

REFERENCE TITLE: **antidiscrimination; public accommodations; employment; housing**

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2739

Introduced by
Representative Shah

AN ACT

AMENDING SECTIONS 41-1402, 41-1441 AND 41-1442, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 9, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1445; AMENDING SECTIONS 41-1461, 41-1463 AND 41-1464, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 9, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1469; AMENDING SECTIONS 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 AND 41-1491.21, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 9, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1491.38; AMENDING SECTION 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. Section 41-1402, Arizona Revised Statutes, is amended to
3 read:

4 41-1402. Powers and duties of the division

5 A. The division may:

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

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

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

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

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

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

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

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

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

39 B. The division shall:

40 1. Administer this chapter.

41 2. Report from time to time, but not less than once a year in
42 December, to the legislature and the governor, describing its activities
43 and accomplishments during the year, and file with each report a copy of
44 all recommendations of the division as to additional remedial action by
45 legislative enactment or otherwise.

1 Sec. 2. Section 41-1441, Arizona Revised Statutes, is amended to
2 read:

3 41-1441. Definitions

4 In this article, unless the context otherwise requires:

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

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

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

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

14 ~~1.~~ 2. "Person" means an individual, corporation, partnership,
15 unincorporated association, or other organization, and includes the owner,
16 lessee, operator, proprietor, manager, superintendent, agent, ~~or~~ or employee
17 of any place of public accommodation.

18 ~~2.~~ 3. "Places of public accommodation" means all public places of
19 entertainment, amusement or recreation, all public places where food or
20 beverages are sold for consumption on the premises, all public places
21 ~~which~~ THAT are conducted for the lodging of transients or for the benefit,
22 use or accommodation of those seeking health or recreation and all
23 establishments ~~which~~ THAT cater or offer their services, facilities or
24 goods to or solicit patronage from the members of the general public. Any
25 dwelling as defined in section 41-1491, ~~or~~ any private club, ANY PRIVATE
26 SCHOOL, PUBLIC SCHOOL, CHARTER SCHOOL, ACCOMMODATION SCHOOL OR SCHOOL AS
27 DEFINED IN SECTION 15-101 OR ANY FACILITY, PROGRAM OR ACTIVITY THEREOF, or
28 any place ~~which~~ THAT is in its nature distinctly private is not a place of
29 public accommodation.

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

32 Sec. 3. 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. THIS SECTION DOES NOT APPLY TO DISCRIMINATION OR DISTINCTIONS
28 BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY BY OR AT ANY OF THE
29 FOLLOWING:

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

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

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

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

42 5. ONLINE OPERATIONS OR ACTIVITIES OF AN ORGANIZATION THAT IS
43 EXEMPT UNDER THIS SECTION.

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

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

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

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

21 Sec. 4. Title 41, chapter 9, article 3, Arizona Revised Statutes,
22 is amended by adding section 41-1445, to read:

23 41-1445. Discrimination; places of public accommodation;
24 sexual orientation; gender identity; state
25 preemption

26 THE REGULATION OF DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION
27 BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY IS OF STATEWIDE CONCERN.
28 THE REGULATION OF DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION BASED
29 ON SEXUAL ORIENTATION OR GENDER IDENTITY BY THIS STATE SUPERSEDES ANY
30 CONTRARY ORDINANCE, REGULATION, STANDARD OR OTHER LEGAL ACTION BY A
31 COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE.

32 Sec. 5. Section 41-1461, Arizona Revised Statutes, is amended to
33 read:

34 41-1461. Definitions

35 In this article, unless the context otherwise requires:

36 1. "Auxiliary aids and services" includes:

37 (a) Qualified interpreters or other effective methods of making
38 aurally delivered materials available to individuals with hearing
39 impairments.

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

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

44 (d) Other similar services and actions.

