

ASSEMBLY BILL

No. 1001

**Introduced by Assembly Members Villaraigosa, Kuehl,
Keeley, Migden, and Shelley**
(Principal coauthor: Senator Vasconcellos)
(Coauthors: Assembly Members Aroner, Mazzoni,
Steinberg, and Strom-Martin)

February 25, 1999

An act to amend Sections 12920, 12921, 12926, 12930, 12931, 12935, 12940, 12944, 12955, 12955.8, and 12993 of the Government Code, and to repeal Section 1102.1 of the Labor Code, relating to fair employment and housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1001, as introduced, Villaraigosa. Fair employment and housing.

(1) Under the California Fair Employment and Housing Act, it is unlawful to engage in specified discriminatory employment practices, including hiring, promotion, and termination on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age. The act also makes it unlawful to engage in specified discriminatory practices in housing accommodations on the basis of race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability.

This bill would amend the act to include sexual orientation, as defined, within the unlawful bases for discrimination in employment and housing accommodations.

(2) Under existing law codified in the Labor Code, discrimination or different treatment in any aspect of employment or opportunity for employment, as specified, and with certain exceptions, based on actual or perceived sexual orientation, is prohibited.

This bill would repeal the provision of the Labor Code that expresses that prohibition.

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 12920 of the Government Code
2 is amended to read:

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

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

17 Further, the practice of discrimination because of race,
18 color, religion, sex, marital status, national origin, ;
19 ancestry, familial status, ~~or~~ disability, *or sexual orientation*
20 in housing accommodations is declared to be against
21 public policy.

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

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



SEC. 2. Section 12921 of the Government Code is amended to read:

12921. The opportunity to seek, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, ~~or~~ age, *or sexual orientation* is hereby recognized as and declared to be a civil right.

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

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

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

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

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

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

(1) “Employer” does not include a religious association or corporation not organized for private profit.

(2) “Employer,” for purposes of provisions defining unlawful employment practices related to mental disability, means any person regularly employing 15 or more persons, or any person directly or indirectly acting

1 as an agent of such an employer, and also includes the
2 state and municipalities and political subdivisions of the
3 state.

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

7 (f) “Essential functions” means the fundamental job
8 duties of the employment position the individual with a
9 disability holds or desires. “Essential functions” does not
10 include the marginal functions of the position.

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

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

16 (B) The function may be essential because of the
17 limited number of employees available among whom the
18 performance of that job function can be distributed.

19 (C) The function may be highly specialized, so that the
20 incumbent in the position is hired for his or her expertise
21 or ability to perform the particular function.

22 (2) Evidence of whether a particular function is
23 essential includes, but is not limited to, the following:

24 (A) The employer’s judgment as to which functions
25 are essential.

26 (B) Written job descriptions prepared before
27 advertising or interviewing applicants for the job.

28 (C) The amount of time spent on the job performing
29 the function.

30 (D) The consequences of not requiring the incumbent
31 to perform the function.

32 (E) The terms of a collective bargaining agreement.

33 (F) The work experiences of past incumbents in the
34 job.

35 (G) The current work experience of incumbents in
36 similar jobs.

37 (g) “Labor organization” includes any organization
38 that exists and is constituted for the purpose, in whole or
39 in part, of collective bargaining or of dealing with

1 employers concerning grievances, terms or conditions of
2 employment, or of other mutual aid or protection.

3 (h) “Medical condition” includes (1) genetic
4 characteristics, or (2) any health impairment related to
5 or associated with a diagnosis of cancer, for which a
6 person has been rehabilitated or cured, based on
7 competent medical evidence. For purposes of this
8 section, “genetic characteristics” means any scientifically
9 or medically identifiable gene or chromosome, or
10 combination or alteration thereof, that is known to be a
11 cause of a disease or disorder in a person or his or her
12 offspring, or is determined to be associated with a
13 statistically increased risk of development of a disease or
14 disorder, or inherited characteristics that may derive
15 from the individual or family member, that is presently
16 not associated with any symptoms of any disease or
17 disorder.

