

AMENDED IN ASSEMBLY MAY 28, 1999

AMENDED IN ASSEMBLY APRIL 28, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1001

**Introduced by Assembly Members Villaraigosa, ~~Kuehl,~~
~~Keeley~~ Hertzberg, Keeley, Kuehl, Migden, and Shelley**

(Principal coauthor: Senator Vasconcellos)

**(Coauthors: Assembly Members Aroner, Corbett, Firebaugh,
Honda, Jackson, Knox, Mazzoni, Romero, Steinberg,
Strom-Martin, and Thomson)**

(Coauthors: Senators Hayden, Solis, and Speier)

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 amended, 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. It is the intent of the Legislature that the
2 purpose of this act is to incorporate in the California Fair
3 Employment and Housing Act (Part 2.8 (commencing
4 with Section 12900) of Division 3 of Title 2 of the
5 Government Code) the prohibition against
6 discrimination or different treatment in any aspect of
7 employment or opportunity for employment based on
8 sexual orientation, contained in Section 1102.1 of the
9 Labor Code, as that section read on December 31, 1999.
10 As was the intent of Section 1102.1 of the Labor Code, as
11 that section read on December 31, 1999, this act is
12 intended to codify the court decisions in *Gay Law*
13 *Students v. Pacific Telephone and Telegraph* (1979) 24
14 *Cal.3d 458* and *Soroka v. Dayton Hudson Corp.* (1991) 235
15 *Cal.App.3d 654*, prohibiting discrimination based on
16 sexual orientation. Any conduct that would have been a
17 violation of Section 1102.1 of the Labor Code, as it read on
18 December 1, 1999, shall be deemed a violation of this act.

19 SEC. 1.5. Section 12920 of the Government Code is
20 amended to read:

21 12920. It is hereby declared as the public policy of this
22 state that it is necessary to protect and safeguard the right

1 and opportunity of all persons to seek, obtain, and hold
2 employment without discrimination or abridgment on
3 account of race, religious creed, color, national origin,
4 ancestry, physical disability, mental disability, medical
5 condition, marital status, sex, age, or sexual orientation.

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

14 Further, the practice of discrimination because of race,
15 color, religion, sex, marital status, national origin,
16 ancestry, familial status, disability, or sexual orientation in
17 housing accommodations is declared to be against public
18 policy.

19 It is the purpose of this part to provide effective
20 remedies that will eliminate these discriminatory
21 practices.

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

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

27 12921. The opportunity to seek, obtain and hold
28 employment without discrimination because of race,
29 religious creed, color, national origin, ancestry, physical
30 disability, mental disability, medical condition, marital
31 status, sex, age, or sexual orientation is hereby recognized
32 as and declared to be a civil right.

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

35 12926. As used in this part in connection with
36 unlawful practices, unless a different meaning clearly
37 appears from the context:

38 (a) “Affirmative relief” or “prospective relief”
39 includes the authority to order reinstatement of an
40 employee, awards of backpay, reimbursement of

1 out-of-pocket expenses, hiring, transfers, reassignments,
2 grants of tenure, promotions, cease and desist orders,
3 posting of notices, training of personnel, testing,
4 expunging of records, reporting of records, and any other
5 similar relief that is intended to correct unlawful
6 practices under this part.

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

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

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

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

21 (2) “Employer,” for purposes of provisions defining
22 unlawful employment practices related to mental
23 disability, means any person regularly employing 15 or
24 more persons, or any person directly or indirectly acting
25 as an agent of such an employer, and also includes the
26 state and municipalities and political subdivisions of the
27 state.

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

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

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

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

1 (B) The function may be essential because of the
2 limited number of employees available among whom the
3 performance of that job function can be distributed.

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

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

9 (A) The employer's judgment as to which functions
10 are essential.

11 (B) Written job descriptions prepared before
12 advertising or interviewing applicants for the job.

13 (C) The amount of time spent on the job performing
14 the function.

15 (D) The consequences of not requiring the incumbent
16 to perform the function.

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

18 (F) The work experiences of past incumbents in the
19 job.

