

ASSEMBLY BILL

No. 1999

Introduced by Assembly Member Brownley

February 23, 2012

An act to amend Sections 51 and 54 of the Civil Code, to amend Section 32228 of the Education Code, to amend Section 354.5 of the Elections Code, to amend Sections 11135, 12920, 12921, 12926, 12926.1, 12940, and 12955.2 of the Government Code, to amend Section 868.8 of the Penal Code, and to amend Section 4900 of the Welfare and Institutions Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1999, as introduced, Brownley. Employment: familial status protection.

Existing law, the California Fair Employment and Housing Act, protects and safeguards the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation.

This bill would include “familial status” as an additional basis upon which the right to seek, obtain, and hold employment cannot be denied.

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

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

1 SECTION 1. Section 51 of the Civil Code is amended to read:

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

3 (b) All persons within the jurisdiction of this state are free and
4 equal, and no matter what their sex, race, color, religion, ancestry,
5 national origin, disability, medical condition, genetic information,
6 marital status, or sexual orientation are entitled to the full and equal
7 accommodations, advantages, facilities, privileges, or services in
8 all business establishments of every kind whatsoever.

9 (c) This section shall not be construed to confer any right or
10 privilege on a person that is conditioned or limited by law or that
11 is applicable alike to persons of every sex, color, race, religion,
12 ancestry, national origin, disability, medical condition, marital
13 status, or sexual orientation or to persons regardless of their genetic
14 information.

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

25 (e) For purposes of this section:

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

28 (2) (A) "Genetic information" means, with respect to any
29 individual, information about any of the following:

- 30 (i) The individual's genetic tests.
- 31 (ii) The genetic tests of family members of the individual.
- 32 (iii) The manifestation of a disease or disorder in family
33 members of the individual.

34 (B) "Genetic information" includes any request for, or receipt
35 of, genetic services, or participation in clinical research that
36 includes genetic services, by an individual or any family member
37 of the individual.

38 (C) "Genetic information" does not include information about
39 the sex or age of any individual.

1 (3) “Medical condition” has the same meaning as defined in
2 ~~subdivision (h)~~ of Section 12926 of the Government Code.

3 (4) “Religion” includes all aspects of religious belief,
4 observance, and practice.

5 (5) “Sex” includes, but is not limited to, pregnancy, childbirth,
6 or medical conditions related to pregnancy or childbirth. “Sex”
7 also includes, but is not limited to, a person’s gender. “Gender”
8 means sex, and includes a person’s gender identity and gender
9 expression. “Gender expression” means a person’s gender-related
10 appearance and behavior whether or not stereotypically associated
11 with the person’s assigned sex at birth.

12 (6) “Sex, race, color, religion, ancestry, national origin,
13 disability, medical condition, genetic information, marital status,
14 or sexual orientation” includes a perception that the person has
15 any particular characteristic or characteristics within the listed
16 categories or that the person is associated with a person who has,
17 or is perceived to have, any particular characteristic or
18 characteristics within the listed categories.

19 (7) “Sexual orientation” has the same meaning as defined in
20 ~~subdivision (r)~~ of Section 12926 of the Government Code.

21 (f) A violation of the right of any individual under the federal
22 Americans with Disabilities Act of 1990 (P.L. 101-336) shall also
23 constitute a violation of this section.

24 SEC. 2. Section 54 of the Civil Code is amended to read:

25 54. (a) Individuals with disabilities or medical conditions have
26 the same right as the general public to the full and free use of the
27 streets, highways, sidewalks, walkways, public buildings, medical
28 facilities, including hospitals, clinics, and physicians’ offices,
29 public facilities, and other public places.

30 (b) For purposes of this section:

31 (1) “Disability” means any mental or physical disability as
32 defined in Section 12926 of the Government Code.

33 (2) “Medical condition” has the same meaning as defined in
34 ~~subdivision (h)~~ of Section 12926 of the Government Code.

35 (c) A violation of the right of an individual under the Americans
36 with Disabilities Act of 1990 (Public Law 101-336) also constitutes
37 a violation of this section.

38 SEC. 3. Section 32228 of the Education Code is amended to
39 read:

1 32228. (a) It is the intent of the Legislature that public schools
2 serving pupils in any of grades 8 to 12, inclusive, have access to
3 supplemental resources to establish programs and strategies that
4 promote school safety and emphasize violence prevention among
5 children and youth in the public schools.

6 (b) It is also the intent of the Legislature that public schools
7 have access to supplemental resources to combat bias on the basis
8 of race, color, religion, ancestry, national origin, disability, gender,
9 gender identity, gender expression, or sexual orientation, as defined
10 ~~in subdivision (r)~~ of Section 12926 of the Government Code, and
11 to prevent and respond to acts of hate violence and bias-related
12 incidents. Sexual orientation shall not include pedophilia.

13 (c) It is further the intent of the Legislature that schoolsites
14 receiving funds pursuant to this article accomplish all of the
15 following goals:

16 (1) Teach pupils techniques for resolving conflicts without
17 violence.

18 (2) Train school staff and administrators to support and promote
19 conflict resolution and mediation techniques for resolving conflicts
20 between and among pupils.

21 (3) Reduce incidents of violence at the schoolsite with an
22 emphasis on prevention and early detection.

23 (4) Provide age-appropriate instruction in domestic violence
24 prevention, dating violence prevention, and interpersonal violence
25 prevention.

26 SEC. 4. Section 354.5 of the Elections Code is amended to
27 read:

28 354.5. (a) "Signature" includes either of the following:

29 (1) A person's mark if the name of the person affixing the mark
30 is written near the mark by a witness over 18 years of age
31 designated by the person and the designee subscribes his or her
32 own name as a witness thereto. For purposes of this paragraph, a
33 signature stamp may be used as a mark, provided that the
34 authorized user complies with the provisions of this paragraph.

35 (2) An impression made by the use of a signature stamp pursuant
36 to the requirements specified in subdivision (c).

37 (b) A mark attested as provided in paragraph (1) of subdivision
38 (a), or an impression made by a signature stamp as provided in
39 paragraph (2) of subdivision (a), may serve as a signature for any
40 purpose specified in this code, including a sworn statement.

1 (c) An authorized user of a signature stamp may use it to affix
2 a signature to a document or writing any time that a signature is
3 required by this code, provided that all of the following conditions,
4 as applicable, are met:

5 (1) A signature stamp used to obtain a ballot or vote by mail
6 ballot in any local, state, or federal election shall be used only by
7 the authorized user of that signature stamp.

