

AMENDED IN ASSEMBLY APRIL 11, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1400**

**Introduced by Assembly Member Laird**

**(Coauthors: Assembly Members *Berg, Evans, Goldberg, Hancock, Jones, Klehs, Koretz, Leno, Levine, Lieber, and Montanez, Oropeza, Pavley, and Yee*)**

**(Coauthors: Senators Kehoe, Kuehl, and Migden)**

February 22, 2005

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An act to amend Sections 51, 51.5, 51.7, 51.8, and 53 of the Civil Code, relating to civil rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 1400, as amended, Laird. Civil Rights Act.

The Unruh Civil Rights Act generally prohibits business establishments from discriminating on the basis of sex, race, color, religion, ancestry, national origin, disability, or medical condition. The Unruh Civil Rights Act provides civil remedies for violations of its provisions.

This bill would further prohibit that discrimination on the basis of ~~familial status~~, marital status, or sexual orientation, and would define related terms. The bill would *also* integrate those definitions into other related provisions, and would ~~provide that the identification of particular bases of discrimination in those provisions are illustrative rather than restrictive. The bill would~~ make specified findings and declarations in that regard.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. This act shall be known and may be cited as “The Civil Rights Act of 2005.”

SEC. 2. The Legislature finds and declares as follows:

(a) Even prior to passage of the Unruh Civil Rights Act, California law ~~has~~ afforded broad protection against arbitrary discrimination by business establishments. *The Unruh Civil Rights Act was enacted to provide broader, more effective protection against arbitrary discrimination. California’s interest in preventing that discrimination is long-standing and compelling.*

(b) In keeping with that history and the legislative history of the Unruh Civil Rights Act, California courts have interpreted the categories enumerated in the act to be illustrative rather than restrictive. It is the intent of the Legislature that these enumerated bases shall continue to be construed as illustrative rather than restrictive.

~~(c) Notwithstanding the erroneous interpretation of law by one district California Court of Appeal in *Beatty v. Truck Insurance Exchange* (1992) 6 Cal. App. 4th 1455, which incorrectly applied the California Supreme Court’s ruling in *Harris v. Capital Growth Investors XIV* (1991) 52 Cal. 3d 1142, and which the California Supreme Court indicated in *Smith v. Fair Employment and Housing Commission* (1996) 12 Cal. 4th 1143, 1160, fn. 11, is not controlling, the~~

(c) *The* Legislature affirms that the bases of discrimination prohibited by the Unruh Civil Rights Act include, but are not limited to, ~~familial status, marital status, marital status~~ and sexual orientation, as defined herein. By specifically enumerating these bases in the Unruh Civil Rights Act, the Legislature intends to clarify the existing law, rather than to change the law, as well as the principle that the bases enumerated in the act are illustrative rather than restrictive.

SEC. 3. Section 51 of the Civil Code is amended to read:

51. (a) This section shall be known, and may be cited, as the Unruh Civil Rights Act.

(b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, ~~familial~~

1 ~~status~~, marital status, or sexual orientation are entitled to the full  
2 and equal accommodations, advantages, facilities, privileges, or  
3 services in all business establishments of every kind whatsoever.

4 (c) This section shall not be construed to confer any right or  
5 privilege on a person that is conditioned or limited by law or that  
6 is applicable alike to persons of every sex, color, race, religion,  
7 ancestry, national origin, disability, medical condition, ~~familial~~  
8 ~~status~~, marital status, or sexual orientation.

9 (d) Nothing in this section shall be construed to require any  
10 construction, alteration, repair, structural or otherwise, or  
11 modification of any sort whatsoever, beyond that construction,  
12 alteration, repair, or modification that is otherwise required by  
13 other provisions of law, to any new or existing establishment,  
14 facility, building, improvement, or any other structure, nor shall  
15 anything in this section be construed to augment, restrict, or alter  
16 in any way the authority of the State Architect to require  
17 construction, alteration, repair, or modifications that the State  
18 Architect otherwise possesses pursuant to other laws.

19 ~~(e) The identification of particular bases of discrimination in~~  
20 ~~subdivisions (b) and (c) is illustrative rather than restrictive.~~

21 ~~(f)~~

22 (e) For purposes of this section:

23 (1) "Disability" means any mental or physical disability as  
24 defined in Sections 12926 and 12926.1 of the Government Code.

25 ~~(2) "Familial status" has the same meaning as defined in~~  
26 ~~Section 12955.2 of the Government Code.~~

27 ~~(3)~~

28 (2) "Medical condition" has the same meaning as defined in  
29 subdivision (h) of Section 12926 of the Government Code.

30 ~~(4)~~

31 (3) "Religion" includes all aspects of religious belief,  
32 observance, and practice.

33 ~~(5)~~

34 (4) "Sex" has the same meaning as defined in subdivision (p)  
35 of Section 12926 of the Government Code.

36 ~~(6)~~

37 (5) "Sex, race, color, religion, ancestry, national origin,  
38 disability, medical condition, ~~familial status~~, marital status, or  
39 sexual orientation" includes a perception that the person has any  
40 ~~of those particular characteristic or characteristics within the~~

1 *listed categories* or that the person is associated with a person  
2 who has, or is perceived to have, any ~~of those particular~~  
3 *characteristic or characteristics within the listed categories.*

4 ~~(7)~~

5 (6) “Sexual orientation” has the same meaning as defined in  
6 subdivision (q) of Section 12926 of the Government Code.

