

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2062

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

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 agreement
15 with those agencies not inconsistent with or beyond this chapter.

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

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

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

22 6. Make periodic surveys of the existence and effect of
23 discrimination because of race, color, religion, sex, **SEXUAL ORIENTATION,**
24 **GENDER IDENTITY AND GENDER EXPRESSION,** age, disability, familial status or

1 national origin in the enjoyment of civil rights by any person within this
2 state as prescribed by this chapter.

3 7. Foster, through community effort, in cooperation with both public
4 and private groups, the elimination of discrimination based on race, color,
5 religion, sex, **SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRESSION,**
6 age, disability, familial status or national origin.

7 8. Issue publications of results of studies, investigations and
8 research as in its judgment will tend to promote goodwill and the
9 elimination of discrimination between persons because of race, color,
10 religion, sex, **SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRESSION,**
11 age, disability, familial status or national origin.

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

14 B. The division shall:

15 1. Administer this chapter.

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

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

23 **41-1441. Definitions**

24 In this article, unless the context otherwise requires:

25 1. **"GENDER IDENTITY AND GENDER EXPRESSION" MEANS THE GENDER-RELATED**
26 **IDENTITY AND EXPRESSION, INCLUDING APPEARANCE, MANNERISMS OR OTHER**
27 **GENDER-RELATED CHARACTERISTICS, OF AN INDIVIDUAL REGARDLESS OF THE**
28 **INDIVIDUAL'S DESIGNATED SEX AT BIRTH.**

29 ~~1.~~ 2. "Person" means an individual, corporation, partnership,
30 unincorporated association, or other organization, and includes the owner,
31 lessee, operator, proprietor, manager, superintendent, agent, ~~or~~ or employee
32 of any place of public accommodation.

1 ~~2.~~ 3. "Places of public accommodation" means all public places of
2 entertainment, amusement or recreation, all public places where food or
3 beverages are sold for consumption on the premises, all public places ~~which~~
4 THAT are conducted for the lodging of transients or for the benefit, use or
5 accommodation of those seeking health or recreation and all establishments
6 ~~which~~ THAT cater or offer their services, facilities or goods to or solicit
7 patronage from the members of the general public. Any dwelling as defined
8 in section 41-1491, or any private club, or any place ~~which~~ THAT is in its
9 nature distinctly private is not a place of public accommodation.

10 Sec. 3. Section 41-1442, Arizona Revised Statutes, is amended to
11 read:

12 41-1442. Discrimination in places of public accommodation;
13 exceptions

14 A. Discrimination in places of public accommodation against any
15 person because of race, color, religion, sex, SEXUAL ORIENTATION, GENDER
16 IDENTITY AND GENDER EXPRESSION, national origin or ancestry is contrary to
17 the policy of this state and shall be deemed unlawful.

18 B. No person, directly or indirectly, shall refuse to, withhold from
19 or deny to any person, nor aid in or incite the refusal to deny or
20 withhold, accommodations, advantages, facilities or privileges thereof
21 because of race, color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY
22 AND GENDER EXPRESSION, national origin or ancestry, nor shall distinction
23 be made with respect to any person based on race, color, religion, sex,
24 SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRESSION, national origin
25 or ancestry in connection with the price or quality of any item, goods or
26 services offered by or at any place of public accommodation.

27 C. Any person who is under the influence of alcohol or narcotics,
28 who is guilty of boisterous conduct, who is of lewd or immoral character,
29 who is physically violent or who violates any regulation of any place of
30 public accommodation that applies to all persons regardless of race, color,
31 religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRESSION,
32 national origin or ancestry may be excluded from any place of public

1 accommodation and nothing in this article shall be considered to limit the
2 right of such exclusion.

3 D. Notwithstanding any other provision of this article and except as
4 required by federal law, it is not an unlawful practice if a person fails
5 to provide a trained and competent bilingual person who is skilled in
6 interpreting a language other than English to assist a person who is
7 seeking services at a place of public accommodation. Notwithstanding any
8 other provision of this article and except as required by federal law, a
9 person who offers a service at a place of public accommodation is not
10 required to provide a person who is seeking the service any form or other
11 documentation in that person's native language.