8 (2) A signature stamp shall be affixed by the authorized user in
9 the presence of the Secretary of State, his or her designee, the local
10 elections official, or his or her designee, to obtain a ballot, in any
11 local, state, or federal election unless the authorized user of the
12 signature stamp votes by vote by mail ballot. If the owner of a
13 signature stamp votes by vote by mail ballot, he or she shall affix
14 the signature stamp on the identification envelope in accordance
15 with Section 3019.

16 (d) A signature affixed with a signature stamp by an authorized
17 user in accordance with this section shall be treated in the same
18 manner as a signature made in writing.

19 (e) A registered voter or any person who is eligible to vote, who
20 qualifies as an authorized user pursuant to paragraph (1) of
21 subdivision (g), may use a signature stamp only after he or she
22 first submits his or her affidavit of registration or a new affidavit
23 of registration, whichever is applicable, in the presence of a county
24 elections official, using the signature stamp to sign the affidavit.

25 (f) The Secretary of State shall report to the Legislature not later
26 than January 1, 2009, regarding the use of signature stamps during
27 the 2008 elections.

28 (g) The following definitions apply for purposes of this section:

29 (1) "Authorized user" means either of the following:

30 (A) A person with a disability who, by reason of that disability,
31 is unable to write and who owns a signature stamp.

32 (B) A person using the signature stamp on behalf of the owner
33 of the stamp with the owner's express consent and in the presence
34 of the owner.

35 (2) "Disability" means a medical condition, mental disability,
36 or physical disability, as those terms are defined in ~~subdivisions~~
37 ~~(i), (j), and (l)~~ of Section 12926 of the Government Code.

38 (3) "Signature stamp" means a stamp that contains the
39 impression of any of the following:

40 (A) The actual signature of a person with a disability.

1 (B) A mark or symbol that is adopted by the person with the
2 disability.

3 (C) A signature of the name of a person with a disability that is
4 made by another person and is adopted by the person with the
5 disability.

6 SEC. 5. Section 11135 of the Government Code is amended
7 to read:

8 11135. (a) No person in the State of California shall, on the
9 basis of race, national origin, ethnic group identification, religion,
10 age, sex, sexual orientation, color, genetic information, or
11 disability, be unlawfully denied full and equal access to the benefits
12 of, or be unlawfully subjected to discrimination under, any program
13 or activity that is conducted, operated, or administered by the state
14 or by any state agency, is funded directly by the state, or receives
15 any financial assistance from the state. Notwithstanding Section
16 11000, this section applies to the California State University.

17 (b) With respect to discrimination on the basis of disability,
18 programs and activities subject to subdivision (a) shall meet the
19 protections and prohibitions contained in Section 202 of the federal
20 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132),
21 and the federal rules and regulations adopted in implementation
22 thereof, except that if the laws of this state prescribe stronger
23 protections and prohibitions, the programs and activities subject
24 to subdivision (a) shall be subject to the stronger protections and
25 prohibitions.

26 (c) (1) As used in this section, “disability” means any mental
27 or physical disability, as defined in Section 12926.

28 (2) The Legislature finds and declares that the amendments
29 made to this act are declarative of existing law. The Legislature
30 further finds and declares that in enacting Senate Bill 105 of the
31 2001–02 Regular Session (Chapter 1102 of the Statutes of 2002),
32 it was the intention of the Legislature to apply subdivision (d) to
33 the California State University in the same manner that
34 subdivisions (a), (b), and (c) already applied to the California State
35 University, notwithstanding Section 11000. In clarifying that the
36 California State University is subject to paragraph (2) of
37 subdivision (d), it is not the intention of the Legislature to increase
38 the cost of developing or procuring electronic and information
39 technology. The California State University shall, however, in
40 determining the cost of developing or procuring electronic or

1 information technology, consider whether technology that meets
2 the standards applicable pursuant to paragraph (2) of subdivision
3 (d) will reduce the long-term cost incurred by the California State
4 University in providing access or accommodations to future users
5 of this technology who are persons with disabilities, as required
6 by existing law, including this section, Title II of the federal
7 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101
8 and following), and Section 504 of the Rehabilitation Act of 1973
9 (29 U.S.C. Sec. 794).

10 (d) (1) The Legislature finds and declares that the ability to
11 utilize electronic or information technology is often an essential
12 function for successful employment in the current work world.

13 (2) In order to improve accessibility of existing technology, and
14 therefore increase the successful employment of individuals with
15 disabilities, particularly blind and visually impaired and deaf and
16 hard-of-hearing persons, state governmental entities, in developing,
17 procuring, maintaining, or using electronic or information
18 technology, either indirectly or through the use of state funds by
19 other entities, shall comply with the accessibility requirements of
20 Section 508 of the federal Rehabilitation Act of 1973, as amended
21 (29 U.S.C. Sec. 794d), and regulations implementing that act as
22 set forth in Part 1194 of Title 36 of the Federal Code of
23 Regulations.

24 (3) Any entity that contracts with a state or local entity subject
25 to this section for the provision of electronic or information
26 technology or for the provision of related services shall agree to
27 respond to, and resolve any complaint regarding accessibility of
28 its products or services that is brought to the attention of the entity.

29 (e) As used in this section, “sex” and “sexual orientation” have
30 the same meanings as those terms are defined in ~~subdivisions (q)~~
31 ~~and (r)~~ of Section 12926.

32 (f) As used in this section, “race, national origin, ethnic group
33 identification, religion, age, sex, sexual orientation, color, or
34 disability” includes a perception that a person has any of those
35 characteristics or that the person is associated with a person who
36 has, or is perceived to have, any of those characteristics.

37 (g) As used in this section, “genetic information” has the same
38 definition as in paragraph (2) of subdivision (e) of Section 51 of
39 the Civil Code.

1 SEC. 6. Section 12920 of the Government Code is amended
2 to read:

3 12920. It is hereby declared as the public policy of this state
4 that it is necessary to protect and safeguard the right and
5 opportunity of all persons to seek, obtain, and hold employment
6 without discrimination or abridgment on account of race, religious
7 creed, color, national origin, ancestry, physical disability, mental
8 disability, medical condition, genetic information, marital status,
9 *familial status*, sex, gender, gender identity, gender expression,
10 age, or sexual orientation.

11 It is recognized that the practice of denying employment
12 opportunity and discriminating in the terms of employment for
13 these reasons foments domestic strife and unrest, deprives the state
14 of the fullest utilization of its capacities for development and
15 advancement, and substantially and adversely affects the interests
16 of employees, employers, and the public in general.