20 (G) The current work experience of incumbents in
21 similar jobs.

22 (g) "Labor organization" includes any organization
23 that exists and is constituted for the purpose, in whole or
24 in part, of collective bargaining or of dealing with
25 employers concerning grievances, terms or conditions of
26 employment, or of other mutual aid or protection.

27 (h) "Medical condition" includes (1) genetic
28 characteristics, or (2) any health impairment related to
29 or associated with a diagnosis of cancer, for which a
30 person has been rehabilitated or cured, based on
31 competent medical evidence. For purposes of this
32 section, "genetic characteristics" means any scientifically
33 or medically identifiable gene or chromosome, or
34 combination or alteration thereof, that is known to be a
35 cause of a disease or disorder in a person or his or her
36 offspring, or is determined to be associated with a
37 statistically increased risk of development of a disease or
38 disorder, or inherited characteristics that may derive
39 from the individual or family member, that is presently

1 not associated with any symptoms of any disease or
2 disorder.

3 (i) “Mental disability” includes any mental or
4 psychological disorder, such as mental retardation,
5 organic brain syndrome, emotional or mental illness, and
6 specific learning disabilities. However, “mental
7 disability” does not include conditions excluded from the
8 federal definition of “disability” pursuant to Section 511
9 of the Americans with Disabilities Act of 1990 (42 U.S.C.,
10 Sec. 12211). Additionally, for purposes of this part, the
11 unlawful use of controlled substances or other drugs shall
12 not be deemed, in and of itself, to constitute a mental
13 disability.

14 (j) “On the bases enumerated in this part” means or
15 refers to discrimination on the basis of one or more of the
16 following: race, religious creed, color, national origin,
17 ancestry, physical disability, mental disability, medical
18 condition, marital status, sex, age, or sexual orientation.

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

21 (1) Having any physiological disease, disorder,
22 condition, cosmetic disfigurement, or anatomical loss that
23 does both of the following:

24 (A) Affects one or more of the following body systems:
25 neurological, immunological, musculoskeletal, special
26 sense organs, respiratory, including speech organs,
27 cardiovascular, reproductive, digestive, genitourinary,
28 hemic and lymphatic, skin, and endocrine.

29 (B) Limits an individual’s ability to participate in
30 major life activities.

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

34 (3) Being regarded as having or having had a disease,
35 disorder, condition, cosmetic disfigurement, anatomical
36 loss, or health impairment described in paragraph (1) or
37 (2).

38 (4) Being regarded as having, or having had, a disease,
39 disorder, condition, cosmetic disfigurement, anatomical
40 loss, or health impairment that has no present disabling

1 effect but may become a physical disability as described
2 in paragraph (1) or (2).

3 It is the intent of the Legislature that the definition of
4 “physical disability” in this subdivision shall have the
5 same meaning as the term “physical handicap” formerly
6 defined by this subdivision and construed in American
7 National Ins. Co. v. Fair Employment & Housing Com.,
8 32 ~~Cal.3d~~ *Cal.3d* 603. However, “physical disability” does
9 not include conditions excluded from the federal
10 definition of “disability” pursuant to Section 511 of the
11 Americans with Disabilities Act of 1990 (42 U.S.C. Sec.
12 12211). Additionally, for purposes of this part, the
13 unlawful use of controlled substances or other drugs shall
14 not be deemed, in and of itself, to constitute a physical
15 disability.

16 (l) Notwithstanding subdivisions (i) and (k), if the
17 definition of “disability” used in the Americans with
18 Disabilities Act of 1990 (Public Law 101-336) would result
19 in broader protection of the civil rights of individuals with
20 a mental disability or physical disability, as defined in
21 subdivision (i) or (k), or would include any medical
22 condition not included within those definitions, then that
23 broader protection or coverage shall be deemed
24 incorporated by reference into, and shall prevail over
25 conflicting provisions of, the definitions in subdivisions
26 (i) and (k).