12 E. It is not an unlawful practice pursuant to this section for a
13 person to fail to provide service at a place of public accommodation if by
14 providing the service the person offering the service would violate a state
15 or federal law or a rule that is adopted by a state or federal board,
16 commission or agency that has jurisdiction over the person offering the
17 service.

18 Sec. 4. Section 41-1444, Arizona Revised Statutes, is amended to
19 read:

20 41-1444. Gender-neutral restrooms; changing stations; public
21 buildings; definitions

22 A. A public entity that constructs a new restroom that is accessible
23 to the public in a public building or that totally renovates an existing
24 restroom ~~that is accessible to both men and women and to the public in a~~
25 ~~public building~~ shall:

26 1. DESIGNATE ALL SINGLE-OCCUPANCY RESTROOM FACILITIES AS
27 GENDER-NEUTRAL RESTROOMS.

28 ~~1.~~ 2. Include in EACH BUILDING at least one restroom ~~in each~~
29 ~~building at least one~~ THAT IS ACCESSIBLE TO ANY PERSON REGARDLESS OF GENDER
30 AND THAT CONTAINS A changing station that is capable of serving both a baby
31 and an adult ~~and that is accessible to both men and women.~~

1 ~~2.~~ 3. Provide signage at or near the entrance to the changing
2 station indicating the location of the changing station.

3 ~~3.~~ 4. Indicate the location of the changing station in the central
4 building directory, if such a directory exists.

5 B. The responsible authority may grant an exemption from the
6 requirements of this section if the responsible authority determines that:

7 1. Any of the following would apply to the installation of a
8 changing station that is capable of serving both a baby and an adult:

9 (a) The installation would not be feasible.

10 (b) The installation would result in a failure to comply with the
11 Americans with disabilities act standards for access for persons with
12 disabilities.

13 (c) The installation would threaten or destroy the historic
14 significance of a historic property.

15 2. The public building is not frequented by the public.

16 C. The installation of a changing station under this section must
17 provide sufficient clear floor space to comply with the requirements of the
18 2010 Americans with disabilities act standards for accessible design.

19 D. This section does not establish a private right of action.

20 E. For the purposes of this section:

21 1. "Public building" means a building or appurtenance to a building
22 that is built in whole or in part with public monies.

23 2. "Public entity" means any:

24 (a) State or local government.

25 (b) Department, agency, special purpose district or other
26 instrumentality of a state or local government, including the legislature.

27 3. "Responsible authority" means an organization, office or
28 individual responsible for enforcing the requirements of a code or standard
29 or for approving equipment, materials, an installation or a procedure.

30 4. "Totally renovates" means to perform construction that is at
31 least \$50,000 and that totally removes all nonstructural interior walls,

1 floor and ceiling finishes, mechanical systems, electrical systems and
2 plumbing fixtures and supply and waste lines.

3 5. "2010 Americans with disabilities act standards for accessible
4 design" means the 2010 standards for state and local government facilities
5 prescribed in 28 Code of Federal Regulations section 35.151 and 36 Code of
6 Federal Regulations part 1191, appendices B and D.

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

9 41-1461. Definitions

10 In this article, unless the context otherwise requires:

11 1. "Auxiliary aids and services" includes:

12 (a) Qualified interpreters or other effective methods of making
13 aurally delivered materials available to individuals with hearing
14 impairments.

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

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

19 (d) Other similar services and actions.

20 2. "Because of sex" and "on the basis of sex" includes because of or
21 on the basis of pregnancy or childbirth or related medical conditions.

22 3. "Being regarded as having such a physical or mental impairment":

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

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

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

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

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

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

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

7 6. "Employee":

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

9 (b) Does not include an elected public official of this state or any
10 political subdivision of this state, any person chosen by an elected
11 official to be on the elected official's personal staff, an appointee on
12 the policymaking level or an immediate adviser with respect to the exercise
13 of the constitutional or legal powers of the office, unless the person or
14 appointee is subject to the civil service laws of this state or any
15 political subdivision of this state.

