

REFERENCE TITLE: housing; employment; public accommodations;
antidiscrimination

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

HB 2802

Introduced by
Representatives Bowers: Shah

AN ACT

AMENDING TITLE 32, CHAPTER 32, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-3230; AMENDING SECTIONS 41-1402, 41-1441, 41-1442, 41-1461, 41-1463, 41-1464, 41-1481, 41-1491, 41-1491.03, 41-1491.05, 41-1491.14, 41-1491.15, 41-1491.16, 41-1491.17, 41-1491.20, 41-1491.21 AND 41-1493.01, 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. Title 32, chapter 32, article 1, Arizona Revised
3 Statutes, is amended by adding section 32-3230, to read:

4 32-3230. Conversion therapy; unprofessional conduct; state
5 preemption; definitions

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

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

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

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

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

19 D. FOR THE PURPOSES OF THIS SECTION:

20 1. "CONVERSION THERAPY":

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

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

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

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

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

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

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

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

41 2. "GENDER IDENTITY" HAS THE SAME MEANING PRESCRIBED IN SECTION
42 41-1441.

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

1 4. "SEXUAL ORIENTATION" HAS THE SAME MEANING PRESCRIBED IN SECTION
2 41-1441.

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

5 41-1402. Powers and duties of the division

6 A. The division may:

7 1. Employ an executive director for the board and other necessary
8 personnel whose compensation shall be as determined pursuant to section
9 38-611.

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

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

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

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

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

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

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

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

40 B. The division shall:

41 1. Administer this chapter.

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

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

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

5 41-1441. Definitions

6 In this article, unless the context otherwise requires:

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

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

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

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

16 ~~1.~~ 2. "Person" means an individual, corporation, partnership,
17 unincorporated association, or other organization, and includes the owner,
18 lessee, operator, proprietor, manager, superintendent, agent, ~~or~~ or employee
19 of any place of public accommodation.

20 ~~2.~~ 3. "Places of public accommodation" means all public places of
21 entertainment, amusement or recreation, all public places where food or
22 beverages are sold for consumption on the premises, all public places
23 ~~which~~ THAT are conducted for the lodging of transients or for the benefit,
24 use or accommodation of those seeking health or recreation and all
25 establishments ~~which~~ THAT cater or offer their services, facilities or
26 goods to or solicit patronage from the members of the general public. Any
27 dwelling as defined in section 41-1491, or any private club, or any place
28 ~~which~~ THAT is in its nature distinctly private is not a place of public
29 accommodation.

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

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

34 41-1442. Discrimination in places of public accommodation;
35 exceptions

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

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

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

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

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

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

27 F. THE REGULATION OF DISCRIMINATION IN PLACES OF PUBLIC
28 ACCOMMODATION IS OF STATEWIDE CONCERN AND IS NOT SUBJECT TO FURTHER
29 REGULATION BY A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS
30 STATE.

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

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

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

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

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

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

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

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

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

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

23 Sec. 5. 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 3. "Being regarded as having such a physical or mental impairment":

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

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

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

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

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

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

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

9 6. "Employee":

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

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

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

23 7. "Employer":

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

31 (b) Does not include either:

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

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

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

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

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

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

3 (c) A RELIGIOUS EDUCATIONAL INSTITUTION THAT IS ELIGIBLE FOR
4 EXEMPTION UNDER THE CIVIL RIGHTS ACT OF 1964 (P.L. 88-352; 78 STAT. 241).

5 (d) A RELIGIOUS CORPORATION, ASSOCIATION OR SOCIETY DESCRIBED IN
6 THE CIVIL RIGHTS ACT OF 1964 (P.L. 88-352; 78 STAT. 241) THAT IS ELIGIBLE
7 FOR TAX-EXEMPT STATUS UNDER SECTION 501(c) OF THE INTERNAL REVENUE CODE OF
8 1986 AND THAT ONLY EMPLOYS INDIVIDUALS OF THE EMPLOYER'S RELIGION, UNLESS
9 THE EMPLOYEE DEMONSTRATES THAT THE EMPLOYER HAS NOT APPLIED WITH
10 REASONABLE CONSISTENCY ITS RELIGIOUS STANDARD CITED AS THE REASON FOR THE
11 ADVERSE EMPLOYMENT ACTION.

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

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

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

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

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

23 ~~9-~~ 11. "Labor organization":

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

26 (b) Includes:

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

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

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

40 ~~10-~~ 13. "Major life activities" includes:

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

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

5 14. "PERFORM THE ESSENTIAL FUNCTIONS":

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

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

14 ~~11.~~ 15. "Person" means one or more individuals, governmental
15 agencies, political subdivisions, labor unions, partnerships,
16 associations, corporations, legal representatives, mutual companies,
17 joint-stock companies, trusts, unincorporated organizations, trustees,
18 trustees in bankruptcy or receivers.