1 2. "Because of sex" and "on the basis of sex" includes because of
2 or on the basis of pregnancy or childbirth or related medical conditions.
3 3. "Being regarded as having such a physical or mental impairment":
4 (a) Means an individual who establishes that the individual has
5 been subjected to an action prohibited under this article because of an
6 actual or perceived physical or mental impairment whether or not the
7 impairment limits or is perceived to limit a major life activity.
8 (b) Does not mean an impairment that is transitory and minor. For
9 the purposes of this subdivision, "transitory impairment" means an
10 impairment with an actual or expected duration of six months or less.
11 4. "Covered entity" means an employer, employment agency, labor
12 organization or joint labor-management committee.
13 5. "Disability" means, with respect to an individual, except any
14 impairment caused by current use of illegal drugs, any of the following:
15 (a) A physical or mental impairment that substantially limits one
16 or more of the major life activities of the individual.
17 (b) A record of such a physical or mental impairment.
18 (c) Being regarded as having such a physical or mental impairment.
19 6. "Employee":
20 (a) Means an individual employed by an employer.
21 (b) FOR THE PURPOSES OF CLAIMS OF DISCRIMINATION BASED ON THE
22 FAILURE TO ACCOMMODATE A RELIGIOUS OBSERVANCE OR PRACTICE, MEANS AN
23 INDIVIDUAL EMPLOYED BY AN EMPLOYER OR A PROSPECTIVE EMPLOYEE OF THE
24 EMPLOYER WHO, WITH OR WITHOUT REASONABLE ACCOMMODATION, IS QUALIFIED TO
25 PERFORM THE ESSENTIAL FUNCTIONS OF THE EMPLOYMENT POSITION.
26 ~~(b)~~ (c) Does not include an elected public official of this state
27 or any political subdivision of this state, any person chosen by an
28 elected official to be on the elected official's personal staff, an
29 appointee on the policymaking level or an immediate adviser with respect
30 to the exercise of the constitutional or legal powers of the office,
31 unless the person or appointee is subject to the civil service laws of
32 this state or any political subdivision of this state.
33 7. "Employer":
34 (a) Means a person who has ~~fifteen~~ FIVE or more employees for each
35 working day in each of twenty or more calendar weeks in the current or
36 preceding calendar year and any agent of that person or a person who has
37 one or more employees in the current or preceding calendar year and any
38 agent of that person, to the extent that the person is alleged to have:
39 (i) Committed any act of sexual harassment.
40 (ii) Discriminated against anyone for opposing sexual harassment or
41 making a charge, testifying, assisting or participating in any manner in
42 an investigation, proceeding or hearing arising from sexual harassment.

1 (b) Does not include either:

2 (i) The United States or any department or agency of the United
3 States, a corporation wholly owned by the government of the United States
4 or an Indian tribe.

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

8 8. "Employment agency" means any person regularly undertaking with
9 or without compensation to procure employees for an employer or to procure
10 for employees opportunities to work for an employer and includes an agent
11 of that person.

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

13 (a) A CHURCH OR ITS INTEGRATED AUXILIARIES, A CONVENTION OR
14 ASSOCIATION OF CHURCHES OR A RELIGIOUS ORDER PRESCRIBED IN SECTION 6033 OF
15 THE INTERNAL REVENUE CODE OF 1986.

16 (b) A RELIGIOUS ORGANIZATION PRESCRIBED IN SECTIONS 501 AND 509 OF
17 THE INTERNAL REVENUE CODE OF 1986.

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

20 (d) A RELIGIOUS CORPORATION, ASSOCIATION OR SOCIETY PRESCRIBED IN
21 THE CIVIL RIGHTS ACT OF 1964 (P.L. 88-352; 78 STAT. 241) THAT IS ELIGIBLE
22 FOR TAX-EXEMPT STATUS UNDER SECTION 501(c) OF THE INTERNAL REVENUE CODE OF
23 1986 AND THAT ONLY EMPLOYS INDIVIDUALS OF THE EMPLOYER'S RELIGION, UNLESS
24 THE EMPLOYEE DEMONSTRATES THAT THE EMPLOYER HAS NOT APPLIED WITH
25 REASONABLE CONSISTENCY ITS RELIGIOUS STANDARD CITED AS THE REASON FOR THE
26 ADVERSE EMPLOYMENT ACTION.

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

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

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

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

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

38 ~~9.~~ 11. "Labor organization":

39 (a) Means a labor organization and any agent of a labor
40 organization.

41 (b) Includes:

42 (i) Any organization of any kind, any agency or employee
43 representation committee, group, association or plan in which ~~fifteen~~ FIVE
44 or more employees participate and that exists for the purpose, in whole or

1 in part, of dealing with employers concerning grievances, labor disputes,
2 wages, rates of pay, hours or other terms or conditions of employment.

3 (ii) Any conference, general committee, joint or system board or
4 joint council that is subordinate to a national or international labor
5 organization.

6 12. "LEAVE OF GENERAL USAGE" MEANS LEAVE THAT IS PROVIDED UNDER AN
7 EMPLOYER'S POLICIES OR PROGRAMS THAT AN EMPLOYEE MAY TAKE BY ADJUSTING OR
8 ALTERING THE EMPLOYEE'S WORK SCHEDULE OR ASSIGNMENT AS DETERMINED BY THE
9 EMPLOYER AND FOR WHICH THE EMPLOYEE MAY DETERMINE THE REASON FOR USING THE
10 LEAVE.

11 ~~10.~~ 13. "Major life activities" includes:

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

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

20 14. "PERFORM THE ESSENTIAL FUNCTIONS":

21 (a) INCLUDES CARRYING OUT THE CORE REQUIREMENTS OF AN EMPLOYMENT
22 POSITION.

