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## ARIZONA HOUSE OF REPRESENTATIVES

### INTERIM MEETING NOTICE OPEN TO THE PUBLIC

#### HOUSE AD HOC COMMITTEE ON RELIGIOUS LIBERTY AND NONDISCRIMINATION

Date: Thursday, March 17, 2022

Time: 1 P.M.

Place: HHR 3



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#### AGENDA

1. Welcome and Introductions
2. Presentation: Corrected draft of H.B. 2802
3. Invited Guests
4. Public Testimony

#### Members:

Representative Russell Bowers, Co-Chair  
 Representative Amish Shah, Co-Chair  
 Representative César Chávez  
 Representative Regina E. Cobb  
 Representative Timothy Dunn  
 Representative Jennifer Jermaine  
 Representative Quang Nguyen  
 Representative Jennifer Pawlik

03/14/2022  
 03/16/2022  
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# CORRECTED DRAFT For Discussion Only

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

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

## H. B. 2802 (CORRECTED)

Introduced by  
Representatives Bowers: Shah

### AN ACT

AMENDING TITLE 32, CHAPTER 32, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-3230; AMENDING SECTIONS 41-1402, 41-1441 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)

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1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Title 32, chapter 32, article 1, Arizona Revised  
3 Statutes, is amended by adding section 32-3230, to read:  
4 32-3230. Conversion therapy; unprofessional conduct; state  
5 preemption; definitions  
6 A. IT IS UNPROFESSIONAL CONDUCT FOR A HEALTH PROVIDER TO PROVIDE  
7 CONVERSION THERAPY TO A PATIENT OR CLIENT WHO IS YOUNGER THAN EIGHTEEN  
8 YEARS OF AGE.  
9 B. SUBSECTION A OF THIS SECTION DOES NOT APPLY TO EITHER:  
10 1. A CLERGY MEMBER OR RELIGIOUS COUNSELOR WHO IS ACTING  
11 SUBSTANTIALLY IN A PASTORAL OR RELIGIOUS CAPACITY AND NOT IN THE CAPACITY  
12 OF A HEALTH PROVIDER.  
13 2. A PARENT OR GRANDPARENT WHO IS ACTING SUBSTANTIALLY IN THE  
14 CAPACITY OF A PARENT OR GRANDPARENT AND NOT IN THE CAPACITY OF A HEALTH  
15 PROVIDER.  
16 C. THE REGULATION OF CONVERSION THERAPY IS OF STATEWIDE CONCERN AND  
17 IS NOT SUBJECT TO FURTHER REGULATION BY A COUNTY, CITY, TOWN OR OTHER  
18 POLITICAL SUBDIVISION OF THIS STATE.  
19 D. FOR THE PURPOSES OF THIS SECTION:  
20 1. "CONVERSION THERAPY":  
21 (a) MEANS ANY PRACTICE OR TREATMENT THAT SEEKS TO CHANGE THE SEXUAL  
22 ORIENTATION OR GENDER IDENTITY OF A PATIENT OR CLIENT, INCLUDING MENTAL  
23 HEALTH THERAPY THAT SEEKS TO CHANGE, ELIMINATE OR REDUCE BEHAVIORS,  
24 EXPRESSIONS, ATTRACTIONS OR FEELINGS RELATED TO THE PATIENT'S OR CLIENT'S  
25 SEXUAL ORIENTATION OR GENDER IDENTITY AS PART OF AN EFFORT TO CHANGE  
26 SEXUAL ORIENTATION OR GENDER IDENTITY.  
27 (b) DOES NOT INCLUDE A PRACTICE OR TREATMENT THAT DOES NOT SEEK TO  
28 CHANGE A PATIENT'S OR CLIENT'S SEXUAL ORIENTATION OR GENDER IDENTITY,  
29 INCLUDING MENTAL HEALTH THERAPY THAT MEETS ANY OF THE FOLLOWING:  
30 (i) IS NEUTRAL WITH RESPECT TO SEXUAL ORIENTATION AND GENDER  
31 IDENTITY.  
32 (ii) PROVIDES ASSISTANCE TO A PATIENT OR CLIENT UNDERGOING GENDER  
33 TRANSITION.  
34 (iii) PROVIDES ACCEPTANCE OF AND SUPPORT AND UNDERSTANDING TO A  
35 PATIENT OR CLIENT.  
36 (iv) FACILITATES A PATIENT'S OR CLIENT'S ABILITY TO COPE, SOCIAL  
37 SUPPORT OR IDENTITY EXPLORATION AND DEVELOPMENT.  
38 (v) ADDRESSES UNLAWFUL, UNSAFE, PREMARITAL OR EXTRAMARITAL SEXUAL  
39 ACTIVITIES IN A MANNER THAT IS NEUTRAL WITH RESPECT TO SEXUAL ORIENTATION.  
40 (vi) DISCUSSES WITH A PATIENT OR CLIENT THE PATIENT'S OR CLIENT'S  
41 MORAL OR RELIGIOUS BELIEFS OR PRACTICES.  
42 2. "GENDER IDENTITY" HAS THE SAME MEANING PRESCRIBED IN SECTION  
43 41-1441.  
44 3. "HEALTH PROVIDER" MEANS A PERSON WHO IS CERTIFIED OR LICENSED  
45 PURSUANT TO CHAPTER 14, 15, 17, 19.1, 25, 29 OR 33 OF THIS TITLE.

