



ARIZONA HOUSE OF REPRESENTATIVES

57th Legislature, 2nd Regular Session

Majority Research Staff

HCR2044: preferential treatment; discrimination; prohibited acts

Sponsor: Representative Montenegro, LD 29

Committee on Government

Overview

A constitutional amendment that expands prohibitions on preferential treatment and discrimination on the basis of race or ethnicity in public education, spending and hiring practices.

History

The Arizona Constitution prohibits the state from granting preferential treatment or discriminating on the basis of sex, race, color, ethnicity or national origin in the operation of public employment, education or contracting. This prohibition does not include qualifications based on sex that are reasonable and necessary, actions to establish or maintain federal programs that would otherwise result in a loss of federal money or invalidate court orders and consent decrees ([Article II § 36, Const. of Ariz.](#)).

Provisions

1. Prohibits the state from compelling an applicant, employee, student or contractor to endorse or support an individual on the basis of race or ethnicity as a condition of admission, graduation, hiring, promotion, certification, contracting decision or other employment function or scholarship opportunity.
2. Forbids the state from requiring or soliciting the previously mentioned individuals' statements in support of the following:
 - a. theories or practices that advocate for differential treatment on the basis of race or ethnicity;
 - b. formulations of race-based diversity, equity, inclusion or intersectionality in contemporary American society beyond equal protections of law guaranteed by the United States Constitution; or
 - c. belief that a racially neutral or colorblind law, policy or institution perpetuates racial oppression, injustice or race-based privilege in contemporary American society.
3. Prohibits the state from spending public money to operate or contract an office or position in a public educational institution responsible for promoting preferential treatment or discrimination toward an individual or group based on race or ethnicity.
4. Specifies that the previous provision prohibits using appropriated money or revenue to promote or promulgate the following:

☐ Prop 105 (45 votes)

☐ Prop 108 (40 votes)

☐ Emergency (40 votes)

☐ Fiscal Note

- a. efforts to manipulate or influence the composition of the faculty or student body with reference to race, sex or ethnicity except from ensuring colorblind and sex neutral admission and hiring practices according to federal and state antidiscrimination laws;
 - b. differential treatment or special benefits based on race or ethnicity;
 - c. policies and procedures designed or implemented in reference to race or ethnicity;
 - d. training, programming or activities with reference to race, ethnicity, intersectionality, gender identity or sexual orientation; or
 - e. related practices or concepts as prescribed by the Legislature.
5. Clarifies the prohibition does not include the following:
 - a. academic instruction, research or creative work and its dissemination by students, faculty or research personnel;
 - b. activities of registered student organizations or arrangements with guest speakers or performers for short-term engagements; or
 - c. mental or physical health services provided by a licensed professional.
 6. Prohibits the state from implementing disciplinary policies or practices that treat students or employees differently based on race or ethnicity.
 7. Disbars the state from requiring or soliciting an individual to confess race-based privilege or discuss the individual's race, ethnicity or views and experience of others race and ethnicity.
 8. Forbids the state from giving preferable consideration to an individual for an opinion or act in support of another individual or group based on their race or ethnicity. (Sec. 1)
 9. Prohibits the state from requiring training or courses that promote the tenets of provisions 2, 7 and 8.
 10. Prevents prohibitions on the following:
 - a. sex-specific spaces or designations that are reasonable and necessary for the operation of public employment, education or contracting;
 - b. establishing or maintaining a federal program if ineligibility results in a loss of federal money to the state and the action that would be otherwise prohibited is limited to outreach, advertising or communication and does not modify the application criteria or evaluation of students, employees or candidates;
 - c. qualifications based on tribal membership for programs designed to serve Indian tribes;
 - d. data collection, advertising or outreach required by federal law;
 - e. mental or physical health services provided by a licensed professional;
 - f. training, programs or activities created by an attorney and approved by an institution's general counsel and governing board for the sole purpose of complying with an applicable court order, or anti-discrimination laws;
 - g. identifying and discussing historical movements, ideologies or instances of racial hatred or discrimination including slavery, Indian removal, the Holocaust or Japanese-American internment;
 - h. requiring disclosures of a state applicant, employee or contractor's scholarly research or creative work;
 - i. requiring a state applicant, employee or contractor to certify compliance with state and federal antidiscrimination laws; or

- j. requiring a state applicant, employee or contractor to certify the existence of an affirmative action plan that does not include preferential treatment based on race or ethnicity if required by federal law.
11. Specifies the measure only applies to actions taken after December 14, 2010.
 12. Requires the Secretary of State to submit the proposition to the voters at the next general election.