16 7. "Employer":

17 (a) Means a person who has ~~fifteen~~ FIVE or more employees for each
18 working day in each of twenty or more calendar weeks in the current or
19 preceding calendar year and any agent of that person or a person who has
20 one or more employees in the current or preceding calendar year and any
21 agent of that person, to the extent that the person is alleged to have:

22 (i) Committed any act of sexual harassment.

23 (ii) Discriminated against anyone for opposing sexual harassment or
24 making a charge, testifying, assisting or participating in any manner in an
25 investigation, proceeding or hearing arising from sexual harassment.

26 (b) Does not include either:

27 (i) The United States or any department or agency of the United
28 States, a corporation wholly owned by the government of the United States
29 or an Indian tribe.

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

1 8. "Employment agency" means any person regularly undertaking with
2 or without compensation to procure employees for an employer or to procure
3 for employees opportunities to work for an employer and includes an agent
4 of that person.

5 9. "GENDER IDENTITY AND GENDER EXPRESSION" MEANS THE GENDER-RELATED
6 IDENTITY AND EXPRESSION, INCLUDING APPEARANCE, MANNERISMS OR OTHER
7 GENDER-RELATED CHARACTERISTICS, OF AN INDIVIDUAL REGARDLESS OF THE
8 INDIVIDUAL'S DESIGNATED SEX AT BIRTH.

9 ~~9.~~ 10. "Labor organization":

10 (a) Means a labor organization and any agent of a labor
11 organization.

12 (b) Includes:

13 (i) Any organization of any kind, any agency or employee
14 representation committee, group, association or plan in which ~~fifteen~~ FIVE
15 or more employees participate and that exists for the purpose, in whole or
16 in part, of dealing with employers concerning grievances, labor disputes,
17 wages, rates of pay, hours or other terms or conditions of employment.

18 (ii) Any conference, general committee, joint or system board or
19 joint council that is subordinate to a national or international labor
20 organization.

21 ~~10.~~ 11. "Major life activities" includes:

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

25 (b) The operation of a major bodily function, including functions of
26 the immune system, normal cell growth and digestive, bowel, bladder,
27 neurological, brain, respiratory, circulatory, endocrine and reproductive
28 functions.

29 ~~11.~~ 12. "Person" means one or more individuals, governmental
30 agencies, political subdivisions, labor unions, partnerships, associations,
31 corporations, legal representatives, mutual companies, joint-stock

1 companies, trusts, unincorporated organizations, trustees, trustees in
2 bankruptcy or receivers.

3 ~~12.~~ 13. "Qualified individual" means a person with a disability
4 who, with or without reasonable accommodation, is capable of performing the
5 essential functions of the employment position that the individual holds or
6 desires.

7 ~~13.~~ 14. "Reasonable accommodation" includes:

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

10 (b) Job restructuring, part-time or modified work schedules,
11 reassignment to a vacant position, acquisition or modification of equipment
12 or devices, appropriate adjustment or modification of examinations,
13 training materials or policies, the provision of qualified readers, taped
14 texts or other effective methods of making visually delivered materials
15 available to individuals with visual impairments, the provision of
16 auxiliary aids and services or interpreters and other similar services and
17 actions for individuals with disabilities.

18 ~~14.~~ 15. "Religion" means all aspects of religious observance and
19 practice, as well as belief. Unlawful practices as prohibited by this
20 article include practices with respect to religion unless an employer
21 demonstrates that the employer is unable to reasonably accommodate an
22 employee's or prospective employee's religious observance or practice
23 without undue hardship on the conduct of the employer's business.

24 ~~15.~~ 16. "Undue hardship":

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

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

30 (i) The nature and cost of the accommodations needed under this
31 article.

1 (ii) The overall financial resources of the facility or facilities
2 involved in the provision of the reasonable accommodation, the number of
3 persons employed at the facility, the effect on expenses and resources of
4 the facility and any other impact of the accommodation on the operation of
5 the facility.

6 (iii) The overall financial resources of the covered entity, the
7 overall size of the business of the covered entity with respect to the
8 number of its employees and the number, type and location of its
9 facilities.

10 (iv) The type of operation or operations of the covered entity,
11 including the composition, structure and functions of the workforce of the
12 covered entity.