17 Further, the practice of discrimination because of race, color,
18 religion, sex, gender, gender identity, gender expression, sexual
19 orientation, marital status, national origin, ancestry, familial status,
20 source of income, disability, or genetic information in housing
21 accommodations is declared to be against public policy.

22 It is the purpose of this part to provide effective remedies that
23 will eliminate these discriminatory practices.

24 This part shall be deemed an exercise of the police power of the
25 state for the protection of the welfare, health, and peace of the
26 people of this state.

27 SEC. 7. Section 12921 of the Government Code is amended
28 to read:

29 12921. (a) The opportunity to seek, obtain, and hold
30 employment without discrimination because of race, religious
31 creed, color, national origin, ancestry, physical disability, mental
32 disability, medical condition, genetic information, marital status,
33 *familial status*, sex, gender, gender identity, gender expression,
34 age, or sexual orientation is hereby recognized as and declared to
35 be a civil right.

36 (b) The opportunity to seek, obtain, and hold housing without
37 discrimination because of race, color, religion, sex, gender, gender
38 identity, gender expression, sexual orientation, marital status,
39 national origin, ancestry, familial status, source of income,
40 disability, genetic information, or any other basis prohibited by

1 Section 51 of the Civil Code is hereby recognized as and declared
2 to be a civil right.

3 SEC. 8. Section 12926 of the Government Code is amended
4 to read:

5 12926. As used in this part in connection with unlawful
6 practices, unless a different meaning clearly appears from the
7 context:

8 (a) “Affirmative relief” or “prospective relief” includes the
9 authority to order reinstatement of an employee, awards of backpay,
10 reimbursement of out-of-pocket expenses, hiring, transfers,
11 reassignments, grants of tenure, promotions, cease and desist
12 orders, posting of notices, training of personnel, testing, expunging
13 of records, reporting of records, and any other similar relief that
14 is intended to correct unlawful practices under this part.

15 (b) “Age” refers to the chronological age of any individual who
16 has reached his or her 40th birthday.

17 (c) “Employee” does not include any individual employed by
18 his or her parents, spouse, or child, or any individual employed
19 under a special license in a nonprofit sheltered workshop or
20 rehabilitation facility.

21 (d) “Employer” includes any person regularly employing five
22 or more persons, or any person acting as an agent of an employer,
23 directly or indirectly, the state or any political or civil subdivision
24 of the state, and cities, except as follows:

25 “Employer” does not include a religious association or
26 corporation not organized for private profit.

27 (e) “Employment agency” includes any person undertaking for
28 compensation to procure employees or opportunities to work.

29 (f) “Essential functions” means the fundamental job duties of
30 the employment position the individual with a disability holds or
31 desires. “Essential functions” does not include the marginal
32 functions of the position.

33 (1) A job function may be considered essential for any of several
34 reasons, including, but not limited to, any one or more of the
35 following:

36 (A) The function may be essential because the reason the
37 position exists is to perform that function.

38 (B) The function may be essential because of the limited number
39 of employees available among whom the performance of that job
40 function can be distributed.

- 1 (C) The function may be highly specialized, so that the
2 incumbent in the position is hired for his or her expertise or ability
3 to perform the particular function.
- 4 (2) Evidence of whether a particular function is essential
5 includes, but is not limited to, the following:
- 6 (A) The employer's judgment as to which functions are essential.
7 (B) Written job descriptions prepared before advertising or
8 interviewing applicants for the job.
9 (C) The amount of time spent on the job performing the function.
10 (D) The consequences of not requiring the incumbent to perform
11 the function.
12 (E) The terms of a collective bargaining agreement.
13 (F) The work experiences of past incumbents in the job.
14 (G) The current work experience of incumbents in similar jobs.
- 15 (g) (1) *In connection with unlawful employment practices,*
16 *“familial status” includes being an individual who is, who will*
17 *be, or who is perceived to be, a family caregiver. For purposes of*
18 *this paragraph, “family” means any of the following:*
- 19 (A) *A child as defined in Section 3302 of the Unemployment*
20 *Insurance Code.*
21 (B) *A parent as defined in Section 3302 of the Unemployment*
22 *Insurance Code.*
23 (C) *A spouse, which means the partner of a lawful marriage.*
24 (D) *A domestic partner as defined in Section 297 of the Family*
25 *Code.*
26 (E) *A parent-in-law, which means the parent of a spouse or*
27 *domestic partner.*
28 (F) *A sibling as defined in paragraph (c) of Section 362.1 of*
29 *the Welfare and Institutions Code.*
30 (G) *A grandparent.*
31 (H) *A grandchild.*
- 32 (2) *In connection with unlawful housing practices, “familial*
33 *status” has the same meaning as defined in Section 12955.2.*
- 34 ~~(g)~~
- 35 (h) (1) “Genetic information” means, with respect to any
36 individual, information about any of the following:
- 37 (A) The individual's genetic tests.
38 (B) The genetic tests of family members of the individual.
39 (C) The manifestation of a disease or disorder in family members
40 of the individual.

1 (2) “Genetic information” includes any request for, or receipt
2 of, genetic services, or participation in clinical research that
3 includes genetic services, by an individual or any family member
4 of the individual.

5 (3) “Genetic information” does not include information about
6 the sex or age of any individual.

7 ~~(h)~~

8 (i) “Labor organization” includes any organization that exists
9 and is constituted for the purpose, in whole or in part, of collective
10 bargaining or of dealing with employers concerning grievances,
11 terms or conditions of employment, or of other mutual aid or
12 protection.

13 ~~(i)~~

14 (j) “Medical condition” means either of the following:

15 (1) Any health impairment related to or associated with a
16 diagnosis of cancer or a record or history of cancer.

17 (2) Genetic characteristics. For purposes of this section, “genetic
18 characteristics” means either of the following:

19 (A) Any scientifically or medically identifiable gene or
20 chromosome, or combination or alteration thereof, that is known
21 to be a cause of a disease or disorder in a person or his or her
22 offspring, or that is determined to be associated with a statistically
23 increased risk of development of a disease or disorder, and that is
24 presently not associated with any symptoms of any disease or
25 disorder.

26 (B) Inherited characteristics that may derive from the individual
27 or family member, that are known to be a cause of a disease or
28 disorder in a person or his or her offspring, or that are determined
29 to be associated with a statistically increased risk of development
30 of a disease or disorder, and that are presently not associated with
31 any symptoms of any disease or disorder.