18 (i) “Mental disability” includes any mental or
19 psychological disorder, such as mental retardation,
20 organic brain syndrome, emotional or mental illness, and
21 specific learning disabilities. However, “mental
22 disability” does not include conditions excluded from the
23 federal definition of “disability” pursuant to Section 511
24 of the Americans with Disabilities Act of 1990 (42 U.S.C.,
25 Sec. 12211). Additionally, for purposes of this part, the
26 unlawful use of controlled substances or other drugs shall
27 not be deemed, in and of itself, to constitute a mental
28 disability.

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

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

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

39 (A) Affects one or more of the following body systems:
40 neurological, immunological, musculoskeletal, special

1 sense organs, respiratory, including speech organs,
2 cardiovascular, reproductive, digestive, genitourinary,
3 hemic and lymphatic, skin, and endocrine.

4 (B) Limits an individual's ability to participate in
5 major life activities.

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

9 (3) Being regarded as having or having had a disease,
10 disorder, condition, cosmetic disfigurement, anatomical
11 loss, or health impairment described in paragraph (1) or
12 (2).

13 (4) Being regarded as having, or having had, a disease,
14 disorder, condition, cosmetic disfigurement, anatomical
15 loss, or health impairment that has no present disabling
16 effect but may become a physical disability as described
17 in paragraph (1) or (2).

18 It is the intent of the Legislature that the definition of
19 "physical disability" in this subdivision shall have the
20 same meaning as the term "physical handicap" formerly
21 defined by this subdivision and construed in American
22 National Ins. Co. v. Fair Employment & Housing Com.,
23 32 Cal. 3d 603. However, "physical disability" does not
24 include conditions excluded from the federal definition of
25 "disability" pursuant to Section 511 of the Americans with
26 Disabilities Act of 1990 (42 U.S.C.; Sec. 12211).
27 Additionally, for purposes of this part, the unlawful use of
28 controlled substances or other drugs shall not be deemed,
29 in and of itself, to constitute a physical disability.

30 (I) Notwithstanding subdivisions (i) and (k), if the
31 definition of "disability" used in the Americans with
32 Disabilities Act of 1990 (Public Law 101-336) would result
33 in broader protection of the civil rights of individuals with
34 a mental disability or physical disability, as defined in
35 subdivision (i) or (k), or would include any medical
36 condition not included within those definitions, then that
37 broader protection or coverage shall be deemed
38 incorporated by reference into, and shall prevail over
39 conflicting provisions of, the definitions in subdivisions
40 (i) and (k).



(m) “Reasonable accommodation” may include either of the following:

(1) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.

(2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(n) “Religious creed,” “religion,” “religious observance,” “religious belief,” and “creed” include all aspects of religious belief, observance, and practice.

(o) “Sex” includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.

(p) “*Sexual orientation*” means *heterosexuality, homosexuality, and bisexuality*.

(q) “Undue hardship” means an action requiring significant difficulty or expense, when considered in light of the following factors: (1) the nature and cost of the accommodation needed, (2) the overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility, (3) the overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities, (4) the type of operations, including the composition, structure, and functions of the work force of the entity, and (5) the geographic separateness, administrative, or fiscal relationship of the facility or facilities.

SEC. 4. Section 12930 of the Government Code is amended to read:

1 12930. The department shall have the following
2 functions, powers, and duties:

3 (a) To establish and maintain a principal office and
4 any other offices within the state as are necessary to carry
5 out the purposes of this part.

6 (b) To meet and function at any place within the state.

7 (c) To appoint attorneys, investigators, conciliators,
8 and other employees as it may deem necessary, fix their
9 compensation within the limitations provided by law, and
10 prescribe their duties.

11 (d) To obtain upon request and utilize the services of
12 all governmental departments and agencies and, in
13 addition, with respect to housing discrimination, of
14 conciliation councils.

15 (e) To adopt, promulgate, amend, and rescind suitable
16 rules and regulations to carry out the functions and duties
17 of the department pursuant to this part.

18 (f) (1) To receive, investigate, and conciliate
19 complaints alleging practices made unlawful pursuant to
20 Chapter 6 (commencing with Section 12940).