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

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

5           41-1402. Powers and duties of the division

6           A. The division may:

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

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

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

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

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

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

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

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

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

40          B. The division shall:

41           1. Administer this chapter.

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

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

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

5 41-1441. Definitions

6 In this article, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 F. 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 EXEMPT UNDER  
43 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 OR SIMILAR PLACE WHOSE SERVICES  
6 OR FACILITIES ARE INTENDED FOR THE EXCLUSIVE USE OF PERSONS OF THE SAME  
7 SEX, MAY NOT BE PREVENTED FROM PROVIDING THOSE SERVICES OR FACILITIES  
8 EXCLUSIVELY TO PERSONS OF THAT SEX OR PROHIBITED FROM TEMPORARILY  
9 RESTRICTING ACCESS TO A FITNESS CENTER, SPA, POOL OR SIMILAR PLACE, BASED  
10 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 SHALL NOT PREVENT  
17 ANY SUCH FACILITY FROM CONSIDERING AN INDIVIDUAL'S SEX FOR PARTICIPATION  
18 IN SUCH PROGRAM OR ACTIVITY, PROVIDED THAT, WHERE APPROPRIATE, TO  
19 ACCOMPLISH THE PURPOSE OF THE PROGRAM OR ACTIVITY INDIVIDUALS ARE TREATED  
20 IN ACCORDANCE WITH THEIR GENDER IDENTITY.

21 Sec. 5. 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. 6. 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 orally 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 PURPOSES OF CLAIMS OF DISCRIMINATION BASED ON THE FAILURE  
22 TO ACCOMMODATE A RELIGIOUS OBSERVANCE OR PRACTICE, MEANS AN INDIVIDUAL  
23 EMPLOYED BY AN EMPLOYER OR A PROSPECTIVE EMPLOYEE OF THE EMPLOYER WHO,  
24 WITH OR WITHOUT REASONABLE ACCOMMODATION, IS QUALIFIED TO PERFORM THE  
25 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 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, except that to the  
37 extent that any person is alleged to have committed any act of sexual  
38 harassment, employer means, for purposes of administrative and civil  
39 actions regarding those allegations of sexual harassment, a person who has  
40 one or more employees in the current or preceding calendar year.  
41           (b) Does not include either:  
42           (i) The United States or any department or agency of the United  
43 States, a corporation wholly owned by the government of the United States  
44 or an Indian tribe.