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

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

17 41-1463. Discrimination; unlawful practices; definition

18 A. ~~Nothing contained in~~ This article shall NOT be interpreted to
19 require that the less qualified be preferred over the better qualified
20 simply because of race, color, religion, sex, SEXUAL ORIENTATION, GENDER
21 IDENTITY AND GENDER EXPRESSION, age or national origin or on the basis of
22 disability.

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

24 1. To fail or refuse to hire or to discharge any individual or
25 otherwise to discriminate against any individual with respect to the
26 individual's compensation, terms, conditions or privileges of employment
27 because of the individual's race, color, religion, sex, SEXUAL ORIENTATION,
28 GENDER IDENTITY AND GENDER EXPRESSION, age or national origin or on the
29 basis of disability.

30 2. To limit, segregate or classify employees or applicants for
31 employment in any way that would deprive or tend to deprive any individual
32 of employment opportunities or otherwise adversely affect the individual's

1 status as an employee, because of the individual's race, color, religion,
2 sex, SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRESSION, age or
3 national origin or on the basis of disability.

4 3. To fail or refuse to hire, to discharge or to otherwise
5 discriminate against any individual based on the results of a genetic test
6 received by the employer, notwithstanding subsection ~~K~~, paragraph 2 of
7 this section.

8 C. THE DENIAL OF ACCESS TO A SHARED FACILITY IS A FORM OF
9 DISCRIMINATION AS PRESCRIBED BY SUBSECTION B OF THIS SECTION.

10 ~~C~~. D. It is an unlawful employment practice for an employment
11 agency to fail or refuse to refer for employment or otherwise to
12 discriminate against any individual because of the individual's race,
13 color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER
14 EXPRESSION, age or national origin or on the basis of disability or to
15 classify or refer for employment any individual on the basis of the
16 individual's race, color, religion, sex, SEXUAL ORIENTATION, GENDER
17 IDENTITY AND GENDER EXPRESSION, age or national origin or on the basis of
18 disability.

19 ~~D~~. E. It is an unlawful employment practice for a labor
20 organization:

21 1. To exclude or to expel from its membership or otherwise to
22 discriminate against any individual because of the individual's race,
23 color, religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER
24 EXPRESSION, age or national origin or on the basis of disability.

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

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

3 ~~F.~~ F. It is an unlawful employment practice for any employer, labor
4 organization or joint labor-management committee controlling apprenticeship
5 or other training or retraining programs, including on-the-job training
6 programs, to discriminate against any individual because of the
7 individual's race, color, religion, sex, **SEXUAL ORIENTATION, GENDER**
8 **IDENTITY AND GENDER EXPRESSION**, age or national origin or on the basis of
9 disability in admission to or employment in any program established to
10 provide apprenticeship or other training and, if the individual is an
11 otherwise qualified individual, to fail or refuse to reasonably accommodate
12 the individual's disability.

13 ~~G.~~ G. With respect to a qualified individual, it is an unlawful
14 employment practice for a covered entity to:

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

19 2. Use standards, criteria or methods of administration that have
20 the effect of discriminating on the basis of disability or that perpetuate
21 the discrimination of others who are subject to common administrative
22 control.

23 3. Exclude or otherwise deny equal jobs or benefits to an individual
24 qualified for the job or benefits because of the known disability of an
25 individual with whom the individual qualified for the job or benefits is
26 known to have a relationship or association.

27 4. Not make reasonable accommodations to the known physical or
28 mental limitations of an otherwise qualified individual who is an applicant
29 or employee unless the covered entity can demonstrate that the
30 accommodation would impose an undue hardship on the operation of the
31 business of the covered entity or the individual only meets the definition

1 of disability as prescribed in section 41-1461, paragraph 5,
2 subdivision (c).

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

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

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

22 ~~H.~~ H. Women who are affected by pregnancy or childbirth or related
23 medical conditions shall be treated the same for all employment-related
24 purposes, including receipt of benefits under fringe benefit programs, as
25 other persons not so affected but similar in their ability or inability to
26 work, and subsection ~~J~~ K, paragraph 3 of this section may not be
27 interpreted to allow otherwise.