21 (2) To receive, investigate, and conciliate complaints
22 alleging a violation of Section 51 or 51.7 of the Civil Code.
23 The remedies and procedures of this part shall be
24 independent of any other remedy or procedure that
25 might apply.

26 (g) In connection with any matter under investigation
27 or in question before the department pursuant to a
28 complaint filed under Section 12960, 12961, or 12980:

29 (1) To issue subpoenas to require the attendance and
30 testimony of witnesses and the production of books,
31 records, documents, and physical materials.

32 (2) To administer oaths, examine witnesses under oath
33 and take evidence, and take depositions and affidavits.

34 (3) To issue written interrogatories.

35 (4) To request the production for inspection and
36 copying of books, records, documents, and physical
37 materials.

38 (5) To petition the superior courts to compel the
39 appearance and testimony of witnesses, the production of



1 books, records, documents, and physical materials, and
2 the answering of interrogatories.

3 (h) To issue accusations pursuant to Section 12965 or
4 12981 and to prosecute those accusations before the
5 commission.

6 (i) To issue those publications and those results of
7 investigations and research as in its judgment will tend to
8 promote good will and minimize or eliminate
9 discrimination in employment on the bases enumerated
10 in this part and discrimination in housing because of race,
11 religious creed, color, sex, marital status, national origin,
12 ancestry, familial status, ~~or~~ disability, *or sexual*
13 *orientation*.

14 (j) To investigate, approve, certify, decertify, monitor,
15 and enforce nondiscrimination programs proposed by a
16 contractor to be engaged in pursuant to Section 12990.

17 (k) To render annually to the Governor and to the
18 Legislature a written report of its activities and of its
19 recommendations.

20 SEC. 5. Section 12931 of the Government Code is
21 amended to read:

22 12931. The department may also provide assistance to
23 communities and persons therein in resolving disputes,
24 disagreements, or difficulties relating to discriminatory
25 practices based on race, religious creed, color, national
26 origin, ancestry, physical disability, mental disability,
27 medical condition, marital status, sex, familial status, ~~or~~
28 ~~age—~~*which age, or sexual orientation that* impair the rights
29 of persons in such communities under the Constitution or
30 laws of the United States or of this state. The services of
31 the department may be made available in cases of ~~such~~
32 *these* disputes, disagreements, or difficulties only when,
33 in its judgment, peaceful relations among the citizens of
34 the community involved are threatened thereby. The
35 department's services are to be made available only upon
36 the request of an appropriate state or local public body,
37 or upon the request of any person directly affected by any
38 such dispute, disagreement, or difficulty.

1 The assistance of the department pursuant to this
2 section shall be limited to endeavors at investigation,
3 conference, conciliation, and persuasion.

4 SEC. 6. Section 12935 of the Government Code is
5 amended to read:

6 12935. The commission shall have the following
7 functions, powers, and duties:

8 (a) To adopt, promulgate, amend, and rescind suitable
9 rules, regulations, and standards (1) to interpret,
10 implement, and apply all provisions of this part, (2) to
11 regulate the conduct of hearings held pursuant to
12 Sections 12967 and 12980, and (3) to carry out all other
13 functions and duties of the commission pursuant to this
14 part.

15 (b) To conduct hearings pursuant to Sections 12967
16 and 12981.

17 (c) To establish and maintain a principal office within
18 the state.

19 (d) To meet and function at any place within the state.

20 (e) To appoint an executive secretary, and any
21 attorneys and other employees as it may deem necessary,
22 fix their compensation within the limitations provided by
23 law, and prescribe their duties.

24 (f) To hold hearings, subpoena witnesses, compel their
25 attendance, administer oaths, examine any person under
26 oath and, in connection therewith, to require the
27 production of any books or papers relating to any matter
28 under investigation or in question before the commission.