19 ~~12.~~ 16. "Qualified individual" means a person with a disability
20 who, with or without reasonable accommodation, is capable of performing
21 the essential functions of the employment position that the individual
22 holds or desires.

23 ~~13.~~ 17. "Reasonable accommodation":

24 (a) Includes:

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

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

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

41 ~~14.~~ 18. "Religion" means all aspects of religious observance and
42 practice, as well as belief. Unlawful practices as prohibited by this
43 article include practices with respect to religion unless an employer
44 demonstrates that the employer is unable, AFTER INITIATING AND ENGAGING IN
45 AN AFFIRMATIVE AND BONA FIDE EFFORT, to reasonably accommodate an

1 employee's or prospective employee's religious observance or practice
2 without undue hardship on the conduct of the employer's business.

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

5 ~~15-~~ 20. "Undue hardship":

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

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

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

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

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

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

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

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

31 Sec. 6. Section 41-1463, Arizona Revised Statutes, is amended to
32 read:

33 ~~41-1463.~~ Discrimination; unlawful practices; definition

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

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

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

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

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

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

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

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

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

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

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

40 E. It is an unlawful employment practice for any employer, labor
41 organization or joint labor-management committee controlling
42 apprenticeship or other training or retraining programs, including
43 on-the-job training programs, to discriminate against any individual
44 because of the individual's race, color, religion, sex, **SEXUAL**
45 **ORIENTATION, GENDER IDENTITY**, age or national origin or on the basis of

1 disability in admission to or employment in any program established to
2 provide apprenticeship or other training and, if the individual is an
3 otherwise qualified individual, to fail or refuse to reasonably
4 accommodate the individual's disability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 1. For an employer to apply different standards of compensation or
30 different terms, conditions or privileges of employment pursuant to a bona
31 fide seniority or merit system or a system that measures earnings by
32 quantity or quality of production or to employees who work in different
33 locations, if these differences are not the result of an intention to
34 discriminate because of race, color, religion, sex, SEXUAL ORIENTATION,
35 GENDER IDENTITY or national origin.

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

41 3. For any employer to differentiate on the basis of sex or
42 disability in determining the amount of the wages or compensation paid or
43 to be paid to employees of the employer if the differentiation is
44 authorized by the provisions of section 6(d) or section 14 of the fair

1 labor standards act of 1938, as amended (29 United States Code section
2 206(d)).

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

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

24 M. The age discrimination prohibitions of this article may not be
25 construed to prohibit compulsory retirement of any employee who has
26 attained sixty-five years of age and who, for the two year period
27 immediately before retirement, is employed in a bona fide executive or
28 high policymaking position, if the employee is entitled to an immediate
29 nonforfeitable annual retirement benefit from a pension, profit sharing,
30 savings or deferred compensation plan or any combination of plans of the
31 employer for the employee, that equals, in the aggregate, at least
32 \$44,000. In applying the retirement benefit test of this subsection, if
33 any retirement benefit is in a form other than a straight life annuity,
34 with no ancillary benefits, or if employees contribute to the plan or make
35 rollover contributions, the benefit shall be adjusted in accordance with
36 rules adopted by the division so the benefit is the equivalent of a
37 straight life annuity, with no ancillary benefits, under a plan to which
38 employees do not contribute and under which no rollover contributions are
39 made.

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

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

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

7 Sec. 7. Section 41-1464, Arizona Revised Statutes, is amended to
8 read:

9 41-1464. Other unlawful employment practices; opposition to
10 unlawful practices; filing of charges;
11 participation in proceedings; notices and
12 advertisements for employment

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

25 B. It is an unlawful employment practice for an employer, labor
26 organization, employment agency or joint labor-management committee
27 controlling apprenticeship or other training or retraining programs,
28 including on-the-job training programs, to print or publish or cause to be
29 printed or published any notice or advertisement relating to employment by
30 an employer or membership in or any classification or referral for
31 employment by a labor organization, ~~or relating to~~ any classification or
32 referral for employment by an employment agency or ~~relating to~~ admission
33 or ~~to~~ employment in any program established to provide apprenticeship or
34 other training by a joint labor-management committee indicating any
35 preference, limitation, specification or discrimination based on race,
36 color, religion, sex, **SEXUAL ORIENTATION, GENDER IDENTITY** or national
37 origin, except that a notice or advertisement may indicate a preference,
38 limitation, specification or discrimination based on religion, sex or
39 national origin when religion, sex, **SEXUAL ORIENTATION, GENDER IDENTITY** or
40 national origin is a bona fide occupational qualification for employment,
41 **PROVIDED THAT IF SEX IS A BONA FIDE OCCUPATIONAL QUALIFICATION INDIVIDUALS**
42 **ARE RECOGNIZED AS QUALIFIED BASED ON THEIR GENDER IDENTITY.**