28 ~~H.~~ I. Notwithstanding any other provision of this article, it is
29 not an unlawful employment practice:

30 1. For an employer to hire and employ employees, for an employment
31 agency to classify or refer for employment any individual, for a labor
32 organization to classify its membership or classify or refer for employment

1 any individual or for an employer, labor organization or joint
2 labor-management committee controlling apprenticeship or other training or
3 retraining programs to admit or employ any individual in any such program,
4 on the basis of the individual's religion, sex, **SEXUAL ORIENTATION, GENDER**
5 **IDENTITY AND GENDER EXPRESSION** or national origin in those certain
6 instances when religion, sex, **SEXUAL ORIENTATION, GENDER IDENTITY AND**
7 **GENDER EXPRESSION** or national origin is a bona fide occupational
8 qualification reasonably necessary to the normal operation of that
9 particular business or enterprise.

10 2. For any school, college, university or other educational
11 institution or institution of learning to hire and employ employees of a
12 particular religion if the school, college, university or other educational
13 institution or institution of learning is in whole or in substantial part
14 owned, supported, controlled or managed by a particular religion or
15 religious corporation, association or society, or if the curriculum of the
16 school, college, university or other educational institution or institution
17 of learning is directed toward the propagation of a particular religion.

18 3. For an employer to fail or refuse to hire or employ any
19 individual for any position, for an employment agency to fail or refuse to
20 refer any individual for employment in any position or for a labor
21 organization to fail or refuse to refer any individual for employment in
22 any position, if both of the following apply:

23 (a) The occupancy of the position or access to the premises in or on
24 which any part of the duties of the position are performed or are to be
25 performed is subject to any requirement imposed in the interest of the
26 national security of the United States under any security program in effect
27 pursuant to or administered under any statute of the United States or any
28 executive order of the president of the United States.

29 (b) The individual has not fulfilled or has ceased to fulfill that
30 requirement.

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

1 (a) To take any action otherwise prohibited under subsection B, ~~E~~ D
2 or ~~F~~ E 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 bona
6 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 ~~F~~ J. For the purposes of this article, unlawful employment
16 practice does not include any action or measure taken by an employer, labor
17 organization, joint labor-management committee or employment agency with
18 respect to an individual who is a member of the communist party of the
19 United States or of any other organization required to register as a
20 communist-action or communist-front organization by final order of the
21 subversive activities control board pursuant to the subversive activities
22 control act of 1950.

23 ~~F~~ K. Notwithstanding any other provision of this article, it is
24 not an unlawful employment practice:

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

1 2. For an employer to give and act on the results of any
2 professionally developed ability test if the test, its administration or
3 action on the results is not designed, intended or used to discriminate
4 because of race, color, religion, sex, **SEXUAL ORIENTATION, GENDER IDENTITY**
5 **AND GENDER EXPRESSION** or national origin.

6 3. For any employer to differentiate on the basis of sex or
7 disability in determining the amount of the wages or compensation paid or
8 to be paid to employees of the employer if the differentiation is
9 authorized by the provisions of section 6(d) or section 14 of the fair
10 labor standards act of 1938, as amended (29 United States Code section
11 206(d)).

12 ~~K. L. Nothing contained in~~ This chapter ~~applies~~ **DOES NOT APPLY** to
13 any business or enterprise on or near an Indian reservation with respect to
14 any publicly announced employment practice of the business or enterprise
15 under which a preferential treatment is given to any individual because the
16 individual is an Indian living on or near a reservation.

17 ~~L. M. Nothing contained in~~ This article or article 6 of this
18 chapter ~~requires~~ **DOES NOT REQUIRE** any employer, employment agency, labor
19 organization or joint labor-management committee subject to this article to
20 grant preferential treatment to any individual or group because of the
21 race, color, religion, sex, **SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER**
22 **EXPRESSION** or national origin of the individual or group on account of an
23 imbalance that may exist with respect to the total number or percentage of
24 persons of any race, color, religion, sex, **SEXUAL ORIENTATION, GENDER**
25 **IDENTITY AND GENDER EXPRESSION** or national origin employed by any employer,
26 referred or classified for employment by any employment agency or labor
27 organization, admitted to membership or classified by any labor
28 organization or admitted to or employed in any apprenticeship or other
29 training program, in comparison with the total number or percentage of
30 persons of that race, color, religion, sex, **SEXUAL ORIENTATION, GENDER**
31 **IDENTITY AND GENDER EXPRESSION** or national origin in any community, state,

1 section or other area, or in the available workforce in any community,
2 state, section or other area.

