

REFERENCE TITLE: preferential treatment; discrimination; policies

State of Arizona
House of Representatives
Fifty-seventh Legislature
First Regular Session
2025

HB 2868

Introduced by
Representatives Way: Biasiucci, Carbone, Carter N, Carter P, Fink, Gress,
Kupper, Lopez, Montenegro, Nguyen, Olson, Powell, Taylor, Weninger

AN ACT

AMENDING TITLE 41, CHAPTER 9, ARTICLE 10, ARIZONA REVISED STATUTES, BY
ADDING SECTION 41-1494.01; RELATING TO DISCRIMINATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Heading change

3 The article heading of title 41, chapter 9, article 10, Arizona
4 Revised Statutes, is changed from "TRAINING AND INSTRUCTION" to
5 "PREFERENTIAL TREATMENT".

6 Sec. 2. Title 41, chapter 9, article 10, Arizona Revised Statutes,
7 is amended by adding section 41-1494.01, to read:

8 41-1494.01. Preferential treatment or discrimination
9 prohibited; exceptions; remedies; definition

10 A. NOTWITHSTANDING ANY OTHER LAW, THIS STATE OR A CITY, TOWN,
11 COUNTY, PUBLIC UNIVERSITY, COMMUNITY COLLEGE DISTRICT, SCHOOL DISTRICT OR
12 SPECIAL DISTRICT IN THIS STATE MAY NOT DO ANY OF THE FOLLOWING:

13 1. COMPEL AN APPLICANT, EMPLOYEE, STUDENT OR CONTRACTOR TO ENDORSE
14 OR SUPPORT GIVING PREFERENTIAL TREATMENT TO OR DISCRIMINATING AGAINST ANY
15 INDIVIDUAL ON THE BASIS OF RACE OR ETHNICITY AS A CONDITION OF ANY
16 ADMISSION, GRADUATION, HIRING, PROMOTION, CERTIFICATION OR CONTRACTING
17 DECISION OR OTHER EMPLOYMENT FUNCTION OR SCHOLARSHIP OPPORTUNITY. THE
18 PROHIBITION PURSUANT TO THIS PARAGRAPH INCLUDES ALL OF THE FOLLOWING:

19 (a) REQUIRING OR SOLICITING A WRITTEN OR ORAL STATEMENT IN SUPPORT
20 OF ANY OF THE FOLLOWING:

21 (i) A THEORY OR PRACTICE THAT ADVOCATES FOR THE DIFFERENTIAL
22 TREATMENT OF ANY INDIVIDUAL OR GROUP OF INDIVIDUALS ON THE BASIS OF RACE
23 OR ETHNICITY.

24 (ii) ANY FORMULATION OF RACE-BASED DIVERSITY, EQUITY AND INCLUSION
25 OR INTERSECTIONALITY IN CONTEMPORARY SOCIETY BEYOND UPHOLDING THE EQUAL
26 PROTECTION OF THE LAWS GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE
27 CONSTITUTION OF THE UNITED STATES.

28 (iii) THE BELIEF THAT A RACIALLY NEUTRAL LAW, POLICY OR INSTITUTION
29 PERPETUATES RACIAL OPPRESSION OR INJUSTICE OR RACE-BASED PRIVILEGE IN
30 CONTEMPORARY SOCIETY.

31 (b) REQUIRING OR SOLICITING AN INDIVIDUAL TO CONFESS RACE-BASED
32 PRIVILEGE OR DISCUSS THE INDIVIDUAL'S RACE OR ETHNICITY OR VIEWS ON OR
33 EXPERIENCE WITH THE RACE OR ETHNICITY OF OTHERS.

34 (c) GIVING PREFERABLE CONSIDERATION TO AN INDIVIDUAL FOR AN OPINION
35 EXPRESSED OR AN ACT TAKEN IN SUPPORT OF ANOTHER INDIVIDUAL OR A GROUP OF
36 INDIVIDUALS IF THE CONSIDERATION IS BASED ON THE RACE OR ETHNICITY OF
37 THOSE INDIVIDUALS.