23 (b) DOES NOT INCLUDE CARRYING OUT PRACTICES RELATING TO CLOTHING,
24 TAKING TIME OFF OR OTHER PRACTICES THAT MAY HAVE A TEMPORARY OR TANGENTIAL
25 IMPACT ON THE ABILITY TO PERFORM JOB FUNCTIONS, IF ANY OF THE PRACTICES
26 PRESCRIBED IN THIS SUBDIVISION RESTRICT AN EMPLOYEE'S ABILITY TO WEAR
27 RELIGIOUS CLOTHING, MAINTAIN RELIGIOUS GROOMING STANDARDS OR TAKE TIME OFF
28 FOR A RELIGIOUS DAY OR HOLIDAY.

29 ~~11.~~ 15. "Person" means one or more individuals, governmental
30 agencies, political subdivisions, labor unions, partnerships,
31 associations, corporations, legal representatives, mutual companies,
32 joint-stock companies, trusts, unincorporated organizations, trustees,
33 trustees in bankruptcy or receivers.

34 ~~12.~~ 16. "Qualified individual" means a person with a disability
35 who, with or without reasonable accommodation, is capable of performing
36 the essential functions of the employment position that the individual
37 holds or desires.

38 ~~13.~~ 17. "Reasonable accommodation" includes:

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

41 (b) Job restructuring, part-time or modified work schedules,
42 reassignment to a vacant position, acquisition or modification of
43 equipment or devices, appropriate adjustment or modification of
44 examinations, training materials or policies, the provision of qualified
45 readers, taped texts or other effective methods of making visually

1 delivered materials available to individuals with visual impairments, the
2 provision of auxiliary aids and services or interpreters and other similar
3 services and actions for individuals with disabilities.

4 (c) REMOVING THE CONFLICT BETWEEN EMPLOYMENT REQUIREMENTS AND THE
5 RELIGIOUS OBSERVANCE OR PRACTICE OF AN EMPLOYEE TO BE CONSIDERED
6 REASONABLE AND NOT REFUSING, BY THE EMPLOYER, TO ALLOW THE EMPLOYEE TO USE
7 LEAVE OF GENERAL USAGE BECAUSE THE LEAVE WILL BE USED TO ACCOMMODATE THE
8 EMPLOYEE'S RELIGIOUS OBSERVANCE OR PRACTICE.

9 ~~14.~~ 18. "Religion" means all aspects of religious observance and
10 practice, as well as belief. Unlawful practices as prohibited by this
11 article include practices with respect to religion unless an employer
12 demonstrates that the employer is unable, AFTER INITIATING AND ENGAGING IN
13 AN AFFIRMATIVE AND BONA FIDE EFFORT, to reasonably accommodate an
14 employee's or prospective employee's religious observance or practice
15 without undue hardship on the conduct of the employer's business.

16 19. "SEXUAL ORIENTATION" MEANS HOMOSEXUALITY, HETEROSEXUALITY OR
17 BISEXUALITY.

18 ~~15.~~ 20. "Undue hardship":

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

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

24 (i) The nature and cost of the accommodations needed under this
25 article.

26 (ii) The overall financial resources of the facility or facilities
27 involved in the provision of the reasonable accommodation, the number of
28 persons employed at the facility, the effect on expenses and resources of
29 the facility and any other impact of the accommodation on the operation of
30 the facility.

31 (iii) The overall financial resources of the covered entity, the
32 overall size of the business of the covered entity with respect to the
33 number of its employees and the number, type and location of its
34 facilities.

35 (iv) The type of operation or operations of the covered entity,
36 including the composition, structure and functions of the workforce of the
37 covered entity.

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

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

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

3 41-1463. Discrimination; unlawful practices; definition

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

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

9 1. To fail or refuse to hire or to discharge any individual or
10 otherwise to discriminate against any individual with respect to the
11 individual's compensation, terms, conditions or privileges of employment
12 because of the individual's race, color, religion, sex, SEXUAL
13 ORIENTATION, GENDER IDENTITY, age or national origin or on the basis of
14 disability.

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

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

25 4. TO FAIL TO PROVIDE A REASONABLE ACCOMMODATION TO AN EMPLOYEE WHO
26 REQUESTS GREATER PRIVACY WITHIN A FACILITY INTENDED FOR THE EXCLUSIVE USE
27 OF PERSONS OF THE SAME SEX IF EQUIVALENT FACILITIES AND BENEFITS ARE MADE
28 AVAILABLE WITHOUT REGARD TO A PROTECTED CLASSIFICATION UNDER THIS SECTION.
29 THIS PARAGRAPH DOES NOT REQUIRE THE CONSTRUCTION OF NEW OR ADDITIONAL
30 FACILITIES.

31 C. It is an unlawful employment practice for an employment agency
32 to fail or refuse to refer for employment or otherwise to discriminate
33 against any individual because of the individual's race, color, religion,
34 sex, SEXUAL ORIENTATION, GENDER IDENTITY, age or national origin or on the
35 basis of disability or to classify or refer for employment any individual
36 on the basis of the individual's race, color, religion, sex, SEXUAL
37 ORIENTATION, GENDER IDENTITY, age or national origin or on the basis of
38 disability.