29 (g) To create or provide financial or technical
30 assistance to any advisory agencies and conciliation
31 councils, local or otherwise, as in its judgment will aid in
32 effectuating the purposes of this part, and to empower
33 them to study the problems of discrimination in all or
34 specific fields of human relationships or in particular
35 instances of employment discrimination on the bases
36 enumerated in this part or in specific instances of housing
37 discrimination because of race, religious creed, color,
38 national origin, ancestry, familial status, disability, marital
39 status, ~~or~~ sex, *or sexual orientation* and to foster, through
40 community effort or otherwise, good will, cooperation,

1 and conciliation among the groups and elements of the
2 population of the state and to make recommendations to
3 the commission for the development of policies and
4 procedures in general. These advisory agencies and
5 conciliation councils shall be composed of representative
6 citizens, serving without pay.

7 (h) With respect to findings and orders made pursuant
8 to this part, to establish a system of published opinions
9 ~~which~~ *that* shall serve as precedent in interpreting and
10 applying the provisions of this part. Commission findings,
11 orders, and opinions in an adjudicative proceeding are
12 subject to Section 11425.60.

13 (i) To issue publications and results of inquiries and
14 research ~~which~~ *that* in its judgment will tend to promote
15 good will and minimize or eliminate unlawful
16 discrimination. These publications shall include an
17 annual report to the Governor and the Legislature of its
18 activities and recommendations.

19 (j) Notwithstanding Sections 11370.3 and 11502, to
20 appoint hearing officers, as it may deem necessary, to
21 conduct hearings. Each hearing officer shall possess the
22 qualifications established by the State Personnel Board
23 for the particular class of position involved.

24 SEC. 7. Section 12940 of the Government Code is
25 amended to read:

26 12940. It shall be an unlawful employment practice,
27 unless based upon a bona fide occupational qualification,
28 or, except where based upon applicable security
29 regulations established by the United States or the State
30 of California:

31 (a) For an employer, because of the race, religious
32 creed, color, national origin, ancestry, physical disability,
33 mental disability, medical condition, marital status, ~~or~~ sex,
34 *or sexual orientation* of any person, to refuse to hire or
35 employ the person or to refuse to select the person for a
36 training program leading to employment, or to bar or to
37 discharge the person from employment or from a training
38 program leading to employment, or to discriminate
39 against the person in compensation or in terms,
40 conditions, or privileges of employment.

1 (1) Nothing in this part shall prohibit an employer
2 from refusing to hire or discharging an employee with a
3 physical or mental disability, or subject an employer to
4 any legal liability resulting from the refusal to employ or
5 the discharge of an employee with a physical or mental
6 disability, where the employee, because of his or her
7 physical or mental disability, is unable to perform his or
8 her essential duties even with reasonable
9 accommodations, or cannot perform those duties in a
10 manner that would not endanger his or her health or
11 safety or the health and safety of others even with
12 reasonable accommodations.

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

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

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

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

39 (4) Nothing in this part relating to discrimination on
40 account of sex shall affect the right of an employer to use

1 veteran status as a factor in employee selection or to give
2 special consideration to Vietnam era veterans.

3 (b) For a labor organization, because of the race,
4 religious creed, color, national origin, ancestry, physical
5 disability, mental disability, medical condition, marital
6 status, ~~or~~ sex, *or sexual orientation* of any person, to
7 exclude, expel or restrict from its membership the
8 person, or to provide only second-class or segregated
9 membership or to discriminate against any person
10 because of the race, religious creed, color, national origin,
11 ancestry, physical disability, mental disability, medical
12 condition, marital status, ~~or~~ sex, *or sexual orientation* of
13 the person in the election of officers of the labor
14 organization or in the selection of the labor organization's
15 staff or to discriminate in any way against any of its
16 members or against any employer or against any person
17 employed by an employer.

18 (c) For any person to discriminate against any person
19 in the selection or training of that person in any
20 apprenticeship training program or any other training
21 program leading to employment because of the race,
22 religious creed, color, national origin, ancestry, physical
23 disability, mental disability, medical condition, marital
24 status, ~~or~~ sex, *or sexual orientation* of the person
25 discriminated against.

