



**ARIZONA STATE SENATE**  
*Fifty-Sixth Legislature, Second Regular Session*

FACT SHEET FOR H.C.R. 2056

preferential treatment; discrimination; prohibition

Purpose

Subject to voter approval, constitutionally prohibits the state from compelling an individual to endorse giving preferential treatment to or discriminating against any individual or individuals on the basis of race or ethnicity as a condition of any hiring, promoting or contracting decision.

Background

The Fourteenth Amendment to the U.S. Constitution deems all persons who are born or naturalized in the United States and subject to U.S. jurisdiction to be citizens of the United States and their state of residence. A state may not: 1) make or enforce a law abridging the privileges or immunities of a U.S. citizen; 2) deprive a person of life, liberty or property without due process of law; or 3) deny a person within its jurisdiction the equal protection of law. The Fourteenth Amendment also includes a requirement to reduce a state's apportionment of representatives for denying certain persons the right to vote and a prohibition against certain officials who have engaged in insurrection or rebellion holding office. Congress has the power to enforce the provisions by appropriate legislation ([U.S. Const. amend. XIV](#)). Title VI of the federal Civil Rights Act of 1964 prohibits a person from being excluded from participation in, denied the benefits of or subjected to discrimination under any program or activity receiving federal financial assistance based on race, color or national origin ([P.L. 88-352, 88th Congress, 1964](#)).

The State of Arizona may not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin in relation to public employment, education or contracts. The Arizona Constitution does not prohibit: 1) bona fide qualifications based on sex that are reasonably necessary for the normal operation of public employment, education or contracting; 2) any action that must be taken to establish or maintain eligibility for any federal program if ineligibility would result in a loss of federal monies to Arizona; and 3) invalidating any court order or consent decree that is in force ([Ariz. Const. art. 2 § 36](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Prohibits the state from compelling an applicant, employee or contractor to endorse giving preferential treatment to or discriminating against any individual on the basis of race or ethnicity, as a condition of any hiring, promoting or contracting decision.
2. Prohibits the state, under any circumstance, from disadvantaging or treating an individual or individuals differently on the basis of race or ethnicity, from a pool of applicants, students, employees or contract recipients when making a hiring, contracting, promotion or admission decision.

3. Limits any action relating to preferential treatment, including an affirmative action policy, to outreach, advertising or communication efforts that do not modify any application criteria or evaluation.
4. Prohibits the state from implementing any disciplinary policy or action that treats an individual student or employee or group of students or employees differently on the basis of race or ethnicity.
5. Prohibits access to services, facilities or grounds of the state from being conditioned on race or ethnicity of any individual or group of individuals.
6. Deems any requirement that the state practice racial discrimination, except in accordance with the exemption for outreach, advertising or communication efforts necessary for federal program eligibility, to be:
  - a) inconsistent with the Fourteenth Amendment of the U.S. Constitution; and
  - b) subject to the prohibition on the state and its political subdivisions using personnel or financial resources to enforce, administer or cooperate with the designated federal action or program.
7. Exempts, from the preferential treatment prohibition, qualifications based on tribal membership as part of a program established to serve members of Indian tribes.
8. Includes in the act of compelling an applicant, employee or contractor to endorse giving preferential treatment or discriminating on the basis of race or ethnicity:
  - a) requiring or soliciting a written or oral statement in support of any theory or practice that advocates for the differential treatment of individuals based on race or ethnicity and any formulation of diversity, equity, inclusion or intersectionality, beyond upholding the equal protection of the laws guaranteed by the Fourteenth Amendment of the U.S. Constitution;
  - b) requiring or soliciting an individual to confess race-based privilege or discuss the individual's race or ethnicity or views on or experience with the race or ethnicity of others; and
  - c) giving preferable consideration to an individual for opinions expressed or actions taken in support of another individual or a group of individuals in which the consideration is based on the race or ethnicity of those individuals.
9. Stipulates that the preferential treatment prohibition does not prevent the state from either doing or requiring applicants, employees or contractors to:
  - a) disclose or discuss the content of their scholarly research or creative works;
  - b) certify compliance with state and federal antidiscrimination law;
  - c) if expressly required by federal law, certify the existence of an affirmative action plan that does not include preferential treatment of individuals on the basis of race or ethnicity; or
  - d) discuss services, pedagogical approaches or experiences with students or individuals with mental or physical disabilities.
10. Stipulates that the preferential treatment prohibition does not prevent any applicant or employee from providing any of the outlined information on the applicant's or employee's own initiative.

11. Removes the stipulation that the preferential treatment prohibition applies only to actions that are taken after December 14, 2010.
12. Makes technical and conforming changes.
13. Requires the Secretary of State to submit the proposition to the voters at the next general election.
14. Becomes effective if approved by the voters and on proclamation of the Governor.

House Action

GOV	2/14/24	DP	5-3-1-0
3 <sup>rd</sup> Read	2/28/24		31-28-0-0-1

Prepared by Senate Research

March 11, 2024

JT/MA/slp