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

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

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

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

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

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

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

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

28 12930. The department shall have the following
29 functions, powers, and duties:

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

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

34 (c) To appoint attorneys, investigators, conciliators,
35 and other employees as it may deem necessary, fix their
36 compensation within the limitations provided by law, and
37 prescribe their duties.

38 (d) To obtain upon request and utilize the services of
39 all governmental departments and agencies and, in

1 addition, with respect to housing discrimination, of
2 conciliation councils.

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

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

9 (2) To receive, investigate, and conciliate complaints
10 alleging a violation of Section 51 or 51.7 of the Civil Code.
11 The remedies and procedures of this part shall be
12 independent of any other remedy or procedure that
13 might apply.

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

17 (1) To issue subpoenas to require the attendance and
18 testimony of witnesses and the production of books,
19 records, documents, and physical materials.

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

22 (3) To issue written interrogatories.

23 (4) To request the production for inspection and
24 copying of books, records, documents, and physical
25 materials.

26 (5) To petition the superior courts to compel the
27 appearance and testimony of witnesses, the production of
28 books, records, documents, and physical materials, and
29 the answering of interrogatories.

30 (h) To issue accusations pursuant to Section 12965 or
31 12981 and to prosecute those accusations before the
32 commission.

33 (i) To issue those publications and those results of
34 investigations and research as in its judgment will tend to
35 promote good will and minimize or eliminate
36 discrimination in employment on the bases enumerated
37 in this part and discrimination in housing because of race,
38 religious creed, color, sex, marital status, national origin,
39 ancestry, familial status, disability, or sexual orientation.

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

4 (k) To render annually to the Governor and to the
5 Legislature a written report of its activities and of its
6 recommendations.

7 SEC. 5. Section 12931 of the Government Code is
8 amended to read:

9 12931. The department may also provide assistance to
10 communities and persons therein in resolving disputes,
11 disagreements, or difficulties relating to discriminatory
12 practices based on race, religious creed, color, national
13 origin, ancestry, physical disability, mental disability,
14 medical condition, marital status, sex, familial status, age,
15 or sexual orientation that impair the rights of persons in
16 those communities under the Constitution or laws of the
17 United States or of this state. The services of the
18 department may be made available in cases of these
19 disputes, disagreements, or difficulties only when, in its
20 judgment, peaceful relations among the citizens of the
21 community involved are threatened thereby. The
22 department's services are to be made available only upon
23 the request of an appropriate state or local public body,
24 or upon the request of any person directly affected by any
25 such dispute, disagreement, or difficulty.

26 The assistance of the department pursuant to this
27 section shall be limited to endeavors at investigation,
28 conference, conciliation, and persuasion.

29 SEC. 6. Section 12935 of the Government Code is
30 amended to read:

31 12935. The commission shall have the following
32 functions, powers, and duties:

33 (a) To adopt, promulgate, amend, and rescind suitable
34 rules, regulations, and standards (1) to interpret,
35 implement, and apply all provisions of this part, (2) to
36 regulate the conduct of hearings held pursuant to
37 Sections 12967 and 12980, and (3) to carry out all other
38 functions and duties of the commission pursuant to this
39 part.



1 (b) To conduct hearings pursuant to Sections 12967
2 and 12981.

3 (c) To establish and maintain a principal office within
4 the state.

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

6 (e) To appoint an executive secretary, and any
7 attorneys and other employees as it may deem necessary,
8 fix their compensation within the limitations provided by
9 law, and prescribe their duties.

10 (f) To hold hearings, subpoena witnesses, compel their
11 attendance, administer oaths, examine any person under
12 oath and, in connection therewith, to require the
13 production of any books or papers relating to any matter
14 under investigation or in question before the commission.

15 (g) To create or provide financial or technical
16 assistance to any advisory agencies and conciliation
17 councils, local or otherwise, as in its judgment will aid in
18 effectuating the purposes of this part, and to empower
19 them to study the problems of discrimination in all or
20 specific fields of human relationships or in particular
21 instances of employment discrimination on the bases
22 enumerated in this part or in specific instances of housing
23 discrimination because of race, religious creed, color,
24 national origin, ancestry, familial status, disability, marital
25 status, sex, or sexual orientation and to foster, through
26 community effort or otherwise, good will, cooperation,
27 and conciliation among the groups and elements of the
28 population of the state and to make recommendations to
29 the commission for the development of policies and
30 procedures in general. These advisory agencies and
31 conciliation councils shall be composed of representative
32 citizens, serving without pay.