3 ~~M.~~ N. The age discrimination prohibitions of this article ~~may~~ DO
4 not ~~be construed to~~ prohibit compulsory retirement of any employee who has
5 attained sixty-five years of age and who, for the ~~two-year~~ TWO-YEAR period
6 immediately before retirement, is employed in a bona fide executive or high
7 policymaking position, if the employee is entitled to an immediate
8 nonforfeitable annual retirement benefit from a pension, profit sharing,
9 savings or deferred compensation plan or any combination of plans of the
10 employer for the employee, that equals, in the aggregate, at least
11 \$44,000. In applying the retirement benefit test of this subsection, if
12 any retirement benefit is in a form other than a straight life annuity,
13 with no ancillary benefits, or if employees contribute to the plan or make
14 rollover contributions, the benefit shall be adjusted in accordance with
15 rules adopted by the division so the benefit is the equivalent of a
16 straight life annuity, with no ancillary benefits, under a plan to which
17 employees do not contribute and under which no rollover contributions are
18 made.

19 ~~N.~~ O. A covered entity may require that an individual with a
20 disability shall not pose a direct threat to the health or safety of other
21 individuals in the workplace. For the purposes of this subsection, "direct
22 threat" means a significant risk to the health or safety of others that
23 cannot be eliminated by reasonable accommodation.

24 ~~O.~~ P. This article does not alter the standards for determining
25 eligibility for benefits under this state's workers' compensation laws or
26 under state and federal disability benefit programs.

27 ~~P.~~ Q. For the purposes of this section and section 41-1481, with
28 respect to employers or employment practices involving a disability,
29 "individual" means a qualified individual.

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

3 41-1464. Other unlawful employment practices; opposition to
4 unlawful practices; filing of charges;
5 participation in proceedings; notices and
6 advertisements for employment

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

19 B. It is an unlawful employment practice for an employer, labor
20 organization, employment agency or joint labor-management committee
21 controlling apprenticeship or other training or retraining programs,
22 including on-the-job training programs, to print or publish or cause to be
23 printed or published any notice or advertisement relating to employment by
24 an employer or membership in or any classification or referral for
25 employment by a labor organization, ~~or relating to~~ any classification or
26 referral for employment by an employment agency or ~~relating to~~ admission or
27 ~~to~~ employment in any program established to provide apprenticeship or other
28 training by a joint labor-management committee indicating any preference,
29 limitation, specification or discrimination based on race, color, religion,
30 sex, SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRESSION or national
31 origin, except that a notice or advertisement may indicate a preference,
32 limitation, specification or discrimination based on religion, sex or

1 national origin when religion, sex, SEXUAL ORIENTATION, GENDER IDENTITY AND
2 GENDER EXPRESSION or national origin is a bona fide occupational
3 qualification for employment.

4 C. It is unlawful for an employer, labor organization or employment
5 agency to print or publish or cause to be printed or published any notice
6 or advertisement relating to employment by an employer or membership in or
7 any classification or referral for employment by a labor organization or
8 ~~relating to~~ any classification or referral for employment by an employment
9 agency, indicating any preference, limitation, specification or
10 discrimination based on age, except that the notice or advertisement may
11 indicate a preference, limitation, specification or discrimination based on
12 age when age is a bona fide occupational qualification for employment.