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

40 1. To exclude or to expel from its membership or otherwise to
41 discriminate against any individual because of the individual's race,
42 color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY, age or national
43 origin or on the basis of disability.

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

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

11 E. It is an unlawful employment practice for any employer, labor
12 organization or joint labor-management committee controlling
13 apprenticeship or other training or retraining programs, including
14 on-the-job training programs, to discriminate against any individual
15 because of the individual's race, color, religion, sex, **SEXUAL**
16 **ORIENTATION, GENDER IDENTITY**, age or national origin or on the basis of
17 disability in admission to or employment in any program established to
18 provide apprenticeship or other training and, if the individual is an
19 otherwise qualified individual, to fail or refuse to reasonably
20 accommodate the individual's disability.

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

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

27 2. Use standards, criteria or methods of administration that have
28 the effect of discriminating on the basis of disability or that perpetuate
29 the discrimination of others who are subject to common administrative
30 control.

31 3. Exclude or otherwise deny equal jobs or benefits to an
32 individual qualified for the job or benefits because of the known
33 disability of an individual with whom the individual qualified for the job
34 or benefits is known to have a relationship or association.

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

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

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

8 7. Fail to select and administer tests relating to employment in
9 the most effective manner to ensure that, when the test is administered to
10 a job applicant or employee who has a disability that impairs sensory,
11 manual or speaking skills, the test results accurately reflect the skills
12 or aptitude or whatever other factor of the applicant or employee that the
13 test purports to measure, rather than reflecting the impaired sensory,
14 manual or speaking skills of the applicant or employee, except if the
15 skills are the factors that the test purports to measure.

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

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

24 1. For an employer to hire and employ employees, for an employment
25 agency to classify or refer for employment any individual, for a labor
26 organization to classify its membership or classify or refer for
27 employment any individual or for an employer, labor organization or joint
28 labor-management committee controlling apprenticeship or other training or
29 retraining programs to admit or employ any individual in any such program,
30 on the basis of the individual's religion, sex, **SEXUAL ORIENTATION, GENDER**
31 **IDENTITY** or national origin in those certain instances when religion, sex,
32 **SEXUAL ORIENTATION, GENDER IDENTITY** or national origin is a bona fide
33 occupational qualification reasonably necessary to the normal operation of
34 that particular business or enterprise, **PROVIDED THAT IF SEX IS A BONA**
35 **FIDE OCCUPATIONAL QUALIFICATION INDIVIDUALS ARE RECOGNIZED AS QUALIFIED**
36 **BASED ON THEIR GENDER IDENTITY.**

37 2. For any school, college, university or other educational
38 institution or institution of learning to hire and employ employees of a
39 particular religion if the school, college, university or other
40 educational institution or institution of learning is in whole or in
41 substantial part owned, supported, controlled or managed by a particular
42 religion or religious corporation, association or society, or if the
43 curriculum of the school, college, university or other educational
44 institution or institution of learning is directed toward the propagation
45 of a particular religion.

1 3. For an employer to fail or refuse to hire or employ any
2 individual for any position, for an employment agency to fail or refuse to
3 refer any individual for employment in any position or for a labor
4 organization to fail or refuse to refer any individual for employment in
5 any position, if both of the following apply:

6 (a) The occupancy of the position or access to the premises in or
7 on which any part of the duties of the position are performed or are to be
8 performed is subject to any requirement imposed in the interest of the
9 national security of the United States under any security program in
10 effect pursuant to or administered under any statute of the United States
11 or any executive order of the president of the United States.

12 (b) The individual has not fulfilled or has ceased to fulfill that
13 requirement.

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

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

20 (b) To observe the terms of a bona fide seniority system or any
21 bona fide employee benefit plan such as a retirement, pension, deferred
22 compensation or insurance plan, which is not a subterfuge to evade the
23 purposes of the age discrimination provisions of this article, except that
24 no employee benefit plan may excuse the failure to hire any individual and
25 no seniority system or employee benefit plan may require or allow the
26 involuntary retirement of any individual specified by section 41-1465
27 because of the individual's age.

28 (c) To discharge or otherwise discipline an individual for good
29 cause.

30 5. FOR AN EXEMPT RELIGIOUS ORGANIZATION TO TAKE ANY ACTION
31 OTHERWISE PROHIBITED BY SUBSECTION B, C, D OR E OF THIS SECTION OR SECTION
32 41-1464, SUBSECTION B BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY.

33 I. For the purposes of this article, unlawful employment practice
34 does not include any action or measure taken by an employer, labor
35 organization, joint labor-management committee or employment agency with
36 respect to an individual who is a member of the communist party of the
37 United States or of any other organization required to register as a
38 communist-action or communist-front organization by final order of the
39 subversive activities control board pursuant to the subversive activities
40 control act of 1950.

