

State of Arizona
Senate
Fifty-third Legislature
First Regular Session
2017

SENATE BILL 1406

AN ACT

AMENDING SECTIONS 41-1492.07, 41-1492.08 AND 41-1492.09, ARIZONA REVISED
STATUTES; RELATING TO PUBLIC ACCOMMODATION AND SERVICE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-1492.07, Arizona Revised Statutes, is amended
3 to read:

4 41-1492.07. Exemptions: private clubs and religious
5 organizations; websites

6 This article does not apply to:

7 1. Private clubs or establishments exempted from coverage under
8 title II of the civil rights act of 1964 (42 United States Code section
9 2000(a)(e)) or to religious organizations or entities controlled by
10 religious organizations, including places of worship.

11 2. WEBSITES.

12 Sec. 2. Section 41-1492.08, Arizona Revised Statutes, is amended to
13 read:

14 41-1492.08. Enforcement by an aggrieved person; notice;
15 affidavit; prohibited demand for money;
16 definition

17 A. Any AGGRIEVED person who ~~believes that any covered person or~~
18 ~~entity has engaged in, or that there are reasonable grounds to believe~~
19 ~~that any covered person or entity is about to engage in, any act or~~
20 ~~practice prohibited by sections~~ IS SUBJECTED TO DISCRIMINATION IN
21 VIOLATION OF SECTION 41-1492.01, ~~through~~ 41-1492.02, 41-1492.03,
22 41-1492.04, 41-1492.05 OR 41-1492.11 or ~~that any covered entity has not~~
23 ~~performed an act required by this article and its~~ ARTICLE'S implementing
24 rules may institute a civil action for preventive or mandatory relief,
25 including an application for a permanent or temporary injunction,
26 restraining order or other order.

27 B. In the case of a violation of sections 41-1492.02 and
28 41-1492.04, injunctive relief includes an order to alter facilities to
29 make these facilities readily accessible to and usable by individuals with
30 disabilities to the extent required by this article. If appropriate,
31 injunctive relief also includes requiring the provision of an auxiliary
32 aid or service, the modification of a policy or the provision of
33 alternative methods, to the extent required by this article.

34 C. ~~A~~ AN AGGRIEVED person may file a civil action in superior court
35 not later than two years after the occurrence or the termination of an
36 alleged discriminatory public accommodation practice or the breach of a
37 conciliation agreement entered into under this article, whichever occurs
38 last, to obtain appropriate relief with respect to the discriminatory
39 public accommodation practice or breach.

40 D. Nothing in this section requires a person with a disability to
41 engage in a civil action.

42 E. BEFORE FILING A CIVIL ACTION PURSUANT TO THIS SECTION THAT
43 ALLEGES A PUBLIC ACCOMMODATION THAT IS OPERATED BY A PRIVATE ENTITY HAS A
44 BUILDING, FACILITY OR PARKING LOT THAT VIOLATES THIS ARTICLE AND EXCEPT AS
45 PROVIDED BY SUBSECTION F OF THIS SECTION, THE AGGRIEVED PERSON OR THE

1 PERSON'S ATTORNEY SHALL PROVIDE WRITTEN NOTICE WITH SUFFICIENT DETAIL TO
2 ALLOW THE PRIVATE ENTITY TO IDENTIFY AND CURE THE VIOLATION OR COMPLY WITH
3 THE LAW. IF THE PRIVATE ENTITY DOES NOT CURE THE VIOLATION OR COMPLY WITH
4 THE LAW WITHIN THIRTY DAYS AFTER RECEIVING THE NOTICE, THE AGGRIEVED
5 PERSON MAY FILE THE CIVIL ACTION.