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

15 41-1481. Filing charges; investigation; findings;
16 conciliation; compliance proceedings; appeals;
17 attorney fees; violation; classification

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

29 B. Whenever a charge is filed by or on behalf of a person claiming
30 to be aggrieved or by a member of the division, referred to as the charging
31 party, alleging that an employer, employment agency, labor organization or
32 joint labor-management committee controlling apprenticeship or other

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

1 C. All conciliation agreements shall provide that the charging party
2 waives, releases and covenants not to sue the respondent or claim against
3 the respondent in any forum with respect to the matters ~~which~~ THAT were
4 alleged as charges filed with the division, subject to performance by the
5 respondent of the promises and representations contained in the
6 conciliation agreement. The charging party or the respondent may prepare a
7 conciliation agreement that the division shall submit to the other party
8 and that, if accepted by the other party, shall be accepted by the
9 division.

10 D. If within thirty days after the division has made a determination
11 that reasonable cause exists to believe that the charge is true the
12 division has not accepted a conciliation agreement to which the charging
13 party and the respondent are parties, the division may bring a civil action
14 against the respondent, other than the state, named in the charge. The
15 charging party shall have the right to intervene in a civil action brought
16 by the division. If a charge filed with the division pursuant to
17 subsection A of this section is dismissed by the division or if within
18 ninety days ~~from~~ AFTER the filing of such charge the division has not filed
19 a civil action under this section or has not entered into a conciliation
20 agreement with the charging party, the division shall so notify the
21 charging party. After providing the notice a civil action may be brought
22 against the respondent named in the charge by the charging party or, if
23 that charge was filed by a member of the division, by any person whom the
24 charge alleges was aggrieved by the alleged unlawful employment
25 practice. ~~In no event shall any~~ AN action MAY NOT be brought pursuant to
26 this article more than one year after the charge to which the action
27 relates has been filed. On application by the complainant and in the
28 circumstances as the court may deem just, the court may appoint an attorney
29 for such complainant and may authorize the commencement of the action
30 without the payment of fees, costs or security. On timely application, the
31 court may in its discretion allow the division to intervene in civil
32 actions in which the state is not a defendant on certification that the

1 case is of general public importance. ~~Upon~~ ON request the court may stay
2 further proceedings for not more than sixty days pending the further
3 efforts of the parties or the division to obtain voluntary compliance.

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

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

19 G. If the court finds that the defendant has intentionally engaged
20 in or is intentionally engaging in an unlawful employment practice alleged
21 in the complaint, the court may enjoin the defendant from engaging in the
22 unlawful employment practice and order the affirmative action as may be
23 appropriate. Affirmative action may include, ~~but is not limited to,~~
24 reinstatement or hiring of employees with or without back pay payable by
25 the employer, employment agency or labor organization responsible for the
26 unlawful employment practice or any other equitable relief as the court
27 deems appropriate. Back pay liability shall not accrue from a date more
28 than two years before the filing of the charge with the division. Interim
29 earnings or amounts earnable with reasonable diligence by the person or
30 persons discriminated against shall reduce the back pay otherwise
31 allowable. An order of the court shall not require the admission or
32 reinstatement of an individual as a member of a union or the hiring,

1 reinstatement or promotion of an individual as an employee or the payment
2 to the individual of any back pay if the individual was refused admission,
3 suspended or expelled or was refused employment or advancement or was
4 suspended or discharged for any reason other than discrimination on account
5 of race, color, religion, sex, **SEXUAL ORIENTATION, GENDER IDENTITY AND**
6 **GENDER EXPRESSION**, age, disability or national origin or a violation of
7 section 41-1464.

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

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

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

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

21 **41-1491. Definitions**

22 In this article, unless the context otherwise requires:

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

24 (a) Claims to have been injured by a discriminatory housing
25 practice.

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

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

30 3. "Conciliation" means the attempted resolution of issues raised by
31 a complaint or by the investigation of the complaint through informal

1 negotiations involving the aggrieved person, the respondent and the
2 attorney general.

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

5 5. "Disability" means a mental or physical impairment that
6 substantially limits at least one major life activity, a record of such an
7 impairment or being regarded as having such an impairment. Disability does
8 not include current illegal use of or addiction to any drug or illegal or
9 federally controlled substance. Disability shall be defined and construed
10 as the term is defined and construed by the Americans with disabilities act
11 of 1990 (P.L. 101-336) and the ADA amendments act of 2008 (P.L. 110-325;
12 122 Stat. 3553).