32 ~~(j)~~

33 (k) “Mental disability” includes, but is not limited to, all of the
34 following:

35 (1) Having any mental or psychological disorder or condition,
36 such as mental retardation, organic brain syndrome, emotional or
37 mental illness, or specific learning disabilities, that limits a major
38 life activity. For purposes of this section:

39 (A) “Limits” shall be determined without regard to mitigating
40 measures, such as medications, assistive devices, or reasonable

1 accommodations, unless the mitigating measure itself limits a
2 major life activity.

3 (B) A mental or psychological disorder or condition limits a
4 major life activity if it makes the achievement of the major life
5 activity difficult.

6 (C) “Major life activities” shall be broadly construed and shall
7 include physical, mental, and social activities and working.

8 (2) Any other mental or psychological disorder or condition not
9 described in paragraph (1) that requires special education or related
10 services.

11 (3) Having a record or history of a mental or psychological
12 disorder or condition described in paragraph (1) or (2), which is
13 known to the employer or other entity covered by this part.

14 (4) Being regarded or treated by the employer or other entity
15 covered by this part as having, or having had, any mental condition
16 that makes achievement of a major life activity difficult.

17 (5) Being regarded or treated by the employer or other entity
18 covered by this part as having, or having had, a mental or
19 psychological disorder or condition that has no present disabling
20 effect, but that may become a mental disability as described in
21 paragraph (1) or (2).

22 “Mental disability” does not include sexual behavior disorders,
23 compulsive gambling, kleptomania, pyromania, or psychoactive
24 substance use disorders resulting from the current unlawful use of
25 controlled substances or other drugs.

26 ~~(k)~~

27 (l) “On the bases enumerated in this part” means or refers to
28 discrimination on the basis of one or more of the following: race,
29 religious creed, color, national origin, ancestry, physical disability,
30 mental disability, medical condition, genetic information, marital
31 status, *familial status*, sex, age, or sexual orientation.

32 (l) “Physical disability” includes, but is not limited to, all of the
33 following:

34 ~~(+)~~

35 (m) Having any physiological disease, disorder, condition,
36 cosmetic disfigurement, or anatomical loss that does both of the
37 following:

38 (A) Affects one or more of the following body systems:
39 neurological, immunological, musculoskeletal, special sense
40 organs, respiratory, including speech organs, cardiovascular,

1 reproductive, digestive, genitourinary, hemic and lymphatic, skin,
2 and endocrine.

3 (B) Limits a major life activity. For purposes of this section:

4 (i) “Limits” shall be determined without regard to mitigating
5 measures such as medications, assistive devices, prosthetics, or
6 reasonable accommodations, unless the mitigating measure itself
7 limits a major life activity.

8 (ii) A physiological disease, disorder, condition, cosmetic
9 disfigurement, or anatomical loss limits a major life activity if it
10 makes the achievement of the major life activity difficult.

11 (iii) “Major life activities” shall be broadly construed and
12 includes physical, mental, and social activities and working.

13 (2) Any other health impairment not described in paragraph (1)
14 that requires special education or related services.

15 (3) Having a record or history of a disease, disorder, condition,
16 cosmetic disfigurement, anatomical loss, or health impairment
17 described in paragraph (1) or (2), which is known to the employer
18 or other entity covered by this part.

19 (4) Being regarded or treated by the employer or other entity
20 covered by this part as having, or having had, any physical
21 condition that makes achievement of a major life activity difficult.

22 (5) Being regarded or treated by the employer or other entity
23 covered by this part as having, or having had, a disease, disorder,
24 condition, cosmetic disfigurement, anatomical loss, or health
25 impairment that has no present disabling effect but may become
26 a physical disability as described in paragraph (1) or (2).

27 (6) “Physical disability” does not include sexual behavior
28 disorders, compulsive gambling, kleptomania, pyromania, or
29 psychoactive substance use disorders resulting from the current
30 unlawful use of controlled substances or other drugs.

31 ~~(m)~~

32 (n) Notwithstanding subdivisions ~~(j)~~ (k) and ~~(l)~~ (m), if the
33 definition of “disability” used in the federal Americans with
34 Disabilities Act of 1990 (P.L. 101-336) would result in broader
35 protection of the civil rights of individuals with a mental disability
36 or physical disability, as defined in subdivision ~~(j)~~ (k) or ~~(l)~~ (m),
37 or would include any medical condition not included within those
38 definitions, then that broader protection or coverage shall be
39 deemed incorporated by reference into, and shall prevail over

1 conflicting provisions of, the definitions in subdivisions ~~(j)~~ (k) and
 2 ~~(l)~~ (m).
 3 ~~(n)~~
 4 (o) “Race, religious creed, color, national origin, ancestry,
 5 physical disability, mental disability, medical condition, genetic
 6 information, marital status, *familial status*, sex, age, or sexual
 7 orientation” includes a perception that the person has any of those
 8 characteristics or that the person is associated with a person who
 9 has, or is perceived to have, any of those characteristics.
 10 ~~(o)~~
 11 (p) “Reasonable accommodation” may include either of the
 12 following:
 13 (1) Making existing facilities used by employees readily
 14 accessible to, and usable by, individuals with disabilities.
 15 (2) Job restructuring, part-time or modified work schedules,
 16 reassignment to a vacant position, acquisition or modification of
 17 equipment or devices, adjustment or modifications of examinations,
 18 training materials or policies, the provision of qualified readers or
 19 interpreters, and other similar accommodations for individuals
 20 with disabilities.
 21 ~~(p)~~
 22 (q) “Religious creed,” “religion,” “religious observance,”
 23 “religious belief,” and “creed” include all aspects of religious
 24 belief, observance, and practice.
 25 ~~(q)~~
 26 (r) “Sex” includes, but is not limited to, pregnancy, childbirth,
 27 or medical conditions related to pregnancy or childbirth. “Sex”
 28 also includes, but is not limited to, a person’s gender. “Gender”
 29 means sex, and includes a person’s gender identity and gender
 30 expression. “Gender expression” means a person’s gender-related
 31 appearance and behavior whether or not stereotypically associated
 32 with the person’s assigned sex at birth.
 33 ~~(r)~~
 34 (s) “Sexual orientation” means heterosexuality, homosexuality,
 35 and bisexuality.
 36 ~~(s)~~
 37 (t) “Supervisor” means any individual having the authority, in
 38 the interest of the employer, to hire, transfer, suspend, layoff, recall,
 39 promote, discharge, assign, reward, or discipline other employees,
 40 or the responsibility to direct them, or to adjust their grievances,

1 or effectively to recommend that action, if, in connection with the
2 foregoing, the exercise of that authority is not of a merely routine
3 or clerical nature, but requires the use of independent judgment.