43 C. It is unlawful for an employer, labor organization or employment
44 agency to print or publish or cause to be printed or published any notice
45 or advertisement relating to employment by an employer or membership in or

1 any classification or referral for employment by a labor organization or
2 relating to any classification or referral for employment by an employment
3 agency, indicating any preference, limitation, specification or
4 discrimination based on age, except that the notice or advertisement may
5 indicate a preference, limitation, specification or discrimination based
6 on age when age is a bona fide occupational qualification for employment.

7 **D. THE REGULATION OF AN UNLAWFUL EMPLOYMENT PRACTICE IS OF**
8 **STATEWIDE CONCERN AND IS NOT SUBJECT TO FURTHER REGULATION BY A COUNTY,**
9 **CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE.**

10 Sec. 8. Section 41-1481, Arizona Revised Statutes, is amended to
11 read:

12 41-1481. Filing charges; investigation; findings;
13 conciliation; compliance proceedings; appeals;
14 attorney fees; violation; classification

15 A. A charge under this section shall be filed within one hundred
16 eighty days after the alleged unlawful employment practice occurred. A
17 charge is deemed filed on receipt by the division from or on behalf of a
18 person claiming to be aggrieved or, if filed by a member of the division,
19 when executed by the member on oath or affirmation. A charge is deemed
20 filed by or on behalf of a person claiming to be aggrieved if received
21 from the United States equal employment opportunity commission. A charge
22 shall be in writing on oath or affirmation and shall contain the
23 information, including the date, place and circumstances of the alleged
24 unlawful employment practice, and be in the form as the division
25 requires. The division shall not make charges public.

26 B. Whenever a charge is filed by or on behalf of a person claiming
27 to be aggrieved or by a member of the division, referred to as the
28 charging party, alleging that an employer, employment agency, labor
29 organization or joint labor-management committee controlling
30 apprenticeship or other training or retraining programs, including
31 on-the-job training programs, has engaged in an unlawful employment
32 practice, the division shall serve notice of and a copy of the charge on
33 the employer, employment agency, labor organization or joint
34 labor-management committee, referred to as the respondent, within ten days
35 and shall investigate the charge. If the division determines after the
36 investigation that there is not reasonable cause to believe that the
37 charge is true, the division shall enter an order determining the same and
38 dismissing the charge and shall notify the charging party and the
39 respondent of its action. If the division determines after the
40 investigation that there is reasonable cause to believe that the charge is
41 true, the division shall enter an order containing its findings of fact
42 and shall endeavor to eliminate the alleged unlawful employment practice
43 by informal methods of conference, conciliation and persuasion. Any party
44 to the informal proceeding may be represented by counsel. Counsel need
45 not be a member of the state bar if counsel is licensed to practice law in

1 any other state or territory of the United States. Nothing said or done
 2 during and as a part of the informal endeavors may be made public by the
 3 division or its officers or employees or used as evidence in a subsequent
 4 proceeding without the written consent of the persons concerned. If a
 5 civil action resulting from a charge is commenced in any federal or state
 6 court, evidence collected by or submitted to the division during the
 7 investigation of the charge and the source of the evidence shall be
 8 subject to discovery by the parties to the civil action. Any person who
 9 makes public information in violation of this subsection is guilty of a
 10 class 1 misdemeanor. The division shall make its determination on
 11 reasonable cause as promptly as possible and as far as practicable not
 12 later than sixty days ~~from~~ AFTER the filing of the charge. If more than
 13 two years have elapsed after the alleged unlawful employment practice
 14 occurred, and if the charging party has received a notice of right to sue,
 15 the division may cease investigation of a charge without reaching a
 16 determination.

17 C. All conciliation agreements shall provide that the charging
 18 party waives, releases and covenants not to sue the respondent or claim
 19 against the respondent in any forum with respect to the matters ~~which~~ THAT
 20 were alleged as charges filed with the division, subject to performance by
 21 the respondent of the promises and representations contained in the
 22 conciliation agreement. The charging party or the respondent may prepare
 23 a conciliation agreement that the division shall submit to the other party
 24 and that, if accepted by the other party, shall be accepted by the
 25 division.