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

15 7. "Dwelling" means either:

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

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

22 8. "Family" includes a single individual.

23 9. "GENDER IDENTITY AND GENDER EXPRESSION" MEANS THE GENDER-RELATED
24 IDENTITY AND EXPRESSION, INCLUDING APPEARANCE, MANNERISMS OR OTHER
25 GENDER-RELATED CHARACTERISTICS OF AN INDIVIDUAL REGARDLESS OF THE
26 INDIVIDUAL'S DESIGNATED SEX AT BIRTH.

27 ~~9.~~ 10. "Person" means one or more individuals, corporations,
28 partnerships, associations, labor organizations, legal representatives,
29 mutual companies, joint stock companies, trusts, unincorporated
30 organizations, trustees, receivers, fiduciaries, banks, credit unions and
31 financial institutions.

32 ~~10.~~ 11. "Respondent" means either:

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

3 (b) Any person identified as an additional or substitute respondent
4 under section 41-1491.25 or an agent of an additional or substitute
5 respondent.

6 ~~11.~~ 12. "To rent" includes to lease, to sublease, to let or to
7 otherwise grant for a consideration the right to occupy premises not owned
8 by the occupant.

9 Sec. 10. Section 41-1491.05, Arizona Revised Statutes, is amended to
10 read:

11 41-1491.05. Appraisal exemption

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

17 Sec. 11. Section 41-1491.14, Arizona Revised Statutes, is amended to
18 read:

19 41-1491.14. Discrimination in sale or rental

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

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

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

1 Sec. 12. Section 41-1491.15, Arizona Revised Statutes, is amended to
2 read:

3 41-1491.15. Publication of sales or rentals

4 A person may not make, print or publish or cause to be made, printed
5 or published any notice, statement or advertisement with respect to the
6 sale or rental of a dwelling that indicates any preference, limitation or
7 discrimination based on race, color, religion, sex, **SEXUAL ORIENTATION,**
8 **GENDER IDENTITY AND GENDER EXPRESSION,** disability, familial status or
9 national origin or an intention to make such a preference, limitation or
10 discrimination.

11 Sec. 13. Section 41-1491.16, Arizona Revised Statutes, is amended to
12 read:

13 41-1491.16. Inspection of dwelling

14 A person may not represent to any person because of race, color,
15 religion, sex, **SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRESSION,**
16 disability, familial status or national origin that a dwelling is not
17 available for inspection for sale or rental if the dwelling is available
18 for inspection.

19 Sec. 14. Section 41-1491.17, Arizona Revised Statutes, is amended to
20 read:

21 41-1491.17. Entry into neighborhood

22 A person, for profit, may not induce or attempt to induce a person to
23 sell or rent a dwelling by representations regarding the entry or
24 prospective entry into a neighborhood of a person of a particular race,
25 color, religion, sex, **SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER**
26 **EXPRESSION,** disability, familial status or national origin.

27 Sec. 15. Section 41-1491.20, Arizona Revised Statutes, is amended to
28 read:

29 41-1491.20. Residential real estate related transaction;
30 definition

31 A. A person whose business includes engaging in residential real
32 estate related transactions may not discriminate against a person in making

1 a real estate related transaction available or in the terms or conditions
2 of a real estate related transaction because of race, color, religion, sex,
3 **SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRESSION**, disability,
4 familial status or national origin.

5 B. ~~iii~~ **FOR THE PURPOSES OF** this section, "residential real estate
6 related transaction" means:

7 1. Making or purchasing loans or providing other financial
8 assistance either:

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

10 (b) To secure residential real estate.

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

12 Sec. 16. Section 41-1491.21, Arizona Revised Statutes, is amended to
13 read:

14 **41-1491.21. Brokerage services**

15 A person may not deny any person access to, or membership or
16 participation in, a multiple listing service, real estate brokers'
17 organization or other service, organization or facility relating to the
18 business of selling or renting dwellings or may not discriminate against a
19 person in the terms or conditions of access, membership or participation in
20 such an organization, service or facility because of race, color, religion,
21 sex, **SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRESSION**, disability,
22 familial status or national origin."

23 Amend title to conform

BETTY J. VILLEGAS

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