4 (†)

5 (u) “Undue hardship” means an action requiring significant
6 difficulty or expense, when considered in light of the following
7 factors:

8 (1) The nature and cost of the accommodation needed.

9 (2) The overall financial resources of the facilities involved in
10 the provision of the reasonable accommodations, the number of
11 persons employed at the facility, and the effect on expenses and
12 resources or the impact otherwise of these accommodations upon
13 the operation of the facility.

14 (3) The overall financial resources of the covered entity, the
15 overall size of the business of a covered entity with respect to the
16 number of employees, and the number, type, and location of its
17 facilities.

18 (4) The type of operations, including the composition, structure,
19 and functions of the workforce of the entity.

20 (5) The geographic separateness, administrative, or fiscal
21 relationship of the facility or facilities.

22 SEC. 9. Section 12926.1 of the Government Code is amended
23 to read:

24 12926.1. The Legislature finds and declares as follows:

25 (a) The law of this state in the area of disabilities provides
26 protections independent from those in the federal Americans with
27 Disabilities Act of 1990 (P.L. 101-336). Although the federal act
28 provides a floor of protection, this state’s law has always, even
29 prior to passage of the federal act, afforded additional protections.

30 (b) The law of this state contains broad definitions of physical
31 disability, mental disability, and medical condition. It is the intent
32 of the Legislature that the definitions of physical disability and
33 mental disability be construed so that applicants and employees
34 are protected from discrimination due to an actual or perceived
35 physical or mental impairment that is disabling, potentially
36 disabling, or perceived as disabling or potentially disabling.

37 (c) Physical and mental disabilities include, but are not limited
38 to, chronic or episodic conditions such as HIV/AIDS, hepatitis,
39 epilepsy, seizure disorder, diabetes, clinical depression, bipolar
40 disorder, multiple sclerosis, and heart disease. In addition, the

1 Legislature has determined that the definitions of “physical
 2 disability” and “mental disability” under the law of this state
 3 require a “limitation” upon a major life activity, but do not require,
 4 as does the federal Americans with Disabilities Act of 1990, a
 5 “substantial limitation.” This distinction is intended to result in
 6 broader coverage under the law of this state than under that federal
 7 act. Under the law of this state, whether a condition limits a major
 8 life activity shall be determined without respect to any mitigating
 9 measures, unless the mitigating measure itself limits a major life
 10 activity, regardless of federal law under the Americans with
 11 Disabilities Act of 1990. Further, under the law of this state,
 12 “working” is a major life activity, regardless of whether the actual
 13 or perceived working limitation implicates a particular employment
 14 or a class or broad range of employments.

15 (d) Notwithstanding any interpretation of law in *Cassista v.*
 16 *Community Foods* (1993) 5 Cal.4th 1050, the Legislature intends
 17 (1) for state law to be independent of the federal Americans with
 18 Disabilities Act of 1990, (2) to require a “limitation” rather than
 19 a “substantial limitation” of a major life activity, and (3) by
 20 enacting paragraph (4) of subdivision-~~(j)~~ *(k)* and paragraph (4) of
 21 subdivision-~~(l)~~ *(m)* of Section 12926, to provide protection when
 22 an individual is erroneously or mistakenly believed to have any
 23 physical or mental condition that limits a major life activity.

24 (e) The Legislature affirms the importance of the interactive
 25 process between the applicant or employee and the employer in
 26 determining a reasonable accommodation, as this requirement has
 27 been articulated by the Equal Employment Opportunity
 28 Commission in its interpretive guidance of the federal Americans
 29 with Disabilities Act of 1990.

30 SEC. 10. Section 12940 of the Government Code is amended
 31 to read:

32 12940. It is an unlawful employment practice, unless based
 33 upon a bona fide occupational qualification, or, except where based
 34 upon applicable security regulations established by the United
 35 States or the State of California:

36 (a) For an employer, because of the race, religious creed, color,
 37 national origin, ancestry, physical disability, mental disability,
 38 medical condition, genetic information, marital status, *familial*
 39 *status*, sex, gender, gender identity, gender expression, age, or
 40 sexual orientation of any person, to refuse to hire or employ the

1 person or to refuse to select the person for a training program
2 leading to employment, or to bar or to discharge the person from
3 employment or from a training program leading to employment,
4 or to discriminate against the person in compensation or in terms,
5 conditions, or privileges of employment.

6 (1) This part does not prohibit an employer from refusing to
7 hire or discharging an employee with a physical or mental
8 disability, or subject an employer to any legal liability resulting
9 from the refusal to employ or the discharge of an employee with
10 a physical or mental disability, where the employee, because of
11 his or her physical or mental disability, is unable to perform his
12 or her essential duties even with reasonable accommodations, or
13 cannot perform those duties in a manner that would not endanger
14 his or her health or safety or the health or safety of others even
15 with reasonable accommodations.

16 (2) This part does not prohibit an employer from refusing to
17 hire or discharging an employee who, because of the employee's
18 medical condition, is unable to perform his or her essential duties
19 even with reasonable accommodations, or cannot perform those
20 duties in a manner that would not endanger the employee's health
21 or safety or the health or safety of others even with reasonable
22 accommodations. Nothing in this part shall subject an employer
23 to any legal liability resulting from the refusal to employ or the
24 discharge of an employee who, because of the employee's medical
25 condition, is unable to perform his or her essential duties, or cannot
26 perform those duties in a manner that would not endanger the
27 employee's health or safety or the health or safety of others even
28 with reasonable accommodations.

29 (3) Nothing in this part relating to discrimination on account of
30 marital status *or familial status* shall do either of the following:

31 (A) Affect the right of an employer to reasonably regulate, for
32 reasons of supervision, safety, security, or morale, the working of
33 spouses in the same department, division, or facility, consistent
34 with the rules and regulations adopted by the commission.

35 (B) Prohibit bona fide health plans from providing additional
36 or greater benefits to employees with dependents than to those
37 employees without or with fewer dependents.

38 (4) Nothing in this part relating to discrimination on account of
39 sex shall affect the right of an employer to use veteran status as a

1 factor in employee selection or to give special consideration to
2 Vietnam-era veterans.

3 (5) (A) This part does not prohibit an employer from refusing
4 to employ an individual because of his or her age if the law
5 compels or provides for that refusal. Promotions within the existing
6 staff, hiring or promotion on the basis of experience and training,
7 rehiring on the basis of seniority and prior service with the
8 employer, or hiring under an established recruiting program from
9 high schools, colleges, universities, or trade schools do not, in and
10 of themselves, constitute unlawful employment practices.