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

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

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

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

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

14 (c) A RELIGIOUS EDUCATIONAL INSTITUTION THAT IS ELIGIBLE FOR  
15 EXEMPTION UNDER THE CIVIL RIGHTS ACT OF 1964 (P.L. 88-352; 78 STAT. 241;  
16 42 UNITED STATES CODE SECTION 2000a).

17 (d) A RELIGIOUS CORPORATION, ASSOCIATION OR SOCIETY DESCRIBED IN  
18 THE CIVIL RIGHTS ACT OF 1964 (P.L. 88-352; 78 STAT. 241; 42 UNITED STATES  
19 CODE SECTION 2000a) THAT IS ELIGIBLE FOR TAX-EXEMPT STATUS UNDER SECTION  
20 501(c) OF THE INTERNAL REVENUE CODE OF 1986 AND THAT ONLY EMPLOYS  
21 INDIVIDUALS OF THE EMPLOYER'S RELIGION, UNLESS THE EMPLOYEE DEMONSTRATES  
22 THAT THE EMPLOYER HAS NOT APPLIED WITH REASONABLE CONSISTENCY ITS  
23 RELIGIOUS STANDARD CITED AS THE REASON FOR THE ADVERSE EMPLOYMENT ACTION.

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

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

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

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

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

35 ~~9.~~ 11. "Labor organization":

36 (a) Means a labor organization and any agent of a labor  
37 organization.

38 (b) Includes:

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

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

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

9 ~~10~~ 13. "Major life activities" includes:

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

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

18 14. "PERFORM THE ESSENTIAL FUNCTIONS":

19 (a) INCLUDES CARRYING OUT THE CORE REQUIREMENTS OF AN EMPLOYMENT  
20 POSITION.

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

27 ~~11~~ 15. "Person" means one or more individuals, governmental  
28 agencies, political subdivisions, labor unions, partnerships,  
29 associations, corporations, legal representatives, mutual companies,  
30 joint-stock companies, trusts, unincorporated organizations, trustees,  
31 trustees in bankruptcy or receivers.

32 ~~12~~ 16. "Qualified individual" means a person with a disability  
33 who, with or without reasonable accommodation, is capable of performing  
34 the essential functions of the employment position that the individual  
35 holds or desires.

36 ~~13~~ 17. "Reasonable accommodation":

37 (a) Includes:

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

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

1 provision of auxiliary aids and services or interpreters and other similar  
2 services and actions for individuals with disabilities.

3 (b) MUST REMOVE THE CONFLICT BETWEEN EMPLOYMENT REQUIREMENTS AND  
4 THE RELIGIOUS OBSERVANCE OR PRACTICE OF AN EMPLOYEE TO BE CONSIDERED  
5 REASONABLE. A CONFLICT WILL NOT BE CONSIDERED REMOVED IF THE EMPLOYER  
6 REFUSES TO ALLOW THE EMPLOYEE TO USE LEAVE OF GENERAL USAGE BECAUSE THE  
7 LEAVE WILL BE USED TO ACCOMMODATE THE EMPLOYEE'S RELIGIOUS OBSERVANCE OR  
8 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. 7. 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 SUBSECTIONS B, C, D OR E OF THIS SECTION OR  
32 SECTION 41-1464, SUBSECTION B BASED ON SEXUAL ORIENTATION OR GENDER  
33 IDENTITY.

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

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

44 1. For an employer to apply different standards of compensation or  
45 different terms, conditions or privileges of employment pursuant to a bona

1 fide seniority or merit system or a system that measures earnings by  
2 quantity or quality of production or to employees who work in different  
3 locations, if these differences are not the result of an intention to  
4 discriminate because of race, color, religion, sex, **SEXUAL ORIENTATION,**  
5 **GENDER IDENTITY** or national origin.