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

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

8 2. For an employer to give and act on the results of any
9 professionally developed ability test if the test, its administration or
10 action on the results is not designed, intended or used to discriminate
11 because of race, color, religion, sex, **SEXUAL ORIENTATION, GENDER IDENTITY**
12 or national origin.

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

19 K. ~~Nothing contained in~~ This chapter ~~applies~~ **DOES NOT APPLY** to any
20 business or enterprise on or near an Indian reservation with respect to
21 any publicly announced employment practice of the business or enterprise
22 under which a preferential treatment is given to any individual because
23 the individual is an Indian living on or near a reservation.

24 L. ~~Nothing contained in~~ This article or article 6 of this chapter
25 ~~requires~~ **DOES NOT REQUIRE** any employer, employment agency, labor
26 organization or joint labor-management committee subject to this article
27 to grant preferential treatment to any individual or group because of the
28 race, color, religion, sex, **SEXUAL ORIENTATION, GENDER IDENTITY** or
29 national origin of the individual or group on account of an imbalance that
30 may exist with respect to the total number or percentage of persons of any
31 race, color, religion, sex, **SEXUAL ORIENTATION, GENDER IDENTITY** or
32 national origin employed by any employer, referred or classified for
33 employment by any employment agency or labor organization, admitted to
34 membership or classified by any labor organization or admitted to or
35 employed in any apprenticeship or other training program, in comparison
36 with the total number or percentage of persons of that race, color,
37 religion, sex, **SEXUAL ORIENTATION, GENDER IDENTITY** or national origin in
38 any community, state, section or other area, or in the available workforce
39 in any community, state, section or other area.

40 M. The age discrimination prohibitions of this article ~~may not be~~
41 ~~construed to~~ **DO NOT** prohibit compulsory retirement of any employee who has
42 attained sixty-five years of age and who, for the ~~two-year~~ **TWO-YEAR** period
43 immediately before retirement, is employed in a bona fide executive or
44 high policymaking position, if the employee is entitled to an immediate
45 nonforfeitable annual retirement benefit from a pension, profit sharing,

1 savings or deferred compensation plan or any combination of plans of the
2 employer for the employee, that equals, in the aggregate, at least
3 \$44,000. In applying the retirement benefit test of this subsection, if
4 any retirement benefit is in a form other than a straight life annuity,
5 with no ancillary benefits, or if employees contribute to the plan or make
6 rollover contributions, the benefit shall be adjusted in accordance with
7 rules adopted by the division so the benefit is the equivalent of a
8 straight life annuity, with no ancillary benefits, under a plan to which
9 employees do not contribute and under which no rollover contributions are
10 made.

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

16 O. This article does not alter the standards for determining
17 eligibility for benefits under this state's workers' compensation laws or
18 under state and federal disability benefit programs.

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

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

24 41-1464. Other unlawful employment practices; opposition to
25 unlawful practices; filing of charges;
26 participation in proceedings; notices and
27 advertisements for employment

28 A. It is an unlawful employment practice for an employer to
29 discriminate against any of the employer's employees or applicants for
30 employment, for an employment agency or joint labor-management committee
31 controlling apprenticeship or other training or retraining programs,
32 including on-the-job training programs, to discriminate against any
33 individual or for a labor organization to discriminate against any member
34 or applicant for membership because the employee, the member, the
35 applicant or the individual in an apprenticeship or other training or
36 retraining program has opposed any practice that is an unlawful employment
37 practice under this article or has made a charge, testified, assisted or
38 participated in any manner in an investigation, proceeding or hearing
39 under article 6 of this chapter.

40 B. It is an unlawful employment practice for an employer, labor
41 organization, employment agency or joint labor-management committee
42 controlling apprenticeship or other training or retraining programs,
43 including on-the-job training programs, to print or publish or cause to be
44 printed or published any notice or advertisement relating to employment by
45 an employer or membership in or any classification or referral for

1 employment by a labor organization, ~~or relating to~~ any classification or
2 referral for employment by an employment agency or ~~relating to~~ admission
3 or ~~to~~ employment in any program established to provide apprenticeship or
4 other training by a joint labor-management committee indicating any
5 preference, limitation, specification or discrimination based on race,
6 color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY or national
7 origin, except that a notice or advertisement may indicate a preference,
8 limitation, specification or discrimination based on religion, sex or
9 national origin when religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY or
10 national origin is a bona fide occupational qualification for employment,
11 PROVIDED THAT IF SEX IS A BONA FIDE OCCUPATIONAL QUALIFICATION,
12 INDIVIDUALS ARE RECOGNIZED AS QUALIFIED BASED ON THEIR GENDER IDENTITY.