11 (B) The provisions of this part relating to discrimination on the
12 basis of age do not prohibit an employer from providing health
13 benefits or health care reimbursement plans to retired persons that
14 are altered, reduced, or eliminated when the person becomes
15 eligible for Medicare health benefits. This subparagraph applies
16 to all retiree health benefit plans and contractual provisions or
17 practices concerning retiree health benefits and health care
18 reimbursement plans in effect on or after January 1, 2011.

19 (b) For a labor organization, because of the race, religious creed,
20 color, national origin, ancestry, physical disability, mental
21 disability, medical condition, genetic information, marital status,
22 *familial status*, sex, gender, gender identity, gender expression,
23 age, or sexual orientation of any person, to exclude, expel, or
24 restrict from its membership the person, or to provide only
25 second-class or segregated membership or to discriminate against
26 any person because of the race, religious creed, color, national
27 origin, ancestry, physical disability, mental disability, medical
28 condition, genetic information, marital status, *familial status*, sex,
29 gender, gender identity, gender expression, age, or sexual
30 orientation of the person in the election of officers of the labor
31 organization or in the selection of the labor organization's staff or
32 to discriminate in any way against any of its members or against
33 any employer or against any person employed by an employer.

34 (c) For any person to discriminate against any person in the
35 selection or training of that person in any apprenticeship training
36 program or any other training program leading to employment
37 because of the race, religious creed, color, national origin, ancestry,
38 physical disability, mental disability, medical condition, genetic
39 information, marital status, *familial status*, sex, gender, gender

1 identity, gender expression, age, or sexual orientation of the person
2 discriminated against.

3 (d) For any employer or employment agency to print or circulate
4 or cause to be printed or circulated any publication, or to make
5 any non-job-related inquiry of an employee or applicant, either
6 verbal or through use of an application form, that expresses,
7 directly or indirectly, any limitation, specification, or discrimination
8 as to race, religious creed, color, national origin, ancestry, physical
9 disability, mental disability, medical condition, genetic information,
10 marital status, *familial status*, sex, gender, gender identity, gender
11 expression, age, or sexual orientation, or any intent to make any
12 such limitation, specification, or discrimination. This part does not
13 prohibit an employer or employment agency from inquiring into
14 the age of an applicant, or from specifying age limitations, where
15 the law compels or provides for that action.

16 (e) (1) Except as provided in paragraph (2) or (3), for any
17 employer or employment agency to require any medical or
18 psychological examination of an applicant, to make any medical
19 or psychological inquiry of an applicant, to make any inquiry
20 whether an applicant has a mental disability or physical disability
21 or medical condition, or to make any inquiry regarding the nature
22 or severity of a physical disability, mental disability, or medical
23 condition.

24 (2) Notwithstanding paragraph (1), an employer or employment
25 agency may inquire into the ability of an applicant to perform
26 job-related functions and may respond to an applicant's request
27 for reasonable accommodation.

28 (3) Notwithstanding paragraph (1), an employer or employment
29 agency may require a medical or psychological examination or
30 make a medical or psychological inquiry of a job applicant after
31 an employment offer has been made but prior to the
32 commencement of employment duties, provided that the
33 examination or inquiry is job related and consistent with business
34 necessity and that all entering employees in the same job
35 classification are subject to the same examination or inquiry.

36 (f) (1) Except as provided in paragraph (2), for any employer
37 or employment agency to require any medical or psychological
38 examination of an employee, to make any medical or psychological
39 inquiry of an employee, to make any inquiry whether an employee
40 has a mental disability, physical disability, or medical condition,

1 or to make any inquiry regarding the nature or severity of a physical
2 disability, mental disability, or medical condition.

3 (2) Notwithstanding paragraph (1), an employer or employment
4 agency may require any examinations or inquiries that it can show
5 to be job related and consistent with business necessity. An
6 employer or employment agency may conduct voluntary medical
7 examinations, including voluntary medical histories, which are
8 part of an employee health program available to employees at that
9 worksite.

10 (g) For any employer, labor organization, or employment agency
11 to harass, discharge, expel, or otherwise discriminate against any
12 person because the person has made a report pursuant to Section
13 11161.8 of the Penal Code that prohibits retaliation against hospital
14 employees who report suspected patient abuse by health facilities
15 or community care facilities.

16 (h) For any employer, labor organization, employment agency,
17 or person to discharge, expel, or otherwise discriminate against
18 any person because the person has opposed any practices forbidden
19 under this part or because the person has filed a complaint, testified,
20 or assisted in any proceeding under this part.

21 (i) For any person to aid, abet, incite, compel, or coerce the
22 doing of any of the acts forbidden under this part, or to attempt to
23 do so.

24 (j) (1) For an employer, labor organization, employment agency,
25 apprenticeship training program or any training program leading
26 to employment, or any other person, because of race, religious
27 creed, color, national origin, ancestry, physical disability, mental
28 disability, medical condition, genetic information, marital status,
29 *familial status*, sex, gender, gender identity, gender expression,
30 age, or sexual orientation, to harass an employee, an applicant, or
31 a person providing services pursuant to a contract. Harassment of
32 an employee, an applicant, or a person providing services pursuant
33 to a contract by an employee, other than an agent or supervisor,
34 shall be unlawful if the entity, or its agents or supervisors, knows
35 or should have known of this conduct and fails to take immediate
36 and appropriate corrective action. An employer may also be
37 responsible for the acts of nonemployees, with respect to sexual
38 harassment of employees, applicants, or persons providing services
39 pursuant to a contract in the workplace, where the employer, or
40 its agents or supervisors, knows or should have known of the

1 conduct and fails to take immediate and appropriate corrective
2 action. In reviewing cases involving the acts of nonemployees, the
3 extent of the employer’s control and any other legal responsibility
4 which the employer may have with respect to the conduct of those
5 nonemployees shall be considered. An entity shall take all
6 reasonable steps to prevent harassment from occurring. Loss of
7 tangible job benefits shall not be necessary in order to establish
8 harassment.

9 (2) The provisions of this subdivision are declaratory of existing
10 law, except for the new duties imposed on employers with regard
11 to harassment.

12 (3) An employee of an entity subject to this subdivision is
13 personally liable for any harassment prohibited by this section that
14 is perpetrated by the employee, regardless of whether the employer
15 or covered entity knows or should have known of the conduct and
16 fails to take immediate and appropriate corrective action.