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

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

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

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

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

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

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

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

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

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

22 41-1464. Other unlawful employment practices: opposition to  
23 unlawful practices; filing of charges;  
24 participation in proceedings; notices and  
25 advertisements for employment

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

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

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

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

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

22 41-1469. Unlawful employment practices: sexual orientation:  
23 gender identity: state preemption

24 THE REGULATION OF UNLAWFUL EMPLOYMENT PRACTICES BASED ON SEXUAL  
25 ORIENTATION OR GENDER IDENTITY IS OF STATEWIDE CONCERN. THE REGULATION OF  
26 UNLAWFUL EMPLOYMENT PRACTICES BASED ON SEXUAL ORIENTATION OR GENDER  
27 IDENTITY BY THIS STATE SUPERSEDES ANY CONTRARY ORDINANCE, REGULATION,  
28 STANDARD OR OTHER LEGAL ACTION BY A COUNTY, CITY, TOWN OR OTHER POLITICAL  
29 SUBDIVISION OF THIS STATE. IF A COUNTY, CITY, TOWN OR OTHER POLITICAL  
30 SUBDIVISION OF THIS STATE DEFINES EMPLOYER TO INCLUDE A PERSON WHO HAS  
31 FEWER THAN FIFTEEN EMPLOYEES AS OF THE EFFECTIVE DATE OF THIS SECTION, THE  
32 COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY  
33 CONTINUE ENFORCING THE ORDINANCE, REGULATION OR STANDARD AGAINST AN  
34 EMPLOYER.

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

37 41-1481. Filing charges: investigation: findings:  
38 conciliation: compliance proceedings: appeals:  
39 attorney fees: violation: classification

40 A. A charge under this section shall be filed within one hundred  
41 eighty days after the alleged unlawful employment practice occurred. A  
42 charge is deemed filed on receipt by the division from or on behalf of a  
43 person claiming to be aggrieved or, if filed by a member of the division,  
44 when executed by the member on oath or affirmation. A charge is deemed  
45 filed by or on behalf of a person claiming to be aggrieved if received

1 from the United States equal employment opportunity commission. A charge  
2 shall be in writing on oath or affirmation and shall contain the  
3 information, including the date, place and circumstances of the alleged  
4 unlawful employment practice, and be in the form as the division  
5 requires. The division shall not make charges public.

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

42 C. All conciliation agreements shall provide that the charging  
43 party waives, releases and covenants not to sue the respondent or claim  
44 against the respondent in any forum with respect to the matters ~~which~~ THAT  
45 were alleged as charges filed with the division, subject to performance by

1 the respondent of the promises and representations contained in the  
2 conciliation agreement. The charging party or the respondent may prepare  
3 a conciliation agreement that the division shall submit to the other party  
4 and that, if accepted by the other party, shall be accepted by the  
5 division.

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

33 E. Whenever a charge is filed with the division and the division  
34 concludes on the basis of a preliminary investigation that prompt judicial  
35 action is necessary to carry out the purposes of this article or article 4  
36 of this chapter, the division may bring an action for appropriate  
37 temporary or preliminary relief pending final disposition of the charge.  
38 Any temporary restraining order or other order granting preliminary or  
39 temporary relief shall be issued in accordance with the Arizona rules of  
40 civil procedure. The court having jurisdiction over the proceedings shall  
41 assign such action for hearing at the earliest practicable date and cause  
42 the action to be expedited in every way.

43 F. The court shall assign any action brought under this article for  
44 hearing at the earliest practicable date and cause the action to be in  
45 every way expedited. If the action has not been scheduled for trial

1 within one hundred twenty days after issue has been joined, the judge may  
2 appoint a master pursuant to rule 53 of the Arizona rules of civil  
3 procedure.