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

22 D. IT IS UNLAWFUL FOR AN EMPLOYER TO DISCHARGE, PUNISH, DEMOTE,
23 TERMINATE, RETALIATE AGAINST, HARASS OR DISCRIMINATE AGAINST IN MATTERS OF
24 COMPENSATION OR IN TERMS, PRIVILEGES OR CONDITIONS OF EMPLOYMENT AN
25 EMPLOYEE FOR EXPRESSING IN THE WORKPLACE THE EMPLOYEE'S RELIGIOUS,
26 POLITICAL OR MORAL BELIEFS REGARDING MARRIAGE, FAMILY, GENDER IDENTITY OR
27 SEXUALITY IN A REASONABLE, NONDISRUPTIVE AND NONHARASSING WAY ON EQUAL
28 TERMS WITH SIMILAR TYPES OF EXPRESSION OF BELIEFS ALLOWED BY THE EMPLOYER
29 IN THE WORKPLACE, UNLESS THE EXPRESSION IS IN DIRECT AND SUBSTANTIAL
30 CONFLICT WITH THE ESSENTIAL BUSINESS-RELATED INTERESTS OF THE EMPLOYER.

31 E. IT IS UNLAWFUL FOR AN EMPLOYER TO DISCHARGE, PUNISH, DEMOTE,
32 TERMINATE OR REFUSE TO HIRE ANY PERSON OR RETALIATE AGAINST, HARASS OR
33 DISCRIMINATE AGAINST IN MATTERS OF COMPENSATION OR IN TERMS, PRIVILEGES OR
34 CONDITIONS OF EMPLOYMENT ANY PERSON OTHERWISE QUALIFIED FOR EMPLOYMENT FOR
35 LAWFUL EXPRESSION OR EXPRESSIVE ACTIVITY OUTSIDE OF THE WORKPLACE
36 REGARDING THE PERSON'S BELIEFS ABOUT MARRIAGE, FAMILY, GENDER IDENTITY OR
37 SEXUALITY. THE EMPLOYEE'S EXPRESSION IS NOT PROTECTED UNDER THIS
38 SUBSECTION IF IT DIRECTLY AND MATERIALLY IMPEDES THE EMPLOYEE'S
39 PERFORMANCE OF AN ESSENTIAL JOB FUNCTION.

40 F. SUBSECTIONS D AND E OF THIS SECTION DO NOT APPLY TO A NONPROFIT
41 ORGANIZATION THAT OPERATES TO EXPRESS OR ADVOCATE PARTICULAR VIEWPOINTS OR
42 TO AN EMPLOYER THAT IS AN EXEMPT RELIGIOUS ORGANIZATION AS DEFINED IN
43 SECTION 41-1461.

1 Sec. 8. Title 41, chapter 9, article 4, Arizona Revised Statutes,
2 is amended by adding section 41-1469, to read:

3 41-1469. Unlawful employment practices; sexual orientation;
4 gender identity; state preemption

5 THE REGULATION OF UNLAWFUL EMPLOYMENT PRACTICES BASED ON SEXUAL
6 ORIENTATION OR GENDER IDENTITY IS OF STATEWIDE CONCERN. THE REGULATION OF
7 UNLAWFUL EMPLOYMENT PRACTICES BASED ON SEXUAL ORIENTATION OR GENDER
8 IDENTITY BY THIS STATE SUPERSEDES ANY CONTRARY ORDINANCE, REGULATION,
9 STANDARD OR OTHER LEGAL ACTION BY A COUNTY, CITY, TOWN OR OTHER POLITICAL
10 SUBDIVISION OF THIS STATE. IF A COUNTY, CITY, TOWN OR OTHER POLITICAL
11 SUBDIVISION OF THIS STATE DEFINES EMPLOYER TO INCLUDE A PERSON WHO HAS
12 FEWER THAN FIVE EMPLOYEES AS OF THE EFFECTIVE DATE OF THIS SECTION, THE
13 COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY
14 CONTINUE ENFORCING THE ORDINANCE, REGULATION OR STANDARD AGAINST AN
15 EMPLOYER.

16 Sec. 9. Section 41-1481, Arizona Revised Statutes, is amended to
17 read:

18 41-1481. Filing charges; investigation; findings;
19 conciliation; compliance proceedings; appeals;
20 attorney fees; violation; classification

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

32 B. Whenever a charge is filed by or on behalf of a person claiming
33 to be aggrieved or by a member of the division, referred to as the
34 charging party, alleging that an employer, employment agency, labor
35 organization or joint labor-management committee controlling
36 apprenticeship or other training or retraining programs, including
37 on-the-job training programs, has engaged in an unlawful employment
38 practice, the division shall serve notice of and a copy of the charge on
39 the employer, employment agency, labor organization or joint
40 labor-management committee, referred to as the respondent, within ten days
41 and shall investigate the charge. If the division determines after the
42 investigation that there is not reasonable cause to believe that the
43 charge is true, the division shall enter an order determining the same and
44 dismissing the charge and shall notify the charging party and the
45 respondent of its action. If the division determines after the