6 F. IF THE PRIVATE ENTITY IS REQUIRED TO OBTAIN A BUILDING PERMIT OR
7 OTHER SIMILAR FORM OF GOVERNMENT APPROVAL TO MAKE THE CHANGES NECESSARY TO
8 CURE THE VIOLATION OR COMPLY WITH THE LAW AND THE PRIVATE ENTITY, WITHIN
9 THIRTY DAYS AFTER RECEIVING THE NOTICE REQUIRED BY SUBSECTION E OF THIS
10 SECTION, PROVIDES THE AGGRIEVED PERSON OR THE PERSON'S ATTORNEY WITH A
11 CORRECTIVE ACTION PLAN AND SUBMITS THE COMPLETED APPLICATION FOR THE
12 BUILDING PERMIT OR OTHER SIMILAR FORM OF GOVERNMENT APPROVAL TO THE
13 APPROPRIATE GOVERNMENTAL ENTITY FOR A DETERMINATION, THE AGGRIEVED PERSON
14 MAY NOT FILE THE CIVIL ACTION FOR AN ADDITIONAL SIXTY DAYS FROM THE DATE
15 THAT THE PRIVATE ENTITY PROVIDED THE CORRECTIVE ACTION PLAN TO THE
16 AGGRIEVED PERSON OR THE PERSON'S ATTORNEY. THE TIME AFTER THE COMPLETED
17 APPLICATION FOR THE BUILDING PERMIT OR OTHER SIMILAR FORM OF GOVERNMENT
18 APPROVAL IS SUBMITTED TO THE GOVERNMENTAL ENTITY UP UNTIL A FINAL
19 DETERMINATION IS PROVIDED TO THE PRIVATE ENTITY IS TOLLED AND IS NOT
20 INCLUDED IN CALCULATING THE ADDITIONAL SIXTY DAYS, EXCEPT THAT ANY DELAY
21 THAT IS CAUSED BY THE PRIVATE ENTITY BEFORE THE FINAL DETERMINATION IS
22 PROVIDED IS NOT TOLLED. DURING THE ADDITIONAL SIXTY DAYS, THE PRIVATE
23 ENTITY MUST COMPLY WITH THE REQUIREMENTS OF SECTION 41-1492.04.

24 G. WHEN FILING A CIVIL ACTION PURSUANT TO THIS SECTION, AN
25 AGGRIEVED PERSON MUST FILE AN AFFIDAVIT, UNDER PENALTY OF PERJURY, THAT
26 THE AGGRIEVED PERSON HAS READ THE ENTIRE COMPLAINT, AGREES WITH ALL OF THE
27 ALLEGATIONS AND FACTS CONTAINED IN THE COMPLAINT AND, UNLESS AUTHORIZED BY
28 STATUTE OR RULE, IS NOT RECEIVING AND HAS NOT BEEN PROMISED ANYTHING OF
29 VALUE IN EXCHANGE FOR FILING THE CIVIL ACTION.

30 H. AN AGGRIEVED PERSON OR THE AGGRIEVED PERSON'S ATTORNEY MAY NOT
31 DEMAND OR COLLECT MONEY FROM THE PRIVATE ENTITY BEFORE THE END OF THE
32 APPLICABLE TIME PERIOD UNDER SUBSECTIONS E AND F OF THIS SECTION BUT MAY
33 STATE THAT THE PRIVATE ENTITY MAY BE CIVILLY LIABLE FOR A VIOLATION OF
34 THIS ARTICLE.

35 I. ON THE MOTION OF ANY PARTY, THE COURT MAY STAY AN ACTION FILED
36 PURSUANT TO THIS SECTION TO DETERMINE WHETHER THE PERSON FILING THE CIVIL
37 ACTION OR THE PERSON'S ATTORNEY IS A VEXATIOUS LITIGANT OR TO DETERMINE
38 WHETHER THERE ARE MULTIPLE CIVIL ACTIONS THAT INVOLVE THE SAME PLAINTIFF
39 AND THAT SHOULD BE CONSOLIDATED CONSISTENT WITH THE ARIZONA RULES OF CIVIL
40 PROCEDURE.

41 J. FOR THE PURPOSES OF THIS SECTION, "SUFFICIENT DETAIL" MEANS THE
42 NAME OF THE AGGRIEVED PERSON WHO ENCOUNTERED THE BARRIER, THE DATE WHEN
43 THE BARRIER WAS ENCOUNTERED BY THE AGGRIEVED PERSON AND A DESCRIPTION OF
44 THE BARRIER THAT WAS ENCOUNTERED BY THE AGGRIEVED PERSON.

