fide  
24 occupational qualification for employment.

25 Sec. 6. Section 41-1481, Arizona Revised Statutes, is amended to  
26 read:

27 41-1481. Filing charges; investigation; findings;  
28 conciliation; compliance proceedings; appeals;  
29 attorney fees; violation; classification

30 A. A charge under this section shall be filed within one hundred  
31 eighty days after the alleged unlawful employment practice occurred. A  
32 charge is deemed filed ~~upon~~ **ON** receipt by the division from or on behalf  
33 of a person claiming to be aggrieved or, if filed by a member of the  
34 division, when executed by ~~such~~ **THE** member ~~upon~~ **ON** oath or affirmation. A  
35 charge is deemed filed by or on behalf of a person claiming to be  
36 aggrieved if received from the United States equal employment opportunity  
37 commission. A charge shall be in writing ~~upon~~ **ON** oath or affirmation and  
38 shall contain ~~such~~ **THE** information, including the date, place and  
39 circumstances of the alleged unlawful employment practice, and be in ~~such~~  
40 **THE** form as the division requires. **THE DIVISION SHALL NOT MAKE** charges  
41 ~~shall not be made~~ public ~~by the division~~.

42 B. Whenever a charge is filed by or on behalf of a person claiming  
43 to be aggrieved or by a member of the division, referred to as the  
44 charging party, alleging that an employer, employment agency, labor  
45 organization or joint labor-management committee controlling

1 apprenticeship or other training or retraining programs, including  
2 on-the-job training programs, has engaged in an unlawful employment  
3 practice, the division shall serve notice of and a copy of the charge on  
4 ~~such~~ THE employer, employment agency, labor organization or joint  
5 labor-management committee, referred to as the respondent, within ten days  
6 and shall ~~make an investigation of~~ INVESTIGATE the charge. If the  
7 division determines after ~~such~~ THE investigation that there is not  
8 reasonable cause to believe that the charge is true, ~~it~~ THE DIVISION shall  
9 enter an order determining the same and dismissing the charge and shall  
10 notify the charging party and the respondent of its action. If the  
11 division determines after ~~such~~ THE investigation that there is reasonable  
12 cause to believe that the charge is true, ~~it~~ THE DIVISION shall enter an  
13 order containing its findings of fact and shall endeavor to eliminate the  
14 alleged unlawful employment practice by informal methods of conference,  
15 conciliation and persuasion. Any party to ~~such~~ THE informal proceeding  
16 may be represented by counsel. Counsel need not be a member of the state  
17 bar if ~~he~~ COUNSEL is licensed to practice law in any other state or  
18 territory of the United States. Nothing said or done during and as a part  
19 of ~~such~~ THE informal endeavors may be made public by the division or its  
20 officers or employees or used as evidence in a subsequent proceeding  
21 without the written consent of the persons concerned. If a civil action  
22 resulting from a charge is commenced in any federal or state court,  
23 evidence collected by or submitted to the division during the  
24 investigation of the charge and the source of the evidence shall be  
25 subject to discovery by the parties to the civil action. Any person who  
26 makes public information in violation of this subsection is guilty of a  
27 class 1 misdemeanor. The division shall make its determination on  
28 reasonable cause as promptly as possible and as far as practicable not  
29 later than sixty days from the filing of the charge. If more than two  
30 years have elapsed after the alleged unlawful employment practice  
31 occurred, and if the charging party has received a notice of right to sue,  
32 the division may cease investigation of a charge without reaching a  
33 determination.

34 C. All conciliation agreements shall provide that the charging  
35 party waives, releases and covenants not to sue the respondent or claim  
36 against the respondent in any forum with respect to the matters which were  
37 alleged as charges filed with the division, subject to performance by the  
38 respondent of the promises and representations contained in the  
39 conciliation agreement. The charging party or the respondent may prepare  
40 a conciliation agreement ~~which~~ THAT the division shall submit to the other  
41 party and ~~which~~ THAT, if accepted by the other party, shall be accepted by  
42 the division.