4 G. If the court finds that the defendant has intentionally engaged  
5 in or is intentionally engaging in an unlawful employment practice alleged  
6 in the complaint, the court may enjoin the defendant from engaging in the  
7 unlawful employment practice and order the affirmative action as may be  
8 appropriate. Affirmative action may include, ~~but is not limited to,~~  
9 reinstatement or hiring of employees with or without back pay payable by  
10 the employer, employment agency or labor organization responsible for the  
11 unlawful employment practice or any other equitable relief as the court  
12 deems appropriate. Back pay liability shall not accrue from a date more  
13 than two years before the filing of the charge with the division. Interim  
14 earnings or amounts earnable with reasonable diligence by the person or  
15 persons discriminated against shall reduce the back pay otherwise  
16 allowable. An order of the court shall not require the admission or  
17 reinstatement of an individual as a member of a union or the hiring,  
18 reinstatement or promotion of an individual as an employee or the payment  
19 to the individual of any back pay if the individual was refused admission,  
20 suspended or expelled or was refused employment or advancement or was  
21 suspended or discharged for any reason other than discrimination on  
22 account of race, color, religion, sex, **SEXUAL ORIENTATION, GENDER**  
23 **IDENTITY**, age, disability or national origin or a violation of section  
24 41-1464.

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

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

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

36 Sec. 11. Section 41-1491, Arizona Revised Statutes, is amended to  
37 read:

38 **41-1491. Definitions**

39 In this article, unless the context otherwise requires:

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

41 (a) Claims to have been injured by a discriminatory housing  
42 practice.

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

1           2. "Complainant" means a person, including the attorney general,  
2 who files a complaint under section 41-1491.22.  
3           3. "Conciliation" means the attempted resolution of issues raised  
4 by a complaint or by the investigation of the complaint through informal  
5 negotiations involving the aggrieved person, the respondent and the  
6 attorney general.  
7           4. "Conciliation agreement" means a written agreement setting forth  
8 the resolution of the issues in conciliation.  
9           5. "Disability" means a mental or physical impairment that  
10 substantially limits at least one major life activity, a record of such an  
11 impairment or being regarded as having such an impairment. Disability  
12 does not include current illegal use of or addiction to any drug or  
13 illegal or federally controlled substance. Disability shall be defined  
14 and construed as the term is defined and construed by the Americans with  
15 disabilities act of 1990 (P.L. 101-336) and the ADA amendments act of 2008  
16 (P.L. 110-325; 122 Stat. 3553).  
17           6. "Discriminatory housing practice" means an act prohibited by  
18 sections 41-1491.14 through 41-1491.21.  
19           7. "Dwelling" means either:  
20           (a) Any building, structure or part of a building or structure that  
21 is occupied as, or designed or intended for occupancy as, a residence by  
22 one or more families.  
23           (b) Any vacant land that is offered for sale or lease for the  
24 construction or location of a building, structure or part of a building or  
25 structure described by subdivision (a) of this paragraph.  
26           8. "Family" includes a single individual.  
27           9. "GENDER IDENTITY" MEANS THE GENDER RELATED IDENTITY, APPEARANCE  
28 OR MANNERISMS OR OTHER GENDER-RELATED CHARACTERISTICS OF AN INDIVIDUAL,  
29 REGARDLESS OF THE INDIVIDUAL'S DESIGNATED SEX AT BIRTH, THAT CAN BE SHOWN  
30 BY PROVIDING EVIDENCE, INCLUDING ANY OF THE FOLLOWING:  
31           (a) MEDICAL HISTORY, CARE OR TREATMENT OF THE GENDER IDENTITY.  
32           (b) CONSISTENT AND UNIFORM ASSERTION OF THE GENDER IDENTITY.  
33           (c) OTHER EVIDENCE THAT THE GENDER IDENTITY IS SINCERELY HELD, PART  
34 OF A PERSON'S CORE IDENTITY AND IS NOT BEING ASSERTED FOR AN IMPROPER  
35 PURPOSE.  
36           ~~9.~~ 10. "Person" means one or more individuals, corporations,  
37 partnerships, associations, labor organizations, legal representatives,  
38 mutual companies, joint stock companies, trusts, unincorporated  
39 organizations, trustees, receivers, fiduciaries, banks, credit unions and  
40 financial institutions.  
41           ~~10.~~ 11. "Respondent" means either:  
42           (a) The person accused of a violation of this article in a  
43 complaint of a discriminatory housing practice.