38 (d) REQUIRING ENROLLMENT IN, OR COMPLETION OF, ANY TRAINING OR
39 COURSE THAT PROMOTES ANY OF THE TENETS PRESCRIBED IN THIS PARAGRAPH.

40 2. SPEND PUBLIC MONIES TO OPERATE OR CONTRACT FOR ANY OFFICE OR
41 POSITION IN AN INSTITUTION OF PUBLIC EDUCATION THAT IS RESPONSIBLE FOR
42 PROMOTING PREFERENTIAL TREATMENT TOWARD OR DISCRIMINATION AGAINST AN
43 INDIVIDUAL OR GROUP ON THE BASIS OF RACE OR ETHNICITY. THE PROHIBITION
44 PURSUANT TO THIS PARAGRAPH:

(a) INCLUDES USING ANY APPROPRIATED MONIES OR ANY REVENUE THAT IS DERIVED FROM ANY TAX, FEE, GRANT, TUITION, ENDOWMENT OR DONATION OR ANY OTHER SOURCE THAT IS UNDER THE CONTROL OF THE INSTITUTION OR THE INSTITUTION'S COMPONENT UNITS TO PROMOTE OR PROMULGATE ANY OF THE FOLLOWING:

(i) AN EFFORT TO MANIPULATE OR OTHERWISE INFLUENCE THE COMPOSITION OF THE FACULTY OR STUDENT BODY WITH REFERENCE TO RACE, SEX OR ETHNICITY, APART FROM ENSURING SEX-NEUTRAL ADMISSIONS AND HIRING IN ACCORDANCE WITH STATE AND FEDERAL ANTIDISCRIMINATION LAWS.

(ii) THE DIFFERENTIAL TREATMENT OF OR THE PROVISION OF SPECIAL BENEFITS TO INDIVIDUALS ON THE BASIS OF RACE OR ETHNICITY.

(iii) POLICIES OR PROCEDURES THAT ARE DESIGNED OR IMPLEMENTED IN REFERENCE TO RACE OR ETHNICITY.

(iv) TRAINING, PROGRAMMING OR ACTIVITIES DESIGNED OR IMPLEMENTED WITH REFERENCE TO RACE, ETHNICITY, INTERSECTIONALITY, GENDER IDENTITY OR SEXUAL ORIENTATION.

(v) RELATED PRACTICES OR CONCEPTS AS MAY BE PRESCRIBED BY THE LEGISLATURE.

(b) DOES NOT INCLUDE ANY OF THE FOLLOWING:

(i) ACADEMIC COURSE INSTRUCTION, RESEARCH OR CREATIVE WORKS BY THE INSTITUTION'S STUDENTS, FACULTY OR OTHER RESEARCH PERSONNEL AND THE DISSEMINATION OF THOSE ITEMS.

(ii) ACTIVITIES OF REGISTERED STUDENT ORGANIZATIONS OR ARRANGEMENTS FOR GUEST SPEAKERS AND PERFORMERS WITH SHORT-TERM ENGAGEMENTS.

(iii) MENTAL OR PHYSICAL HEALTH SERVICES THAT ARE PROVIDED BY A LICENSED PROFESSIONAL IN THIS STATE.

3. IMPLEMENT ANY DISCIPLINARY POLICY OR PRACTICE THAT TREATS AN INDIVIDUAL STUDENT OR EMPLOYEE OR GROUP OF STUDENTS OR EMPLOYEES DIFFERENTLY ON THE BASIS OF RACE OR ETHNICITY.

B. THIS SECTION DOES NOT DO ANY OF THE FOLLOWING:

1. PROHIBIT BONA FIDE QUALIFICATIONS BASED ON SEX, INCLUDING SEX-SPECIFIC SPACES OR DESIGNATIONS, THAT ARE REASONABLY NECESSARY TO THE NORMAL OPERATION OF PUBLIC EMPLOYMENT, PUBLIC EDUCATION OR PUBLIC CONTRACTING.