43 D. If within thirty days after the division has made a  
44 determination that reasonable cause exists to believe that the charge is  
45 true the division has not accepted a conciliation agreement to which the

1 charging party and the respondent are parties, the division may bring a  
2 civil action against the respondent, other than the state, named in the  
3 charge. The charging party shall have the right to intervene in a civil  
4 action brought by the division. If a charge filed with the division  
5 pursuant to subsection A of this section is dismissed by the division or  
6 if within ninety days from the filing of such charge the division has not  
7 filed a civil action under this section or has not entered into a  
8 conciliation agreement with the charging party, the division shall so  
9 notify the charging party. ~~Within ninety days~~ After ~~the giving of such~~  
10 ~~PROVIDING THE~~ notice a civil action may be brought against the respondent  
11 named in the charge by the charging party or, if ~~such~~ THAT charge was  
12 filed by a member of the division, by any person whom the charge alleges  
13 was aggrieved by the alleged unlawful employment practice. In no event  
14 shall any action be brought pursuant to this article more than one year  
15 after the charge to which the action relates has been filed. ~~Upon~~ ON  
16 application by the complainant and in ~~such~~ THE circumstances as the court  
17 may deem just, the court may appoint an attorney for such complainant and  
18 may authorize the commencement of the action without the payment of fees,  
19 costs or security. ~~Upon~~ ON timely application, the court may in its  
20 discretion ~~permit~~ ALLOW the division to intervene in civil actions in  
21 which the state is not a defendant ~~upon~~ ON certification that the case is  
22 of general public importance. Upon request the court may stay further  
23 proceedings for not more than sixty days pending the further efforts of  
24 the parties or the division to obtain voluntary compliance.

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

36 F. The court shall assign any action brought under this article for  
37 hearing at the earliest practicable date and cause the action to be in  
38 every way expedited. If the action has not been scheduled for trial  
39 within one hundred twenty days after issue has been joined, the judge may  
40 appoint a master pursuant to rule 53 of the ~~supreme court~~ ARIZONA rules of  
41 civil procedure.

42 G. If the court finds that the defendant has intentionally engaged  
43 in or is intentionally engaging in an unlawful employment practice alleged  
44 in the complaint, the court may enjoin the defendant from engaging in ~~such~~  
45 THE unlawful employment practice and order ~~such~~ THE affirmative action as

1 may be appropriate. Affirmative action may include, but is not limited  
2 to, reinstatement or hiring of employees with or without back pay payable  
3 by the employer, employment agency or labor organization responsible for  
4 the unlawful employment practice or any other equitable relief as the  
5 court deems appropriate. Back pay liability shall not accrue from a date  
6 more than two years ~~prior to~~ BEFORE the filing of the charge with the  
7 division. Interim earnings or amounts earnable with reasonable diligence  
8 by the person or persons discriminated against shall reduce the back pay  
9 otherwise allowable. ~~No~~ AN order of the court shall NOT require the  
10 admission or reinstatement of an individual as a member of a union or the  
11 hiring, reinstatement or promotion of an individual as an employee or the  
12 payment to ~~him~~ THE INDIVIDUAL of any back pay if ~~such~~ THE individual was  
13 refused admission, suspended or expelled or was refused employment or  
14 advancement or was suspended or discharged for any reason other than  
15 discrimination on account of race, color, religion, sex, age, disability  
16 or national origin or a violation of section 41-1464.

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

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

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

28 Sec. 7. Section 41-1492.09, Arizona Revised Statutes, is amended to  
29 read:

30 41-1492.09. Enforcement by the attorney general; sanctions;  
31 use of sanction monies

32 A. The attorney general shall investigate all alleged violations of  
33 this article. These allegations must be filed within one hundred eighty  
34 days after the occurrence or the termination of the alleged discriminatory  
35 practice, shall be in writing under oath and shall be in such form as the  
36 attorney general requires. The attorney general shall undertake periodic  
37 reviews of compliance of covered entities under this article. If the  
38 attorney general concludes at any time after the filing of a complaint of  
39 alleged violation, or as a result of a periodic compliance review, that  
40 prompt judicial action is necessary to carry out the purpose of this  
41 article, the attorney general may file a civil action for appropriate  
42 temporary or preliminary relief pending final disposition of the complaint  
43 or compliance review. If, after investigation, the attorney general  
44 determines that reasonable cause exists to believe this article is being  
45 violated, the attorney general shall attempt for a period of not more than