26 (d) For any employer or employment agency, unless
27 specifically acting in accordance with federal equal
28 employment opportunity guidelines and regulations
29 approved by the commission, to print or circulate or
30 cause to be printed or circulated any publication, or to
31 make any non-job-related inquiry, either verbal or
32 through use of an application form, ~~which~~ *that* expresses,
33 directly or indirectly, any limitation, specification, or
34 discrimination as to race, religious creed, color, national
35 origin, ancestry, physical disability, mental disability,
36 medical condition, marital status, ~~or~~ sex, *or sexual*
37 *orientation*, or any intent to make ~~that~~ *any such*
38 limitation, specification, or discrimination. Except as
39 provided in the Americans with Disabilities Act of 1990
40 (Public Law 101-336) and the regulations adopted

1 pursuant thereto, nothing in this subdivision shall
2 prohibit any employer from making, in connection with
3 prospective employment, an inquiry as to, or a request for
4 information regarding, the physical fitness, medical
5 condition, physical condition, or medical history of
6 applicants if that inquiry or request for information is
7 directly related and pertinent to the position the
8 applicant is applying for or directly related to a
9 determination of whether the applicant would endanger
10 his or her health or safety or the health or safety of others.

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

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

24 (g) For any person to aid, abet, incite, compel, or
25 coerce the doing of any of the acts forbidden under this
26 part, or to attempt to do so.

27 (h) (1) For an employer, labor organization,
28 employment agency, apprenticeship training program or
29 any training program leading to employment, or any
30 other person, because of race, religious creed, color,
31 national origin, ancestry, physical disability, mental
32 disability, medical condition, marital status, sex, ~~or~~ age, *or*
33 *sexual orientation*, to harass an employee or applicant.
34 Harassment of an employee or applicant by an employee
35 other than an agent or supervisor shall be unlawful if the
36 entity, or its agents or supervisors, knows or should have
37 known of this conduct and fails to take immediate and
38 appropriate corrective action. An entity shall take all
39 reasonable steps to prevent harassment from occurring.



1 Loss of tangible job benefits shall not be necessary in
2 order to establish harassment.

3 (2) ~~This~~ *The provisions of this* subdivision is
4 declaratory of existing law, except for the new duties
5 imposed on employers with regard to harassment.

6 (3) (A) For purposes of this subdivision only,
7 “employer” means any person regularly employing one
8 or more persons, or any person acting as an agent of an
9 employer, directly or indirectly, the state, or any political
10 or civil subdivision ~~thereof~~ *of the state*, and cities.

11 (B) Notwithstanding subparagraph (A), for purposes
12 of this subdivision, “employer” does not include a
13 religious association or corporation not organized for
14 private profit.

15 (C) For purposes of this subdivision, “harassment”
16 because of sex includes sexual harassment, gender
17 harassment, and harassment based on pregnancy,
18 childbirth, or related medical conditions.

19 (4) For other types of discrimination as enumerated in
20 subdivision (a), an employer remains as defined in
21 subdivision (d) of Section 12926.

22 (5) Nothing contained in this subdivision shall be
23 construed to apply the definition of employer found in
24 this subdivision to subdivision (a).

25 (i) For an employer, labor organization, employment
26 agency, apprenticeship training program, or any training
27 program leading to employment, to fail to take all
28 reasonable steps necessary to prevent discrimination and
29 harassment from occurring.

30 (j) For an employer or other entity covered by this
31 part to refuse to hire or employ a person or to refuse to
32 select a person for a training program leading to
33 employment or to bar or to discharge a person from
34 employment or from a training program leading to
35 employment, or to discriminate against a person in
36 compensation or in terms, conditions, or privileges of
37 employment because of a conflict between the person’s
38 religious belief or observance and any employment
39 requirement, unless the employer or other entity
40 covered by this part demonstrates that it has explored any

1 available reasonable alternative means of
2 accommodating the religious belief or observance,
3 including the possibilities of excusing the person from
4 those duties that conflict with his or her religious belief or
5 observance or permitting those duties to be performed at
6 another time or by another person, but is unable to
7 reasonably accommodate the religious belief or
8 observance without undue hardship on the conduct of the
9 business of the employer or other entity covered by this
10 part. Religious belief or observance, as used in this
11 section, includes, but is not limited to, observance of a
12 Sabbath or other religious holy day or days, and
13 reasonable time necessary for travel prior and subsequent
14 to a religious observance.