1 Sec. 3. Section 41-1492.09, Arizona Revised Statutes, is amended to
2 read:

3 41-1492.09. Enforcement by the attorney general; sanctions;
4 use of sanction monies

5 A. The attorney general shall investigate all alleged violations of
6 this article. These allegations must be filed within one hundred eighty
7 days after the occurrence or the termination of the alleged discriminatory
8 practice, shall be in writing under oath and shall be in such form as the
9 attorney general requires. The attorney general shall undertake periodic
10 reviews of compliance of covered entities under this article. If the
11 attorney general concludes at any time after the filing of a complaint of
12 alleged violation, or as a result of a periodic compliance review, that
13 prompt judicial action is necessary to carry out the purpose of this
14 article, the attorney general may file a civil action for appropriate
15 temporary or preliminary relief pending final disposition of the complaint
16 or compliance review. If, after investigation, the attorney general
17 determines that reasonable cause exists to believe this article is being
18 violated, the attorney general shall attempt for a period of not more than
19 thirty days to effectuate a conciliation agreement. If no conciliation
20 agreement has been reached after thirty days, the attorney general shall
21 file a civil action in an appropriate court. If the attorney general
22 determines that no reasonable cause exists to believe that a violation of
23 this article has occurred or is about to occur, the attorney general shall
24 promptly dismiss the complaint and give written notice of the dismissal to
25 the complainant and the person or entity complained against. If the
26 attorney general finds reasonable cause to believe that a party has
27 breached a conciliation agreement, the attorney general shall file a civil
28 action for enforcement of the agreement.

29 B. In any civil action BROUGHT under this article the court:

30 1. May grant any equitable relief that the court considers to be
31 appropriate, including, to the extent required by this title:

32 (a) Granting temporary, preliminary or permanent relief.

33 (b) Providing an auxiliary aid or service, a modification of a
34 policy, practice or procedure or an alternative method.

35 (c) Making facilities readily accessible to and usable by
36 individuals with disabilities.

37 2. May award such other relief as the court considers appropriate,
38 including monetary damages to aggrieved persons. ~~It~~ FOR THE PURPOSES OF
39 this paragraph, ~~"monetary damages"~~ and ~~"such other relief"~~ do not
40 include punitive damages.

41 C. In an action brought by the attorney general, the court, to
42 vindicate the public interest, may assess a civil penalty against the
43 covered person or entity in an amount of not more than:

44 1. Five thousand dollars for a first violation.

45 2. Ten thousand dollars for any subsequent violation.

1 D. For THE purposes of subsection C OF THIS SECTION, in determining
2 whether a first or subsequent violation has occurred, a determination in a
3 single action, by judgment or settlement, that the covered person or
4 entity has engaged in more than one discriminatory act shall be deemed a
5 single violation.

6 E. In a civil action BROUGHT BY THE ATTORNEY GENERAL, when
7 considering what amount of civil penalty, if any, is appropriate, the
8 court shall give consideration to any good faith effort or attempt to
9 comply with this article by the entity. In evaluating good faith, the
10 court shall consider, among other factors it deems relevant, whether the
11 entity could have reasonably anticipated the need for an appropriate type
12 of auxiliary aid needed to accommodate the unique needs of a particular
13 individual with a disability.

14 F. In any action or proceeding under this section, the court may
15 allow the prevailing party, other than the attorney general, reasonable
16 attorney fees as part of the costs.

17 G. If appropriate, and to the extent authorized by law, the use of
18 alternative means of dispute resolution, including settlement
19 negotiations, conciliation, facilitation, mediation, fact-finding,
20 mini-trials and arbitration, is encouraged to resolve disputes arising
21 under this article.