1 thirty days to effectuate a conciliation agreement. If no conciliation  
2 agreement has been reached after thirty days, the attorney general ~~shall~~  
3 MAY file a civil action in an appropriate court. If the attorney general  
4 determines that no reasonable cause exists to believe that a violation of  
5 this article has occurred or is about to occur, the attorney general shall  
6 promptly dismiss the complaint and give written notice of the dismissal to  
7 the complainant and the person or entity complained against. If the  
8 attorney general finds reasonable cause to believe that a party has  
9 breached a conciliation agreement, the attorney general shall file a civil  
10 action for enforcement of the agreement.

11 B. In any civil action brought under this article, the court:

12 1. May grant any equitable relief that the court considers to be  
13 appropriate, including, to the extent required by this title:

14 (a) Granting temporary, preliminary or permanent relief.

15 (b) Providing an auxiliary aid or service, a modification of a  
16 policy, practice or procedure or an alternative method.

17 (c) Making facilities readily accessible to and usable by  
18 individuals with disabilities.

19 2. May award such other relief as the court considers appropriate,  
20 including monetary damages to aggrieved persons. For the purposes of  
21 this paragraph, monetary damages and such other relief do not include  
22 punitive damages.

23 C. In an action brought by the attorney general, the court, to  
24 vindicate the public interest, may assess a civil penalty against the  
25 covered person or entity in an amount of not more than:

26 1. ~~Five thousand dollars~~ \$5,000 for a first violation.

27 2. ~~Ten thousand dollars~~ \$10,000 for any subsequent violation.

28 D. For the purposes of subsection C of this section, in determining  
29 whether a first or subsequent violation has occurred, a determination in a  
30 single action, by judgment or settlement, that the covered person or  
31 entity has engaged in more than one discriminatory act shall be deemed a  
32 single violation.

33 E. In a civil action brought by the attorney general, when  
34 considering what amount of civil penalty, if any, is appropriate, the  
35 court shall give consideration to any good faith effort or attempt to  
36 comply with this article by the entity. In evaluating good faith, the  
37 court shall consider, among other factors it deems relevant, whether the  
38 entity could have reasonably anticipated the need for an appropriate type  
39 of auxiliary aid needed to accommodate the unique needs of a particular  
40 individual with a disability.

41 F. In any action or proceeding under this section, the court may  
42 allow the prevailing party, other than the attorney general, reasonable  
43 attorney fees as part of the costs.



1           G. If appropriate, and to the extent authorized by law, the use of  
2 alternative means of dispute resolution, including settlement  
3 negotiations, conciliation, facilitation, mediation, fact-finding,  
4 mini-trials and arbitration, is encouraged to resolve disputes arising  
5 under this article.

6           H. In addition to any sanction that the court may award to a party  
7 pursuant to any rule or law in any civil action brought under this  
8 article, the court may impose a sanction on a plaintiff or the plaintiff's  
9 attorney if the court determines that an action or series of actions is  
10 brought under this article for the primary purpose of obtaining a payment  
11 from the defendant due to the costs of defending the action in a court.  
12 When imposing a sanction, the court may consider the totality of the  
13 abusive litigation-related practices of the plaintiff and the plaintiff's  
14 attorney.

15           I. If the court imposes a sanction pursuant to subsection H of this  
16 section, the court may order a party to pay a part of the sanction to the  
17 governor's office of youth, faith and family and, if ordered, the parties  
18 must notify the governor's office of youth, faith and family of the  
19 court's order. The governor's office of youth, faith and family must use  
20 these monies for the following purposes:

21           1. To educate covered persons or entities about the person's or  
22 entity's obligations under this article.

23           2. To award attorney fees to claimants who file a meritorious  
24 complaint with the attorney general and who resolve the complaint without  
25 litigation.