2. PROHIBIT ANY ACTION THAT MUST BE TAKEN TO ESTABLISH OR MAINTAIN ELIGIBILITY FOR ANY FEDERAL PROGRAM, IF BOTH OF THE FOLLOWING APPLY:

(a) INELIGIBILITY WOULD RESULT IN A LOSS OF FEDERAL MONIES TO THIS STATE.

(b) THE ACTION THAT WOULD OTHERWISE BE PROHIBITED IS LIMITED TO OUTREACH, ADVERTISING OR COMMUNICATION EFFORTS THAT DO NOT MODIFY ANY APPLICATION CRITERION OR THE EVALUATION OF ANY STUDENT, EMPLOYEE OR CANDIDATE.

3. PROHIBIT A QUALIFICATION THAT IS BASED ON TRIBAL MEMBERSHIP AS PART OF A PROGRAM ESTABLISHED TO SERVE MEMBERS OF INDIAN TRIBES IN THIS STATE.

1 4. PROHIBIT DATA COLLECTION, ADVERTISING OR OUTREACH, AS REQUIRED
2 BY FEDERAL LAW.

3 5. PROHIBIT MENTAL OR PHYSICAL HEALTH SERVICES THAT ARE PROVIDED BY
4 A LICENSED PROFESSIONAL IN THIS STATE.

5 6. INCLUDE A TRAINING, PROGRAM OR ACTIVITY DEVELOPED BY AN ATTORNEY
6 AND APPROVED IN WRITING BY THE INSTITUTION'S GENERAL COUNSEL AND GOVERNING
7 BOARD FOR THE SOLE PURPOSE OF ENSURING COMPLIANCE WITH ANY APPLICABLE
8 COURT ORDER OR STATE OR FEDERAL ANTIDISCRIMINATION LAW.

9 7. PROHIBIT IDENTIFYING AND DISCUSSING HISTORICAL MOVEMENTS,
10 IDEOLOGIES OR INSTANCES OF RACIAL HATRED OR DISCRIMINATION, INCLUDING
11 SLAVERY, INDIAN REMOVAL, THE HOLOCAUST OR JAPANESE-AMERICAN INTERNMENT.

12 8. PREVENT THIS STATE FROM REQUIRING AN APPLICANT, EMPLOYEE OR
13 CONTRACTOR FROM DOING ANY OF THE FOLLOWING:

14 (a) DISCLOSING OR DISCUSSING THE CONTENT OF THE INDIVIDUAL'S
15 SCHOLARLY RESEARCH OR CREATIVE WORKS.

16 (b) CERTIFYING COMPLIANCE WITH STATE AND FEDERAL ANTIDISCRIMINATION
17 LAWS.

18 (c) IF EXPRESSLY REQUIRED BY FEDERAL LAW, CERTIFYING THE EXISTENCE
19 OF AN AFFIRMATIVE ACTION PLAN THAT DOES NOT INCLUDE PREFERENTIAL TREATMENT
20 OF INDIVIDUALS ON THE BASIS OF RACE OR ETHNICITY.

21 C. THE REMEDIES AVAILABLE FOR A VIOLATION OF THIS SECTION ARE THE
22 SAME, REGARDLESS OF THE INJURED PARTY'S RACE, SEX, COLOR, ETHNICITY OR
23 NATIONAL ORIGIN, AS ARE OTHERWISE AVAILABLE FOR A VIOLATION OF THE
24 EXISTING ANTIDISCRIMINATION LAWS OF THIS STATE.

25 D. FOR THE PURPOSES OF THIS SECTION, "PUBLIC UNIVERSITY" INCLUDES A
26 UNIVERSITY UNDER THE JURISDICTION OF THE ARIZONA BOARD OF REGENTS.