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

4 12. "SEXUAL ORIENTATION" MEANS HOMOSEXUALITY, HETEROSEXUALITY OR  
5 BISEXUALITY.

6 ~~11.~~ 13. "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. 12. Section 41-1491.03, Arizona Revised Statutes, is amended  
10 to read:

11 41-1491.03. Religious organization and private club  
12 exemption; definition

13 A. This article does not prohibit a religious organization,  
14 association or society, ~~or~~ a nonprofit institution or organization  
15 operated, supervised or controlled by or in conjunction with a religious  
16 organization, association or society OR A RELIGIOUS EDUCATIONAL  
17 INSTITUTION from:

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

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

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

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

31 Sec. 13. Section 41-1491.05, Arizona Revised Statutes, is amended  
32 to read:

33 41-1491.05. Appraisal exemption

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

38 Sec. 14. Section 41-1491.14, Arizona Revised Statutes, is amended  
39 to read:

40 41-1491.14. Discrimination in sale or rental

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

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

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

10 Sec. 15. Section 41-1491.15, Arizona Revised Statutes, is amended  
11 to read:

12 41-1491.15. Publication of sales or rentals

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

19 Sec. 16. Section 41-1491.16, Arizona Revised Statutes, is amended  
20 to read:

21 41-1491.16. Inspection of dwelling

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

26 Sec. 17. Section 41-1491.17, Arizona Revised Statutes, is amended  
27 to read:

28 41-1491.17. Entry into neighborhood

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

34 Sec. 18. Section 41-1491.20, Arizona Revised Statutes, is amended  
35 to read:

36 41-1491.20. Residential real estate related transaction:  
37 definition

38 A. A person whose business includes engaging in residential real  
39 estate related transactions may not discriminate against a person in  
40 making a real estate related transaction available or in the terms or  
41 conditions of a real estate related transaction because of race, color,  
42 religion, sex, **SEXUAL ORIENTATION, GENDER IDENTITY**, disability, familial  
43 status or national origin.

1 B. ~~it~~ FOR THE PURPOSES OF this section, "residential real estate  
2 related transaction" means:

3 1. Making or purchasing loans or providing other financial  
4 assistance either:

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

6 (b) To secure residential real estate.

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

8 Sec. 19. Section 41-1491.21, Arizona Revised Statutes, is amended  
9 to read:

10 41-1491.21. Brokerage services

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

19 Sec. 20. Title 41, chapter 9, article 7, Arizona Revised Statutes,  
20 is amended by adding section 41-1491.38, to read:

21 41-1491.38. Discrimination: sale or rental of a dwelling:  
22 sexual orientation; gender identity; state  
23 preemption

24 THE REGULATION OF DISCRIMINATION IN THE SALE OR RENTAL OF A DWELLING  
25 BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY IS OF STATEWIDE CONCERN.  
26 THE REGULATION OF DISCRIMINATION IN THE SALE OR RENTAL OF A DWELLING BASED  
27 ON SEXUAL ORIENTATION OR GENDER IDENTITY BY THIS STATE SUPERSEDES ANY  
28 CONTRARY ORDINANCE, REGULATION, STANDARD OR OTHER LEGAL ACTION BY A  
29 COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE.

30 Sec. 21. Section 41-1493.01, Arizona Revised Statutes, is amended  
31 to read:

32 41-1493.01. Free exercise of religion protected; definition

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

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

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

42 1. In furtherance of a compelling governmental interest.

43 2. The least restrictive means of furthering that compelling  
44 governmental interest.

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

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

9 F. FOR THE PURPOSES OF THIS SECTION, "GOVERNMENT" INCLUDES ANY  
10 BRANCH, DEPARTMENT, COURT OR AGENCY OF GOVERNMENT OR THE ENFORCEMENT OR  
11 APPLICATION OF ANY LAW, RULE OR POLICY BY ANY BRANCH, DEPARTMENT, COURT OR  
12 AGENCY OF GOVERNMENT.

13 Sec. 22. Short title

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