22 H. IN ADDITION TO ANY SANCTION THAT THE COURT MAY AWARD TO A PARTY
23 PURSUANT TO ANY RULE OR LAW IN ANY CIVIL ACTION BROUGHT UNDER THIS
24 ARTICLE, THE COURT MAY IMPOSE A SANCTION ON A PLAINTIFF OR THE PLAINTIFF'S
25 ATTORNEY IF THE COURT DETERMINES THAT AN ACTION OR SERIES OF ACTIONS IS
26 BROUGHT UNDER THIS ARTICLE FOR THE PRIMARY PURPOSE OF OBTAINING A PAYMENT
27 FROM THE DEFENDANT DUE TO THE COSTS OF DEFENDING THE ACTION IN A COURT.
28 WHEN IMPOSING A SANCTION, THE COURT MAY CONSIDER THE TOTALITY OF THE
29 ABUSIVE LITIGATION-RELATED PRACTICES OF THE PLAINTIFF AND THE PLAINTIFF'S
30 ATTORNEY.

31 I. IF THE COURT IMPOSES A SANCTION PURSUANT TO SUBSECTION H OF THIS
32 SECTION, THE COURT MAY ORDER A PARTY TO PAY A PART OF THE SANCTION TO THE
33 GOVERNOR'S OFFICE OF YOUTH, FAITH AND FAMILY AND, IF ORDERED, THE PARTIES
34 MUST NOTIFY THE GOVERNOR'S OFFICE OF YOUTH, FAITH AND FAMILY OF THE
35 COURT'S ORDER. THE GOVERNOR'S OFFICE OF YOUTH, FAITH AND FAMILY MUST USE
36 THESE MONIES FOR THE FOLLOWING PURPOSES:

37 1. TO EDUCATE COVERED PERSONS OR ENTITIES ABOUT THE PERSON'S OR
38 ENTITY'S OBLIGATIONS UNDER THIS ARTICLE.

39 2. TO AWARD ATTORNEY FEES TO CLAIMANTS WHO FILE A MERITORIOUS
40 COMPLAINT WITH THE ATTORNEY GENERAL AND WHO RESOLVE THE COMPLAINT WITHOUT
41 LITIGATION.

42 Sec. 4. Legislative findings

43 The legislature finds that:

44 1. Section 41-1492.08, Arizona Revised Statutes, as amended by this
45 act, is intended to clarify the requirements for a private litigant to

bring a claim pursuant to section 41-1492.08, Arizona Revised Statutes, as amended by this act. See *Bailey-Null v. ValueOptions*, 221 Ariz. 63, 69 ¶ 18 (App. 2009) (The Arizonans with Disabilities Act allows an "aggrieved individual" to institute civil action); see also *Bennett v. Napolitano*, 206 Ariz. 520, 524-525 ¶¶ 15, 19 (2003) ("[A] litigant seeking relief in the Arizona courts must first establish standing to sue," as the standing issue is a "threshold question[.]"); *Sears v. Hull*, 192 Ariz. 65, 69 ¶ 16 (1998) ("To gain standing to bring an action, a plaintiff must allege a distinct and palpable injury.").

2. This act is in response to thousands of lawsuits and complaints that were filed against Arizona businesses by the same lawyers and generally the same plaintiff.

3. Section 41-1492.09, Arizona Revised Statutes, as amended by this act, is intended to deter enterprises, individuals and attorneys from making demands on businesses for payments or from filing lawsuits that are motivated primarily by a desire to pressure businesses into making payments to avoid the cost of litigation.

4. This act is not intended to deter or inhibit individuals with disabilities from obtaining access to public accommodations that the individuals attempted to or intended to use. It is also not intended to deter bona fide public interest law firms, nonprofit organizations that promote the rights of individuals with disabilities or private attorneys who represent individuals with disabilities who have standing to bring claims because of obstacles to the individual's access to public accommodations.

5. This act is intended to deter abusive litigation tactics and remedy the tactics by authorizing the court, when imposing sanctions, to take into consideration the totality of a plaintiff's or an attorney's abusive litigation tactics and not merely the amount of attorney fees in any one case before the court.

6. The sanctions ordered under title 41, chapter 9, article 8, Arizona Revised Statutes, are intended to be used to promote compliance with the Arizonan's with disabilities act by funding outreach and education by the governor's office of youth, faith and family and by authorizing the governor's office of youth, faith and family to award attorney fees to bona fide public interest law firms, nonprofit legal organizations and private attorneys who file and resolve complaints with the attorney general under title 41, chapter 9, article 8, Arizona Revised Statutes.

Sec. 5. Severability

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.