33 (h) With respect to findings and orders made pursuant
34 to this part, to establish a system of published opinions
35 that shall serve as precedent in interpreting and applying
36 the provisions of this part. Commission findings, orders,
37 and opinions in an adjudicative proceeding are subject to
38 Section 11425.60.

39 (i) To issue publications and results of inquiries and
40 research that in its judgment will tend to promote good

1 will and minimize or eliminate unlawful discrimination.
2 These publications shall include an annual report to the
3 Governor and the Legislature of its activities and
4 recommendations.

5 (j) Notwithstanding Sections 11370.3 and 11502, to
6 appoint hearing officers, as it may deem necessary, to
7 conduct hearings. Each hearing officer shall possess the
8 qualifications established by the State Personnel Board
9 for the particular class of position involved.

10 SEC. 7. Section 12940 of the Government Code is
11 amended to read:

12 12940. It shall be an unlawful employment practice,
13 unless based upon a bona fide occupational qualification,
14 or, except where based upon applicable security
15 regulations established by the United States or the State
16 of California:

17 (a) For an employer, because of the race, religious
18 creed, color, national origin, ancestry, physical disability,
19 mental disability, medical condition, marital status, sex, or
20 sexual orientation of any person, to refuse to hire or
21 employ the person or to refuse to select the person for a
22 training program leading to employment, or to bar or to
23 discharge the person from employment or from a training
24 program leading to employment, or to discriminate
25 against the person in compensation or in terms,
26 conditions, or privileges of employment.

27 (1) Nothing in this part shall prohibit an employer
28 from refusing to hire or discharging an employee with a
29 physical or mental disability, or subject an employer to
30 any legal liability resulting from the refusal to employ or
31 the discharge of an employee with a physical or mental
32 disability, where the employee, because of his or her
33 physical or mental disability, is unable to perform his or
34 her essential duties even with reasonable
35 accommodations, or cannot perform those duties in a
36 manner that would not endanger his or her health or
37 safety or the health and safety of others even with
38 reasonable accommodations.

39 (2) Nothing in this part shall prohibit an employer
40 from refusing to hire or discharging an employee who,

1 because of the employee's medical condition, is unable to
2 perform his or her essential duties even with reasonable
3 accommodations, or cannot perform those duties in a
4 manner that would not endanger the employee's health
5 or safety or the health or safety of others even with
6 reasonable accommodations. Nothing in this part shall
7 subject an employer to any legal liability resulting from
8 the refusal to employ or the discharge of an employee
9 who, because of the employee's medical condition, is
10 unable to perform his or her essential duties, or cannot
11 perform those duties in a manner that would not
12 endanger the employee's health or safety or the health or
13 safety of others even with reasonable accommodations.

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

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

21 (B) Prohibit bona fide health plans from providing
22 additional or greater benefits to employees with
23 dependents than to those employees without or with
24 fewer dependents.

25 (4) Nothing in this part relating to discrimination on
26 account of sex shall affect the right of an employer to use
27 veteran status as a factor in employee selection or to give
28 special consideration to Vietnam era veterans.

29 (b) For a labor organization, because of the race,
30 religious creed, color, national origin, ancestry, physical
31 disability, mental disability, medical condition, marital
32 status, sex, or sexual orientation of any person, to exclude,
33 expel or restrict from its membership the person, or to
34 provide only second-class or segregated membership or
35 to discriminate against any person because of the race,
36 religious creed, color, national origin, ancestry, physical
37 disability, mental disability, medical condition, marital
38 status, sex, or sexual orientation of the person in the
39 election of officers of the labor organization or in the
40 selection of the labor organization's staff or to

1 discriminate in any way against any of its members or
2 against any employer or against any person employed by
3 an employer.