15 (k) For an employer or other entity covered by this
16 part to fail to make reasonable accommodation for the
17 known physical or mental disability of an applicant or
18 employee. Nothing in this subdivision or in paragraph (1)
19 or (2) of subdivision (a) shall be construed to require an
20 accommodation that is demonstrated by the employer or
21 other covered entity to produce undue hardship to its
22 operation.

23 (l) Initial application of this section to discrimination
24 by employers on the basis of mental disability shall be in
25 accordance with the following schedule:

26 (1) Commencing January 1, 1993, for employers with
27 25 or more employees, the state, and its municipalities
28 and political subdivisions.

29 (2) Commencing July 26, 1994, for all other employers
30 specified in paragraph (2) of the subdivision of Section
31 12926 that defines “employer.”

32 SEC. 8. Section 12944 of the Government Code is
33 amended to read:

34 12944. (a) It shall be unlawful for a licensing board to
35 require any examination or establish any other
36 qualification for licensing ~~which~~ *that* has an adverse
37 impact on any class by virtue of its race, creed, color,
38 national origin or ancestry, sex, age, medical condition, ~~or~~
39 physical disability, mental disability, *or sexual orientation*,

1 unless ~~such~~ *the* practice can be demonstrated to be job
2 related.

3 Where the commission, after hearing, determines that
4 an examination is unlawful under this subdivision, the
5 licensing board may continue to use and rely on ~~such~~ *the*
6 examination until such time as judicial review by the
7 superior court of the determination is exhausted.

8 If an examination or other qualification for licensing is
9 determined to be unlawful under this section, that
10 determination shall not void, limit, repeal, or otherwise
11 affect any right, privilege, status, or responsibility
12 previously conferred upon any person by ~~such~~ *the*
13 examination or by a license issued in reliance on ~~such~~ *the*
14 examination or qualification.

15 (b) It shall be unlawful for a licensing board to fail or
16 refuse to make reasonable accommodation to an
17 individual's mental or physical disability or medical
18 condition.

19 (c) It shall be unlawful for any licensing board, unless
20 specifically acting in accordance with federal equal
21 employment opportunity guidelines or regulations
22 approved by the commission, to print or circulate or
23 cause to be printed or circulated any publication, or to
24 make any non-job-related inquiry, either verbal or
25 through use of an application form, which expresses,
26 directly or indirectly, any limitation, specification, or
27 discrimination as to race, religious creed, color, national
28 origin, ancestry, physical disability, mental disability,
29 medical condition, sex, ~~or~~ age, *or sexual orientation* or any
30 intent to make any such limitation, specification, or
31 discrimination. Nothing in this subdivision shall prohibit
32 any licensing board from making, in connection with
33 prospective licensure or certification, an inquiry as to, or
34 a request for information regarding, the physical fitness
35 of applicants if that inquiry or request for information is
36 directly related and pertinent to the license or the
37 licensed position the applicant is applying for. Nothing in
38 this subdivision shall prohibit any licensing board, in
39 connection with prospective examinations, licensure, or
40 certification, from inviting individuals with physical or

1 mental disabilities to request reasonable
2 accommodations or from making inquiries related to
3 reasonable accommodations.

4 (d) It is unlawful for a licensing board to discriminate
5 against any person because ~~such~~ *the* person has filed a
6 complaint, testified, or assisted in any proceeding under
7 this part.

8 (e) It is unlawful for any licensing board to fail to keep
9 records of applications for licensing or certification for a
10 period of two years following the date of receipt of ~~such~~
11 *the* applications.

12 (f) As used in this section, “licensing board” means any
13 state board, agency, or authority in the State and
14 Consumer Services Agency ~~which~~ *that* has the authority
15 to grant licenses or certificates which are prerequisites to
16 employment eligibility or professional status.

17 SEC. 9. Section 12955 of the Government Code is
18 amended to read:

19 12955. It shall be unlawful:

20 (a) For the owner of any housing accommodation to
21 discriminate against any person because of the race,
22 color, religion, sex, *sexual orientation*, marital status,
23 national origin, ancestry, familial status, or disability of
24 that person.