17 (4) (A) For purposes of this subdivision only, “employer” means
18 any person regularly employing one or more persons or regularly
19 receiving the services of one or more persons providing services
20 pursuant to a contract, or any person acting as an agent of an
21 employer, directly or indirectly, the state, or any political or civil
22 subdivision of the state, and cities. The definition of “employer”
23 in subdivision (d) of Section 12926 applies to all provisions of this
24 section other than this subdivision.

25 (B) Notwithstanding subparagraph (A), for purposes of this
26 subdivision, “employer” does not include a religious association
27 or corporation not organized for private profit, except as provided
28 in Section 12926.2.

29 (C) For purposes of this subdivision, “harassment” because of
30 sex includes sexual harassment, gender harassment, and harassment
31 based on pregnancy, childbirth, or related medical conditions.

32 (5) For purposes of this subdivision, “a person providing services
33 pursuant to a contract” means a person who meets all of the
34 following criteria:

35 (A) The person has the right to control the performance of the
36 contract for services and discretion as to the manner of
37 performance.

38 (B) The person is customarily engaged in an independently
39 established business.

1 (C) The person has control over the time and place the work is
2 performed, supplies the tools and instruments used in the work,
3 and performs work that requires a particular skill not ordinarily
4 used in the course of the employer’s work.

5 (k) For an employer, labor organization, employment agency,
6 apprenticeship training program, or any training program leading
7 to employment, to fail to take all reasonable steps necessary to
8 prevent discrimination and harassment from occurring.

9 (l) For an employer or other entity covered by this part to refuse
10 to hire or employ a person or to refuse to select a person for a
11 training program leading to employment or to bar or to discharge
12 a person from employment or from a training program leading to
13 employment, or to discriminate against a person in compensation
14 or in terms, conditions, or privileges of employment because of a
15 conflict between the person’s religious belief or observance and
16 any employment requirement, unless the employer or other entity
17 covered by this part demonstrates that it has explored any available
18 reasonable alternative means of accommodating the religious belief
19 or observance, including the possibilities of excusing the person
20 from those duties that conflict with his or her religious belief or
21 observance or permitting those duties to be performed at another
22 time or by another person, but is unable to reasonably
23 accommodate the religious belief or observance without undue
24 hardship on the conduct of the business of the employer or other
25 entity covered by this part. Religious belief or observance, as used
26 in this section, includes, but is not limited to, observance of a
27 Sabbath or other religious holy day or days, and reasonable time
28 necessary for travel prior and subsequent to a religious observance.

29 (m) For an employer or other entity covered by this part to fail
30 to make reasonable accommodation for the known physical or
31 mental disability of an applicant or employee. Nothing in this
32 subdivision or in paragraph (1) or (2) of subdivision (a) shall be
33 construed to require an accommodation that is demonstrated by
34 the employer or other covered entity to produce undue hardship
35 to its operation.

36 (n) For an employer or other entity covered by this part to fail
37 to engage in a timely, good faith, interactive process with the
38 employee or applicant to determine effective reasonable
39 accommodations, if any, in response to a request for reasonable

1 accommodation by an employee or applicant with a known physical
2 or mental disability or known medical condition.

3 (o) For an employer or other entity covered by this part, to
4 subject, directly or indirectly, any employee, applicant, or other
5 person to a test for the presence of a genetic characteristic.

6 SEC. 11. Section 12955.2 of the Government Code is amended
7 to read:

8 12955.2. For purposes of this part *in connection with unlawful*
9 *housing practices*, “familial status” means one or more individuals
10 under 18 years of age who reside with a parent, another person
11 with care and legal custody of that individual, a person who has
12 been given care and custody of that individual by a state or local
13 governmental agency that is responsible for the welfare of children,
14 or the designee of that parent or other person with legal custody
15 of any individual under 18 years of age by written consent of the
16 parent or designated custodian. The protections afforded by this
17 part against discrimination on the basis of familial status also apply
18 to any individual who is pregnant, who is in the process of securing
19 legal custody of any individual under 18 years of age, or who is
20 in the process of being given care and custody of any individual
21 under 18 years of age by a state or local governmental agency
22 responsible for the welfare of children.

23 SEC. 12. Section 868.8 of the Penal Code is amended to read:

24 868.8. Notwithstanding any other provision of law, in any
25 criminal proceeding in which the defendant is charged with a
26 violation of Section 243.4, 261, 273a, 273d, 285, 286, 288, 288a,
27 288.5, or 289, subdivision (1) of Section 314, Section 647.6, or
28 former Section 647a, or any crime that constitutes domestic
29 violence defined in Section 13700, committed with or upon a
30 person with a disability or a minor under 11 years of age, the court
31 shall take special precautions to provide for the comfort and support
32 of the person with a disability or minor and to protect him or her
33 from coercion, intimidation, or undue influence as a witness,
34 including, but not limited to, any of the following:

35 (a) In the court’s discretion, the witness may be allowed
36 reasonable periods of relief from examination and
37 cross-examination during which he or she may retire from the
38 courtroom. The judge may also allow other witnesses in the
39 proceeding to be examined when the person with a disability or
40 child witness retires from the courtroom.

1 (b) Notwithstanding Section 68110 of the Government Code,
2 in his or her discretion, the judge may remove his or her robe if
3 the judge believes that this formal attire intimidates the person
4 with a disability or the minor.

5 (c) In the court's discretion the judge, parties, witnesses, support
6 persons, and court personnel may be relocated within the courtroom
7 to facilitate a more comfortable and personal environment for the
8 person with a disability or child witness.

9 (d) In the court's discretion, the taking of the testimony of the
10 person with a disability or the minor may be limited to normal
11 school hours if there is no good cause to take the testimony of the
12 person with a disability or the minor during other hours.

13 (e) For the purposes of this section, the term "disability" is
14 defined in ~~subdivision (j)~~ of Section 12926 of the Government
15 Code.

16 SEC. 13. Section 4900 of the Welfare and Institutions Code is
17 amended to read:

18 4900. (a) The definitions contained in this section shall govern
19 the construction of this division, unless the context requires
20 otherwise. These definitions shall not be construed to alter or
21 impact the definitions or other provisions of the Elder Abuse and
22 Dependent Adult Civil Protection Act (Chapter 11 (commencing
23 with Section 15600)), or Chapter 13 (commencing with Section
24 15750), of Part 3 of Division 9.

