

COMMITTEE ON APPROPRIATIONS
HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1406
(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

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 UNLESS THE AMERICANS WITH DISABILITIES ACT OF 1990
12 (P.L. 101-336; 104 STAT. 327) IS AMENDED OR IS INTERPRETED BY THE UNITED
13 STATES SUPREME COURT TO APPLY TO WEBSITES.

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

16 41-1492.08. Enforcement by an aggrieved person; notice;
17 affidavit; definition

18 A. Any AGGRIEVED person who ~~believes that any covered person or~~
19 ~~entity has engaged in, or that there are reasonable grounds to believe that~~
20 ~~any covered person or entity is about to engage in, any act or practice~~
21 ~~prohibited by sections~~ IS SUBJECTED TO DISCRIMINATION OR WHO HAS REASONABLE
22 GROUNDS TO BELIEVE THAT THE PERSON IS ABOUT TO BE SUBJECTED TO
23 DISCRIMINATION IN VIOLATION OF SECTION 41-1492.01, ~~through~~ 41-1492.02,

1 41-1492.03, 41-1492.04, 41-1492.05 OR 41-1492.11 or ~~that any covered entity~~
2 ~~has not performed an act required by this article and its~~ ARTICLE'S
3 implementing rules may institute a civil action for preventive or mandatory
4 relief, including an application for a permanent or temporary injunction,
5 restraining order or other order.

6 B. In the case of a violation of sections 41-1492.01, 41-1492.02,
7 ~~and~~ 41-1492.04, 41-1492.05 AND 41-1492.11, injunctive relief includes an
8 order to alter facilities to make these facilities readily accessible to
9 and usable by individuals with disabilities to the extent required by this
10 article. If appropriate, injunctive relief also includes requiring the
11 provision of an auxiliary aid or service, the modification of a policy or
12 the provision of alternative methods, to the extent required by this
13 article.

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

20 D. Nothing in this section requires a person with a disability to
21 engage in a civil action.

22 E. BEFORE FILING A CIVIL ACTION PURSUANT TO THIS SECTION THAT
23 ALLEGES A VIOLATION OF THIS ARTICLE THAT IS INCLUDED IN SUBSECTION F OF
24 THIS SECTION BY A PUBLIC ACCOMMODATION THAT IS OPERATED BY A PRIVATE
25 ENTITY, THE AGGRIEVED PERSON OR THE PERSON'S ATTORNEY SHALL PROVIDE WRITTEN
26 NOTICE WITH SUFFICIENT DETAIL TO THE PRIVATE ENTITY TO CURE THE VIOLATION
27 OR COMPLY WITH THE LAW. IF THE PRIVATE ENTITY DOES NOT CURE THE VIOLATION
28 OR COMPLY WITH THE LAW WITHIN THIRTY DAYS AFTER RECEIVING THE NOTICE, THE
29 AGGRIEVED PERSON MAY FILE THE CIVIL ACTION.

30 F. THE WRITTEN NOTICE REQUIRED BY SUBSECTION E OF THIS SECTION
31 APPLIES ONLY TO THE FOLLOWING ALLEGED VIOLATIONS OF THIS ARTICLE BY A
32 PUBLIC ACCOMMODATION THAT IS OPERATED BY A PRIVATE ENTITY:

1 1. THE HEIGHT OF A PARKING SIGN, IF THE PARKING SIGN IS VISIBLE WITH
2 THE PRESENCE OF A PARKED CAR.

3 2. THE WIDTH OF A VAN ACCESSIBLE PARKING SPACE, IF THE SPACE MEETS
4 THE STANDARDS REQUIRED BY EITHER THE AMERICANS WITH DISABILITIES ACT OF
5 1990 (P.L. 101-336; 104 STAT. 327) OR THE ADA AMENDMENTS ACT OF 2008
6 (P.L. 110-325; 122 STAT. 3553).

