

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

HOUSE BILL 2045

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 to otherwise
43 discriminate against any individual based on the results of a genetic test
44 received by the employer, notwithstanding subsection ~~F~~ 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~~ 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 ~~J.~~ 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~~ ~~a~~ 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.