7 ~~(g)~~

8 (f) A violation of the right of any individual under the  
9 Americans with Disabilities Act of 1990 (Public Law 101-336)  
10 shall also constitute a violation of this section.

11 SEC. 4. Section 51.5 of the Civil Code is amended to read:

12 51.5. (a) No business establishment of any kind whatsoever  
13 shall discriminate against, boycott or blacklist, or refuse to buy  
14 from, contract with, sell to, or trade with any person in this state  
15 on account of any characteristic listed or defined in subdivision  
16 (b) or ~~(f)~~ (e) of Section 51, or of the person’s partners, members,  
17 stockholders, directors, officers, managers, superintendents,  
18 agents, employees, business associates, suppliers, or customers,  
19 because the person is perceived to have one or more of those  
20 characteristics, or because the person is associated with a person  
21 who has, or is perceived to have, any of those characteristics. ~~The~~  
22 ~~identification in this subdivision of particular bases of~~  
23 ~~discrimination is illustrative rather than restrictive.~~

24 (b) As used in this section, “person” includes any person, firm,  
25 association, organization, partnership, business trust, corporation,  
26 limited liability company, or company.

27 (c) This section shall not be construed to require any  
28 construction, alteration, repair, structural or otherwise, or  
29 modification of any sort whatsoever, beyond that construction,  
30 alteration, repair, or modification that is otherwise required by  
31 other provisions of law, to any new or existing establishment,  
32 facility, building, improvement, or any other structure, nor shall  
33 this section be construed to augment, restrict, or alter in any way  
34 the authority of the State Architect to require construction,  
35 alteration, repair, or modifications that the State Architect  
36 otherwise possesses pursuant to other laws.

37 SEC. 5. Section 51.7 of the Civil Code is amended to read:

38 51.7. (a) All persons within the jurisdiction of this state have  
39 the right to be free from any violence, or intimidation by threat of  
40 violence, committed against their persons or property because of

1 political affiliation, or on account of any characteristic listed or  
2 defined in subdivision (b) or ~~(f)~~ (e) of Section 51, or position in a  
3 labor dispute, or because another person perceives them to have  
4 one or more of those characteristics. The identification in this  
5 subdivision of particular bases of discrimination is illustrative  
6 rather than restrictive.

7 (b) This section does not apply to statements concerning  
8 positions in a labor dispute which are made during otherwise  
9 lawful labor picketing.

10 SEC. 6. Section 51.8 of the Civil Code is amended to read:

11 51.8. (a) No franchisor shall discriminate in the granting of  
12 franchises solely on account of any characteristic listed or  
13 defined in subdivision (b) or ~~(f)~~ (e) of Section 51 of the  
14 franchisee and the composition of a neighborhood or geographic  
15 area reflecting any characteristic listed or defined in subdivision  
16 (b) or ~~(f)~~ (e) of Section 51 in which the franchise is located.  
17 Nothing in this section shall be interpreted to prohibit a  
18 franchisor from granting a franchise to prospective franchisees as  
19 part of a program or programs to make franchises available to  
20 persons lacking the capital, training, business experience, or  
21 other qualifications ordinarily required of franchisees, or any  
22 other affirmative action program adopted by the franchisor. ~~The~~  
23 ~~identification in this section of particular bases of discrimination~~  
24 ~~is illustrative rather than restrictive.~~

25 (b) Nothing in this section shall be construed to require any  
26 construction, alteration, repair, structural or otherwise, or  
27 modification of any sort whatsoever, beyond that construction,  
28 alteration, repair, or modification that is otherwise required by  
29 other provisions of law, to any new or existing establishment,  
30 facility, building, improvement, or any other structure, nor shall  
31 anything in this section be construed to augment, restrict, or alter  
32 in any way the authority of the State Architect to require  
33 construction, alteration, repair, or modifications that the State  
34 Architect otherwise possesses pursuant to other laws.

35 SEC. 7. Section 53 of the Civil Code is amended to read:

36 53. (a) Every provision in a written instrument relating to  
37 real property that purports to forbid or restrict the conveyance,  
38 encumbrance, leasing, or mortgaging of that real property to any  
39 person because of any characteristic listed or defined in  
40 subdivision (b) or ~~(f)~~ (e) of Section 51 is void, and every

1 restriction or prohibition as to the use or occupation of real  
2 property because of any characteristic listed or defined in  
3 subdivision (b) or ~~(f)~~ (e) of Section 51 is void.

4 (b) Every restriction or prohibition, whether by way of  
5 covenant, condition upon use or occupation, or upon transfer of  
6 title to real property, which restriction or prohibition directly or  
7 indirectly limits the acquisition, use or occupation of that  
8 property because of any characteristic listed or defined in  
9 subdivision (b) or ~~(f)~~ (e) of Section 51 is void.

10 ~~(e) The identification of particular bases of discrimination in~~  
11 ~~subdivisions (a) and (b) is illustrative rather than restrictive.~~

12 ~~(d)~~

13 (c) In any action to declare that a restriction or prohibition  
14 specified in subdivision (a) or (b) is void, the court shall take  
15 judicial notice of the recorded instrument or instruments  
16 containing the prohibitions or restrictions in the same manner  
17 that it takes judicial notice of the matters listed in Section 452 of  
18 the Evidence Code.