7 3. THE LACK OF EXTERIOR SIGNS, OTHER THAN PARKING SIGNS AND
8 DIRECTIONAL SIGNS, INCLUDING SIGNS THAT INDICATE THE LOCATION OF ACCESSIBLE
9 PATHWAYS OR ENTRANCE AND EXIT DOORS, IF NOT ALL OF THE PATHWAYS OR ENTRANCE
10 AND EXIT DOORS ARE ACCESSIBLE.

11 4. THE ORDER IN WHICH PARKING SIGNS ARE PLACED OR THE EXACT LOCATION
12 OR WORDING OF PARKING SIGNS, IF THE PARKING SIGNS ARE CLEARLY VISIBLE AND
13 INDICATE THE LOCATION OF ACCESSIBLE PARKING AND VAN-ACCESSIBLE PARKING.

14 5. THE COLOR OF PARKING SIGNS, IF THE COLOR OF THE BACKGROUND
15 CONTRASTS WITH THE COLOR OF THE INFORMATION ON THE SIGN.

16 6. THE COLOR OF PARKING LOT STRIPING, IF STRIPING EXISTS AND THE
17 STRIPING PROVIDES SUFFICIENT CONTRAST WITH THE SURFACE ON WHICH IT IS
18 APPLIED TO BE REASONABLY VISIBLE.

19 7. FADED, CHIPPED, DAMAGED OR DETERIORATED PAINT IN OTHERWISE FULLY
20 COMPLIANT PARKING SPACES AND PASSENGER ACCESS AISLES IN PARKING LOTS, IF
21 THE PAINT INDICATES THE REQUIRED DIMENSIONS OF A PARKING SPACE OR ACCESS
22 AISLE IN A MANNER THAT IS REASONABLY VISIBLE.

23 8. THE PRESENCE OR CONDITION OF DETECTABLE WARNING SURFACES ON
24 RAMPS, EXCEPT WHERE THE RAMP IS PART OF A PEDESTRIAN PATH OF TRAVEL THAT
25 INTERSECTS WITH A VEHICULAR LANE OR OTHER HAZARDOUS AREA.

26 G. WHEN FILING A CIVIL ACTION PURSUANT TO THIS SECTION, AN AGGRIEVED
27 PERSON MUST FILE AN AFFIDAVIT, UNDER PENALTY OF PERJURY, THAT THE AGGRIEVED
28 PERSON HAS READ THE ENTIRE COMPLAINT AND AGREES WITH ALL OF THE ALLEGATIONS
29 AND FACTS CONTAINED IN THE COMPLAINT.

30 H. ON THE MOTION OF ANY PARTY, THE COURT MAY STAY AN ACTION FILED
31 PURSUANT TO THIS SECTION TO DETERMINE IF THE PERSON FILING THE CIVIL ACTION
32 OR THE PERSON'S ATTORNEY IS A VEXATIOUS LITIGANT OR TO DETERMINE IF THERE

1 ARE MULTIPLE CIVIL ACTIONS THAT INVOLVE THE SAME PLAINTIFF AND THAT SHOULD
2 BE CONSOLIDATED CONSISTENT WITH THE ARIZONA RULES OF CIVIL PROCEDURE.

3 I. FOR THE PURPOSES OF THIS SECTION, "SUFFICIENT DETAIL" MEANS THE
4 NAME OF THE AGGRIEVED PERSON WHO ENCOUNTERED THE BARRIER, THE DATE WHEN THE
5 BARRIER WAS ENCOUNTERED BY THE AGGRIEVED PERSON AND A DESCRIPTION OF THE
6 BARRIER THAT WAS ENCOUNTERED BY THE AGGRIEVED PERSON.

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

9 41-1492.09. Enforcement by the attorney general; sanctions;
10 use of sanction monies

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

1 breached a conciliation agreement, the attorney general shall file a civil
2 action for enforcement of the agreement.

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

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

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

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

9 (c) Making facilities readily accessible to and usable by
10 individuals with disabilities.