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

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

32 D. If within thirty days after the division has made a
33 determination that reasonable cause exists to believe that the charge is
34 true the division has not accepted a conciliation agreement to which the
35 charging party and the respondent are parties, the division may bring a
36 civil action against the respondent, other than the state, named in the
37 charge. The charging party shall have the right to intervene in a civil
38 action brought by the division. If a charge filed with the division
39 pursuant to subsection A of this section is dismissed by the division or
40 if within ninety days ~~from~~ AFTER the filing of such charge the division
41 has not filed a civil action under this section or has not entered into a
42 conciliation agreement with the charging party, the division shall so
43 notify the charging party. After providing the notice a civil action may
44 be brought against the respondent named in the charge by the charging
45 party or, if that charge was filed by a member of the division, by any

1 person whom the charge alleges was aggrieved by the alleged unlawful
 2 employment practice. ~~in no event shall any~~ AN action MAY NOT be brought
 3 pursuant to this article more than one year after the charge to which the
 4 action relates has been filed. On application by the complainant and in
 5 the circumstances as the court may deem just, the court may appoint an
 6 attorney for such complainant and may authorize the commencement of the
 7 action without the payment of fees, costs or security. On timely
 8 application, the court may in its discretion allow the division to
 9 intervene in civil actions in which the state is not a defendant on
 10 certification that the case is of general public importance. ~~Upon~~ ON
 11 request the court may stay further proceedings for not more than sixty
 12 days pending the further efforts of the parties or the division to obtain
 13 voluntary compliance.

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

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

30 G. If the court finds that the defendant has intentionally engaged
 31 in or is intentionally engaging in an unlawful employment practice alleged
 32 in the complaint, the court may enjoin the defendant from engaging in the
 33 unlawful employment practice and order the affirmative action as may be
 34 appropriate. Affirmative action may include, ~~but is not limited to,~~
 35 reinstatement or hiring of employees with or without back pay payable by
 36 the employer, employment agency or labor organization responsible for the
 37 unlawful employment practice or any other equitable relief as the court
 38 deems appropriate. Back pay liability shall not accrue from a date more
 39 than two years before the filing of the charge with the division. Interim
 40 earnings or amounts earnable with reasonable diligence by the person or
 41 persons discriminated against shall reduce the back pay otherwise
 42 allowable. An order of the court shall not require the admission or
 43 reinstatement of an individual as a member of a union or the hiring,
 44 reinstatement or promotion of an individual as an employee or the payment
 45 to the individual of any back pay if the individual was refused admission,

1 suspended or expelled or was refused employment or advancement or was
2 suspended or discharged for any reason other than discrimination on
3 account of race, color, religion, sex, **SEXUAL ORIENTATION, GENDER**
4 **IDENTITY**, age, disability or national origin or a violation of section
5 41-1464.

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

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

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

17 Sec. 10. Section 41-1491, Arizona Revised Statutes, is amended to
18 read:

19 **41-1491. Definitions**

20 In this article, unless the context otherwise requires:

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

22 (a) Claims to have been injured by a discriminatory housing
23 practice.

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

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

28 3. "Conciliation" means the attempted resolution of issues raised
29 by a complaint or by the investigation of the complaint through informal
30 negotiations involving the aggrieved person, the respondent and the
31 attorney general.

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

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

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

1 7. "Dwelling" means either:

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

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

8 8. "Family" includes a single individual.

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

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

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

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

18 ~~9.~~ 10. "Person" means one or more individuals, corporations,
19 partnerships, associations, labor organizations, legal representatives,
20 mutual companies, joint stock companies, trusts, unincorporated
21 organizations, trustees, receivers, fiduciaries, banks, credit unions and
22 financial institutions.

23 ~~10.~~ 11. "Respondent" means either:

24 (a) The person accused of a violation of this article in a
25 complaint of a discriminatory housing practice.

26 (b) Any person identified as an additional or substitute respondent
27 under section 41-1491.25 or an agent of an additional or substitute
28 respondent.

29 12. "SEXUAL ORIENTATION" MEANS HOMOSEXUALITY, HETEROSEXUALITY OR
30 BISEXUALITY.

31 ~~11.~~ 13. "To rent" includes to lease, to sublease, to let or to
32 otherwise grant for a consideration the right to occupy premises not owned
33 by the occupant.

34 Sec. 11. Section 41-1491.03, Arizona Revised Statutes, is amended
35 to read:

36 41-1491.03. Religious organization and private club
37 exemption; definition

38 A. This article does not prohibit a religious organization,
39 association or society, ~~or~~ a nonprofit institution or organization
40 operated, supervised or controlled by or in conjunction with a religious
41 organization, association or society OR A RELIGIOUS EDUCATIONAL
42 INSTITUTION from:

43 1. Limiting the sale, rental or occupancy of dwellings that it owns
44 or operates for other than a commercial purpose to persons of the same
45 religion.