25 (b) For the owner of any housing accommodation to
26 make or to cause to be made any written or oral inquiry
27 concerning the race, color, religion, sex, *sexual*
28 *orientation*, marital status, national origin, ancestry,
29 familial status, or disability of any person seeking to
30 purchase, rent or lease any housing accommodation.

31 (c) For any person to make, print, or publish, or cause
32 to be made, printed, or published any notice, statement,
33 or advertisement, with respect to the sale or rental of a
34 housing accommodation that indicates any preference,
35 limitation, or discrimination based on race, color, religion,
36 sex, *sexual orientation*, marital status, national origin,
37 ancestry, familial status, or disability or an intention to
38 make any such preference, limitation, or discrimination.

39 (d) For any person subject to the provisions of Section
40 51 of the Civil Code, as that section applies to housing

1 accommodations, to discriminate against any person on
2 the basis of sex, *sexual orientation*, color, race, religion,
3 ancestry, national origin, familial status, marital status,
4 disability, or on any other basis prohibited by that section.

5 (e) For any person, bank, mortgage company or other
6 financial institution that provides financial assistance for
7 the purchase, organization, or construction of any
8 housing accommodation to discriminate against any
9 person or group of persons because of the race, color,
10 religion, sex, *sexual orientation*, marital status, national
11 origin, ancestry, familial status, or disability in the terms,
12 conditions, or privileges relating to the obtaining or use
13 of that financial assistance.

14 (f) For any owner of housing accommodations to
15 harass, evict, or otherwise discriminate against any
16 person in the sale or rental of housing accommodations
17 when the owner's dominant purpose is retaliation against
18 a person who has opposed practices unlawful under this
19 section, informed law enforcement agencies of practices
20 believed unlawful under this section, has testified or
21 assisted in any proceeding under this part, or has aided or
22 encouraged a person to exercise or enjoy the rights
23 secured by this part. Nothing herein is intended to cause
24 or permit the delay of an unlawful detainer action.

25 (g) For any person to aid, abet, incite, compel, or
26 coerce the doing of any of the acts or practices declared
27 unlawful in this section, or to attempt to do so.

28 (h) For any person, for profit, to induce any person to
29 sell or rent any dwelling by representations regarding the
30 entry or prospective entry into the neighborhood of a
31 person or persons of a particular race, color, religion, sex,
32 *sexual orientation*, marital status, ancestry, disability,
33 familial status, or national origin.

34 (i) For any person or other organization or entity
35 whose business involves real estate-related transactions to
36 discriminate against any person in making available a
37 transaction, or in the terms and conditions of a
38 transaction, because of race, color, religion, sex, *sexual*
39 *orientation*, marital status, national origin, ancestry,
40 familial status, or disability.

(j) To deny a person access to, or membership or participation in, a multiple listing service, real estate brokerage organization, or other service because of race, color, religion, sex, *sexual orientation*, marital status, ancestry, disability, familial status, or national origin.

(k) To otherwise make unavailable or deny a dwelling based on discrimination because of race, color, religion, sex, *sexual orientation*, familial status, disability, or national origin.

(l) To discriminate through public or private land use practices, decisions, and authorizations because of race, color, religion, sex, *sexual orientation*, familial status, marital status, disability, national origin, or ancestry. Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law (Title 7 (commencing with Section 65000)), that make housing opportunities unavailable.

SEC. 10. Section 12955.8 of the Government Code is amended to read:

12955.8. For purposes of this article, in connection with unlawful practices:

(a) Proof of an intentional violation of this article includes, but is not limited to, an act or failure to act that is otherwise covered by this part, that demonstrates an intent to discriminate in any manner in violation of this part. A person intends to discriminate if race, color, religion, sex, *sexual orientation*, familial status, marital status, disability, national origin, or ancestry is a motivating factor in committing a discriminatory housing practice even though other factors may have also motivated the practice. An intent to discriminate may be established by direct or circumstantial evidence.