11 2. May award such other relief as the court considers appropriate,
12 including monetary damages to aggrieved persons. ~~It~~ FOR THE PURPOSES OF
13 this paragraph, ~~“monetary damages”~~ and ~~“such other relief”~~ do not
14 include punitive damages.

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

18 1. Five thousand dollars for a first violation.

19 2. Ten thousand dollars for any subsequent violation.

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

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

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

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

8 H. IN ADDITION TO ANY SANCTION THAT THE COURT MAY AWARD TO A PARTY
9 PURSUANT TO ANY RULE OR LAW IN ANY CIVIL ACTION BROUGHT UNDER THIS ARTICLE,
10 THE COURT MAY IMPOSE A SANCTION ON A PLAINTIFF OR THE PLAINTIFF'S ATTORNEY
11 IF THE COURT DETERMINES THAT AN ACTION OR SERIES OF ACTIONS IS BROUGHT
12 UNDER THIS ARTICLE FOR THE PRIMARY PURPOSE OF OBTAINING A PAYMENT FROM THE
13 DEFENDANT DUE TO THE COSTS OF DEFENDING THE ACTION IN A COURT. WHEN
14 IMPOSING A SANCTION, THE COURT MAY CONSIDER THE TOTALITY OF THE ABUSIVE
15 LITIGATION-RELATED PRACTICES OF THE PLAINTIFF AND THE PLAINTIFF'S ATTORNEY.

16 I. IF THE COURT IMPOSES A SANCTION PURSUANT TO SUBSECTION H OF THIS
17 SECTION, THE COURT MAY ORDER A PARTY TO PAY A PART OF THE SANCTION TO THE
18 GOVERNOR'S OFFICE OF YOUTH, FAITH AND FAMILY AND, IF ORDERED, THE PARTIES
19 MUST NOTIFY THE GOVERNOR'S OFFICE OF YOUTH, FAITH AND FAMILY OF THE COURT'S
20 ORDER. THE GOVERNOR'S OFFICE OF YOUTH, FAITH AND FAMILY MUST USE THESE
21 MONIES FOR THE FOLLOWING PURPOSES:

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

24 2. TO AWARD ATTORNEY FEES TO CLAIMANTS WHO FILE A MERITORIOUS
25 COMPLAINT WITH THE ATTORNEY GENERAL AND WHO RESOLVE THE COMPLAINT WITHOUT
26 LITIGATION.

27 Sec. 4. Legislative findings

28 The legislature finds that:

29 1. Section 41-1492.08, Arizona Revised Statutes, as amended by this
30 act, is intended to clarify the requirements for a private litigant to
31 bring a claim pursuant to section 41-1492.08, Arizona Revised Statutes, as
32 amended by this act. See *Bailey-Null v. ValueOptions*, 221 Ariz. 63, 69 ¶

1 18 (App. 2009) (The Arizonans with Disabilities Act allows an "aggrieved
2 individual" to institute civil action); see also *Bennett v. Napolitano*, 206
3 Ariz. 520, 524-525 ¶¶ 15, 19 (2003) ("[A] litigant seeking relief in the
4 Arizona courts must first establish standing to sue," as the standing issue
5 is a "threshold question[.]"); *Sears v. Hull*, 192 Ariz. 65, 69 ¶ 16 (1998)
6 ("To gain standing to bring an action, a plaintiff must allege a distinct
7 and palpable injury.").

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

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

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

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

29 6. The sanctions ordered under title 41, chapter 9, article 8,
30 Arizona Revised Statutes, are intended to be used to promote compliance
31 with the Arizonan's with disabilities act by funding outreach and education
32 by the governor's office of youth, faith and family and by authorizing the

1 governor's office of youth, faith and family to award attorney fees to bona
2 fide public interest law firms, nonprofit legal organizations and private
3 attorneys who file and resolve complaints with the attorney general under
4 title 41, chapter 9, article 8, Arizona Revised Statutes.

5 Sec. 5. Severability

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

11 Amend title to conform

And, as so amended, it do pass

DON SHOOTER
CHAIRMAN

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03/29/2017
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