26 D. If within thirty days after the division has made a
 27 determination that reasonable cause exists to believe that the charge is
 28 true the division has not accepted a conciliation agreement to which the
 29 charging party and the respondent are parties, the division may bring a
 30 civil action against the respondent, other than the state, named in the
 31 charge. The charging party shall have the right to intervene in a civil
 32 action brought by the division. If a charge filed with the division
 33 pursuant to subsection A of this section is dismissed by the division or
 34 if within ninety days ~~from~~ AFTER the filing of such charge the division
 35 has not filed a civil action under this section or has not entered into a
 36 conciliation agreement with the charging party, the division shall so
 37 notify the charging party. After providing the notice a civil action may
 38 be brought against the respondent named in the charge by the charging
 39 party or, if that charge was filed by a member of the division, by any
 40 person whom the charge alleges was aggrieved by the alleged unlawful
 41 employment practice. ~~In no event shall any~~ AN action MAY NOT be brought
 42 pursuant to this article more than one year after the charge to which the
 43 action relates has been filed. On application by the complainant and in
 44 the circumstances as the court may deem just, the court may appoint an
 45 attorney for such complainant and may authorize the commencement of the

1 action without the payment of fees, costs or security. On timely
2 application, the court may in its discretion allow the division to
3 intervene in civil actions in which the state is not a defendant on
4 certification that the case is of general public importance. ~~UPON~~ ON
5 request the court may stay further proceedings for not more than sixty
6 days pending the further efforts of the parties or the division to obtain
7 voluntary compliance.

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

18 F. The court shall assign any action brought under this article for
19 hearing at the earliest practicable date and cause the action to be in
20 every way expedited. If the action has not been scheduled for trial
21 within one hundred twenty days after issue has been joined, the judge may
22 appoint a master pursuant to rule 53 of the Arizona rules of civil
23 procedure.

24 G. If the court finds that the defendant has intentionally engaged
25 in or is intentionally engaging in an unlawful employment practice alleged
26 in the complaint, the court may enjoin the defendant from engaging in the
27 unlawful employment practice and order the affirmative action as may be
28 appropriate. Affirmative action may include, but is not limited to,
29 reinstatement or hiring of employees with or without back pay payable by
30 the employer, employment agency or labor organization responsible for the
31 unlawful employment practice or any other equitable relief as the court
32 deems appropriate. Back pay liability shall not accrue from a date more
33 than two years before the filing of the charge with the division. Interim
34 earnings or amounts earnable with reasonable diligence by the person or
35 persons discriminated against shall reduce the back pay otherwise
36 allowable. An order of the court shall not require the admission or
37 reinstatement of an individual as a member of a union or the hiring,
38 reinstatement or promotion of an individual as an employee or the payment
39 to the individual of any back pay if the individual was refused admission,
40 suspended or expelled or was refused employment or advancement or was
41 suspended or discharged for any reason other than discrimination on
42 account of race, color, religion, sex, **SEXUAL ORIENTATION, GENDER**
43 **IDENTITY**, age, disability or national origin or a violation of section
44 41-1464.

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

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

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

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

14 41-1491. Definitions

15 In this article, unless the context otherwise requires:

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

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

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

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

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

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

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

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

39 7. "Dwelling" means either:

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

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

1 8. "Family" includes a single individual.
2 9. "GENDER IDENTITY" MEANS THE GENDER RELATED IDENTITY, APPEARANCE
3 OR MANNERISMS OR OTHER GENDER-RELATED CHARACTERISTICS OF AN INDIVIDUAL,
4 REGARDLESS OF THE INDIVIDUAL'S DESIGNATED SEX AT BIRTH, THAT CAN BE SHOWN
5 BY PROVIDING EVIDENCE, INCLUDING ANY OF THE FOLLOWING:
6 (a) MEDICAL HISTORY, CARE OR TREATMENT OF THE GENDER IDENTITY.
7 (b) CONSISTENT AND UNIFORM ASSERTION OF THE GENDER IDENTITY.
8 (c) OTHER EVIDENCE THAT THE GENDER IDENTITY IS SINCERELY HELD, PART
9 OF A PERSON'S CORE IDENTITY AND IS NOT BEING ASSERTED FOR AN IMPROPER
10 PURPOSE.
11 ~~9.~~ 10. "Person" means one or more individuals, corporations,
12 partnerships, associations, labor organizations, legal representatives,
13 mutual companies, joint stock companies, trusts, unincorporated
14 organizations, trustees, receivers, fiduciaries, banks, credit unions and
15 financial institutions.
16 ~~10.~~ 11. "Respondent" means either:
17 (a) The person accused of a violation of this article in a
18 complaint of a discriminatory housing practice.
19 (b) Any person identified as an additional or substitute respondent
20 under section 41-1491.25 or an agent of an additional or substitute
21 respondent.
22 12. "SEXUAL ORIENTATION" MEANS HOMOSEXUALITY, HETEROSEXUALITY OR
23 BISEXUALITY.
24 ~~11.~~ 13. "To rent" includes to lease, to sublease, to let or to
25 otherwise grant for a consideration the right to occupy premises not owned
26 by the occupant.
27 Sec. 10. Section 41-1491.03, Arizona Revised Statutes, is amended
28 to read:
29 41-1491.03. Religious organization and private club
30 exemption; definition
31 A. This article does not prohibit a religious organization,
32 association or society, ~~or~~ a nonprofit institution or organization
33 operated, supervised or controlled by or in conjunction with a religious
34 organization, association or society OR A RELIGIOUS EDUCATIONAL
35 INSTITUTION from:
36 1. Limiting the sale, rental or occupancy of dwellings that it owns
37 or operates for other than a commercial purpose to persons of the same
38 religion.
39 2. Giving preference to persons of the same religion OR TO PERSONS
40 THAT ADHERE TO ITS RELIGION, unless membership in the religion is
41 restricted because of race, color or national origin.
42 B. This article does not prohibit a private club that is not open
43 to the public and that, as an incident to its primary purpose, provides
44 lodging that it owns or operates for other than a commercial purpose from

1 limiting the rental or occupancy of that lodging to its members or from
2 giving preference to its members.

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

5 Sec. 11. Section 41-1491.05, Arizona Revised Statutes, is amended
6 to read:

7 41-1491.05. Appraisal exemption

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

12 Sec. 12. Section 41-1491.14, Arizona Revised Statutes, is amended
13 to read:

14 41-1491.14. Discrimination in sale or rental

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

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

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

29 D. THE REGULATION OF DISCRIMINATION IN THE SALE OR RENTAL OF A
30 DWELLING IS OF STATEWIDE CONCERN AND IS NOT SUBJECT TO FURTHER REGULATION
31 BY A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE.

32 Sec. 13. Section 41-1491.15, Arizona Revised Statutes, is amended
33 to read:

34 41-1491.15. Publication of sales or rentals

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

41 Sec. 14. Section 41-1491.16, Arizona Revised Statutes, is amended
42 to read:

43 41-1491.16. Inspection of dwelling

44 A person may not represent to any person because of race, color,
45 religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, disability, familial

1 status or national origin that a dwelling is not available for inspection
2 for sale or rental if the dwelling is available for inspection.

3 Sec. 15. Section 41-1491.17, Arizona Revised Statutes, is amended
4 to read:

5 41-1491.17. Entry into neighborhood

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

11 Sec. 16. Section 41-1491.20, Arizona Revised Statutes, is amended
12 to read:

13 41-1491.20. Residential real estate related transaction;
14 definition

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

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

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

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

26 (b) To secure residential real estate.

27 2. Selling, brokering or appraising residential real property.

28 C. THE REGULATION OF RESIDENTIAL REAL ESTATE RELATED TRANSACTIONS
29 ARE OF STATEWIDE CONCERN AND ARE NOT SUBJECT TO FURTHER REGULATION BY A
30 COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE.

31 Sec. 17. Section 41-1491.21, Arizona Revised Statutes, is amended
32 to read:

33 41-1491.21. Brokerage services

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

42 B. THE REGULATION OF BROKERAGE SERVICES IS OF STATEWIDE CONCERN AND
43 IS NOT SUBJECT TO FURTHER REGULATION BY A COUNTY, CITY, TOWN OR OTHER
44 POLITICAL SUBDIVISION OF THIS STATE.

1 Sec. 18. Section 41-1493.01, Arizona Revised Statutes, is amended
2 to read:

3 41-1493.01. Free exercise of religion protected; definition

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

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

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

13 1. In furtherance of a compelling governmental interest.

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

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

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

24 **F. FOR THE PURPOSES OF THIS SECTION, "GOVERNMENT" INCLUDES ANY**
25 **BRANCH, DEPARTMENT OR AGENCY OF GOVERNMENT OR THE ENFORCEMENT OR**
26 **APPLICATION OF ANY LAW, RULE OR POLICY BY ANY BRANCH, DEPARTMENT OR AGENCY**
27 **OF GOVERNMENT.**

28 Sec. 19. Short title

29 This act may be cited as the "Equality And Fairness For All
30 Arizonans Act.