(b) Proof of a violation causing a discriminatory effect is shown if an act or failure to act that is otherwise covered by this part, and that has the effect, regardless of intent, of unlawfully discriminating on the basis of race, color, religion, sex, *sexual orientation*, familial status, marital status, disability, national origin, or ancestry. A business establishment whose action or inaction has an

1 unintended discriminatory effect shall not be considered
2 to have committed an unlawful housing practice in
3 violation of this part if the business establishment can
4 establish that the action or inaction is necessary to the
5 operation of the business and effectively carries out the
6 significant business need it is alleged to serve. In cases
7 that do not involve a business establishment, the person
8 whose action or inaction has an unintended
9 discriminatory effect shall not be considered to have
10 committed an unlawful housing practice in violation of
11 this part if the person can establish that the action or
12 inaction is necessary to achieve an important purpose
13 sufficiently compelling to override the discriminatory
14 effect and effectively carries out the purpose it is alleged
15 to serve.

16 (1) Any determination of a violation pursuant to this
17 subdivision shall consider whether or not there are
18 feasible alternatives that would equally well or better
19 accomplish the purpose advanced with a less
20 discriminatory effect.

21 (2) For purposes of this subdivision, the term “business
22 establishment” shall have the same meaning as in Section
23 51 of the Civil Code.

24 SEC. 11. Section 12993 of the Government Code is
25 amended to read:

26 12993. (a) The provisions of this part shall be
27 construed liberally for the accomplishment of the
28 purposes ~~thereof~~ *of this part*. Nothing contained in this
29 part shall be deemed to repeal any of the provisions of the
30 Civil Rights Law or of any other law of this state relating
31 to discrimination because of race, religious creed, color,
32 national origin, ancestry, physical disability, mental
33 disability, medical condition, marital status, sex, ~~or~~ age, *or*
34 *sexual orientation*, unless those provisions provide less
35 protection to the enumerated classes of persons covered
36 under this part.

37 (b) Nothing contained in this part relating to
38 discrimination in employment on account of sex or
39 medical condition shall be deemed to affect the operation
40 of the terms or conditions of any bona fide retirement,

1 pension, employee benefit, or insurance plan, provided
2 the terms or conditions are in accordance with customary
3 and reasonable or actuarially sound underwriting
4 practices.

5 (c) While it is the intention of the Legislature to
6 occupy the field of regulation of discrimination in
7 employment and housing encompassed by the provisions
8 of this part, exclusive of all other laws banning
9 discrimination in employment and housing by any city,
10 city and county, county, or other political subdivision of
11 the state, nothing contained in this part shall be
12 construed, in any manner or way, to limit or restrict the
13 application of Section 51 of the Civil Code.

14 SEC. 12. Section 1102.1 of the Labor Code is repealed.

15 ~~1102.1. (a) Sections 1101 and 1102 prohibit~~
16 ~~discrimination or different treatment in any aspect of~~
17 ~~employment or opportunity for employment based on~~
18 ~~actual or perceived sexual orientation.~~

19 ~~(b) For purposes of this section:~~

20 ~~(1) "Employer" as used in this chapter includes any~~
21 ~~person regularly employing five or more persons, or any~~
22 ~~person acting as an agent of an employer, directly or~~
23 ~~indirectly, including the state or any political subdivision~~
24 ~~of the state.~~

25 ~~(2) "Employer" as used in this chapter does not~~
26 ~~include a religious association or corporation not~~
27 ~~organized for private profit, whether incorporated as a~~
28 ~~religious or public benefit corporation.~~

29 ~~(c) Nothing in this section shall invalidate any marital~~
30 ~~status classification that is otherwise valid.~~

31 ~~(d) Nothing in this section shall require or permit the~~
32 ~~use of quotas or other such affirmative action.~~

33 ~~(e) Nothing in this section shall interfere with~~
34 ~~whatever existing rights an employer has to base~~
35 ~~employment actions on the commission of conduct illegal~~
36 ~~in California.~~

37 ~~(f) Section 1103 on criminal penalties shall not apply~~
38 ~~to a violation of this section.~~