1 2. Giving preference to persons of the same religion **OR TO PERSONS**
2 **THAT ADHERE TO ITS RELIGION**, unless membership in the religion is
3 restricted because of race, color or national origin.

4 B. This article does not prohibit a private club that is not open
5 to the public and that, as an incident to its primary purpose, provides
6 lodging that it owns or operates for other than a commercial purpose from
7 limiting the rental or occupancy of that lodging to its members or from
8 giving preference to its members.

9 **C. FOR THE PURPOSES OF THIS SECTION, "RELIGION" HAS THE SAME**
10 **MEANING PRESCRIBED IN SECTION 41-1461.**

11 Sec. 12. Section 41-1491.05, Arizona Revised Statutes, is amended
12 to read:

13 41-1491.05. Appraisal exemption

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

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

20 41-1491.14. Discrimination in sale or rental

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

26 B. A person may not discriminate against any person in the terms,
27 conditions or privileges of sale or rental of a dwelling, or in providing
28 services or facilities in connection with the sale or rental, because of
29 race, color, religion, sex, **SEXUAL ORIENTATION, GENDER IDENTITY**, familial
30 status or national origin.

31 C. This section does not prohibit discrimination against a person
32 because the person has been convicted under federal law or the law of any
33 state of the illegal manufacture or distribution of a controlled
34 substance.

35 Sec. 14. Section 41-1491.15, Arizona Revised Statutes, is amended
36 to read:

37 41-1491.15. Publication of sales or rentals

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

1 Sec. 15. Section 41-1491.16, Arizona Revised Statutes, is amended
2 to read:

3 41-1491.16. Inspection of dwelling

4 A person may not represent to any person because of race, color,
5 religion, sex, **SEXUAL ORIENTATION, GENDER IDENTITY**, disability, familial
6 status or national origin that a dwelling is not available for inspection
7 for sale or rental if the dwelling is available for inspection.

8 Sec. 16. Section 41-1491.17, Arizona Revised Statutes, is amended
9 to read:

10 41-1491.17. Entry into neighborhood

11 A person, for profit, may not induce or attempt to induce a person
12 to sell or rent a dwelling by representations regarding the entry or
13 prospective entry into a neighborhood of a person of a particular race,
14 color, religion, sex, **SEXUAL ORIENTATION, GENDER IDENTITY**, disability,
15 familial status or national origin.

16 Sec. 17. Section 41-1491.20, Arizona Revised Statutes, is amended
17 to read:

18 41-1491.20. Residential real estate related transaction:
19 definition

20 A. A person whose business includes engaging in residential real
21 estate related transactions may not discriminate against a person in
22 making a real estate related transaction available or in the terms or
23 conditions of a real estate related transaction because of race, color,
24 religion, sex, **SEXUAL ORIENTATION, GENDER IDENTITY**, disability, familial
25 status or national origin.

26 B. ~~It~~ **FOR THE PURPOSES OF** this section, "residential real estate
27 related transaction" means:

28 1. Making or purchasing loans or providing other financial
29 assistance either:

- 30 (a) To purchase, construct, improve, repair or maintain a dwelling.
31 (b) To secure residential real estate.

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

33 Sec. 18. Section 41-1491.21, Arizona Revised Statutes, is amended
34 to read:

35 41-1491.21. Brokerage services

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

1 Sec. 19. Title 41, chapter 9, article 7, Arizona Revised Statutes,
2 is amended by adding section 41-1491.38, to read:

3 41-1491.38. Discrimination; sale or rental of a dwelling;
4 sexual orientation; gender identity; state
5 preemption

6 THE REGULATION OF DISCRIMINATION IN THE SALE OR RENTAL OF A DWELLING
7 BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY IS OF STATEWIDE CONCERN.
8 THE REGULATION OF DISCRIMINATION IN THE SALE OR RENTAL OF A DWELLING BASED
9 ON SEXUAL ORIENTATION OR GENDER IDENTITY BY THIS STATE SUPERSEDES ANY
10 CONTRARY ORDINANCE, REGULATION, STANDARD OR OTHER LEGAL ACTION BY A
11 COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE.

12 Sec. 20. Section 41-1493.01, Arizona Revised Statutes, is amended
13 to read:

14 41-1493.01. Free exercise of religion protected; definition

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

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

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

24 1. In furtherance of a compelling governmental interest.

25 2. The least restrictive means of furthering that compelling
26 governmental interest.

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

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

35 F. FOR THE PURPOSES OF THIS SECTION, "GOVERNMENT" INCLUDES ANY
36 BRANCH, DEPARTMENT, COURT OR AGENCY OF GOVERNMENT OR THE ENFORCEMENT OR
37 APPLICATION OF ANY LAW, RULE OR POLICY BY ANY BRANCH, DEPARTMENT, COURT OR
38 AGENCY OF GOVERNMENT.

39 Sec. 21. Short title

40 This act may be cited as the "Equality and Fairness for All
41 Arizonans Act".