25 (b) "Abuse" means an act, or failure to act, that would constitute
26 abuse as that term is defined in federal regulations pertaining to
27 the authority of protection and advocacy agencies, including
28 Section 51.2 of Title 42 of the Code of Federal Regulations or
29 Section 1386.19 of Title 45 of the Code of Federal Regulations.
30 "Abuse" also means an act, or failure to act, that would constitute
31 abuse as that term is defined in Section 15610.07 of this code or
32 Section 11165.6 of the Penal Code.

33 (c) "Complaint" has the same meaning as "complaint" as defined
34 in federal statutes and regulations pertaining to the authority of
35 protection and advocacy agencies, including Section 10802(1) of
36 Title 42 of the United States Code, Section 51.2 of Title 42 of the
37 Code of Federal Regulations, or Section 1386.19 of Title 45 of the
38 Code of Federal Regulations.

39 (d) "Disability" means a developmental disability, as defined
40 in Section 15002(8) of Title 42 of the United States Code, a mental

1 illness, as defined in Section 10802(4) of Title 42 of the United
2 States Code, a disability within the meaning of the federal
3 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101
4 et seq.), as defined in Section 12102(2) of Title 42 of the United
5 States Code, or a disability within the meaning of the California
6 Fair Employment and Housing Act (Part 2.8 (commencing with
7 Section 12900) of Division 3 of Title 2 of the Government Code),
8 as defined in ~~subdivision (j) or (l)~~ of Section 12926 of the
9 Government Code.

10 (e) “Facility” or “program” means a public or private facility
11 or program providing services, support, care, or treatment to
12 persons with disabilities, even if only on an as-needed basis or
13 under contractual arrangement. “Facility” or “program” includes,
14 but is not limited to, a hospital, a long-term health care facility, a
15 community living arrangement for people with disabilities,
16 including a group home, a board and care home, an individual
17 residence or apartment of a person with a disability where services
18 are provided, a day program, a juvenile detention facility, a
19 homeless shelter, a jail, or a prison, including all general areas, as
20 well as special, mental health, or forensic units. The term includes
21 any facility licensed under Division 2 (commencing with Section
22 1200) of the Health and Safety Code and any facility that is
23 unlicensed but is not exempt from licensure as provided in
24 subdivision (a) of Section 1503.5 of the Health and Safety Code.
25 The term also includes a public or private school or other institution
26 or program providing education, training, habilitation, therapeutic,
27 or residential services to persons with disabilities.

28 (f) “Legal guardian,” “conservator,” or “legal representative”
29 means a person appointed by a state court or agency empowered
30 under state law to appoint and review the legal guardian,
31 conservator, or legal representative, as appropriate. With respect
32 to an individual described under paragraph (2) of subdivision (i),
33 this person is one who has the legal authority to consent to health
34 or mental health care or treatment on behalf of the individual. With
35 respect to an individual described under paragraphs (1) or (3) of
36 subdivision (i), this person is one who has the legal authority to
37 make all decisions on behalf of the individual. These terms include
38 the parent of a minor who has legal custody of the minor. These
39 terms do not include a person acting solely as a representative
40 payee, a person acting solely to handle financial matters, an

1 attorney or other person acting on behalf of an individual with a
2 disability solely in individual legal matters, or an official or his or
3 her designee who is responsible for the provision of treatment or
4 services to an individual with a disability.

5 (g) “Neglect” means a negligent act, or omission to act, that
6 would constitute neglect as that term is defined in federal statutes
7 and regulations pertaining to the authority of protection and
8 advocacy agencies, including Section 10802(5) of Title 42 of the
9 United States Code, Section 51.2 of Title 42 of the Code of Federal
10 Regulations, or Section 1386.19 of Title 45 of the Code of Federal
11 Regulations. “Neglect” also means a negligent act, or omission to
12 act, that would constitute neglect as that term is defined in
13 subdivision (b) of Section 15610.07 of this code or Section 11165.2
14 of the Penal Code.

15 (h) “Probable cause” to believe that an individual has been
16 subject to abuse or neglect, or is at significant risk of being
17 subjected to abuse or neglect, exists when the protection and
18 advocacy agency determines that it is objectively reasonable for
19 a person to entertain that belief. The individual making a probable
20 cause determination may base the decision on reasonable inferences
21 drawn from his or her experience or training regarding similar
22 incidents, conditions, or problems that are usually associated with
23 abuse or neglect. Information supporting a probable cause
24 determination may result from monitoring or other activities,
25 including, but not limited to, media reports and newspaper articles.

26 (i) “Protection and advocacy agency” means the private
27 nonprofit corporation designated by the Governor in this state
28 pursuant to federal law for the protection and advocacy of the
29 rights of persons with disabilities, including the following:

30 (1) People with developmental disabilities, as authorized under
31 the federal Developmental Disabilities Assistance and Bill of
32 Rights Act of 2000, contained in Chapter 144 (commencing with
33 Section 15001) of Title 42 of the United States Code.

34 (2) People with mental illness, as authorized under the federal
35 Protection and Advocacy for Mentally Ill Individuals Amendments
36 Act of 1991, contained in Chapter 114 (commencing with Section
37 10801) of Title 42 of the United States Code.

38 (3) People with disabilities within the meaning of the federal
39 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101
40 et seq.) as defined in Section 12102(2) of Title 42 of the United

1 States Code, who do not have a developmental disability as defined
2 in Section 15002(8) of Title 42 of the United States Code, people
3 with a mental illness as defined in Section 10802(4) of Title 42 of
4 the United States Code, and who are receiving services under the
5 federal Protection and Advocacy of Individual Rights Act as
6 defined in Section 794e of Title 29 of the United States Code, or
7 people with a disability within the meaning of the California Fair
8 Employment and Housing Act (Part 2.8 (commencing with Section
9 12900) of Division 3 of Title 2 of the Government Code), as
10 defined in ~~subdivision (j) or (l)~~ of Section 12926 of the Government
11 Code.

12 (j) “Reasonable unaccompanied access” means access that
13 permits the protection and advocacy agency, without undue
14 interference, to monitor, inspect, and observe conditions in facilities
15 and programs, to meet and communicate with residents and service
16 recipients privately and confidentially on a regular basis, formally
17 or informally, by telephone, mail, electronic mail, and in person,
18 and to review records privately and confidentially, in a manner
19 that minimizes interference with the activities of the program or
20 service, that respects residents’ privacy interests and honors a
21 resident’s request to terminate an interview, and that does not
22 jeopardize the physical health or safety of facility or program staff,
23 residents, service recipients, or protection and advocacy agency
24 staff.

O