4 (c) For any person to discriminate against any person
5 in the selection or training of that person in any
6 apprenticeship training program or any other training
7 program leading to employment because of the race,
8 religious creed, color, national origin, ancestry, physical
9 disability, mental disability, medical condition, marital
10 status, sex, or sexual orientation of the person
11 discriminated against.

12 (d) For any employer or employment agency, unless
13 specifically acting in accordance with federal equal
14 employment opportunity guidelines and regulations
15 approved by the commission, to print or circulate or
16 cause to be printed or circulated any publication, or to
17 make any non-job-related inquiry, either verbal or
18 through use of an application form, that expresses,
19 directly or indirectly, any limitation, specification, or
20 discrimination as to race, religious creed, color, national
21 origin, ancestry, physical disability, mental disability,
22 medical condition, marital status, sex, or sexual
23 orientation, or any intent to make any such limitation,
24 specification, or discrimination. Except as provided in the
25 Americans with Disabilities Act of 1990 (Public Law
26 101-336) and the regulations adopted pursuant thereto,
27 nothing in this subdivision shall prohibit any employer
28 from making, in connection with prospective
29 employment, an inquiry as to, or a request for information
30 regarding, the physical fitness, medical condition,
31 physical condition, or medical history of applicants if that
32 inquiry or request for information is directly related and
33 pertinent to the position the applicant is applying for or
34 directly related to a determination of whether the
35 applicant would endanger his or her health or safety or
36 the health or safety of others.

37 (e) For any employer, labor organization, or
38 employment agency to harass, discharge, expel, or
39 otherwise discriminate against any person because the
40 person has made a report pursuant to Section 11161.8 of



1 the Penal Code that prohibits retaliation against hospital
2 employees who report suspected patient abuse by health
3 facilities or community care facilities.

4 (f) For any employer, labor organization,
5 employment agency, or person to discharge, expel, or
6 otherwise discriminate against any person because the
7 person has opposed any practices forbidden under this
8 part or because the person has filed a complaint, testified,
9 or assisted in any proceeding under this part.

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

13 (h) (1) For an employer, labor organization,
14 employment agency, apprenticeship training program or
15 any training program leading to employment, or any
16 other person, because of race, religious creed, color,
17 national origin, ancestry, physical disability, mental
18 disability, medical condition, marital status, sex, age, or
19 sexual orientation, to harass an employee or applicant.
20 Harassment of an employee or applicant by an employee
21 other than an agent or supervisor shall be unlawful if the
22 entity, or its agents or supervisors, knows or should have
23 known of this conduct and fails to take immediate and
24 appropriate corrective action. An entity shall take all
25 reasonable steps to prevent harassment from occurring.
26 Loss of tangible job benefits shall not be necessary in
27 order to establish harassment.

28 (2) The provisions of this subdivision is declaratory of
29 existing law, except for the new duties imposed on
30 employers with regard to harassment.

31 (3) (A) For purposes of this subdivision only,
32 “employer” means any person regularly employing one
33 or more persons, or any person acting as an agent of an
34 employer, directly or indirectly, the state, or any political
35 or civil subdivision of the state, and cities.

36 (B) Notwithstanding subparagraph (A), for purposes
37 of this subdivision, “employer” does not include a
38 religious association or corporation not organized for
39 private profit.

1 (C) For purposes of this subdivision, “harassment”
2 because of sex includes sexual harassment, gender
3 harassment, and harassment based on pregnancy,
4 childbirth, or related medical conditions.

5 (4) For other types of discrimination as enumerated in
6 subdivision (a), an employer remains as defined in
7 subdivision (d) of Section 12926.

8 (5) Nothing contained in this subdivision shall be
9 construed to apply the definition of employer found in
10 this subdivision to subdivision (a).

11 (i) For an employer, labor organization, employment
12 agency, apprenticeship training program, or any training
13 program leading to employment, to fail to take all
14 reasonable steps necessary to prevent discrimination and
15 harassment from occurring.

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

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

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

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

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

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

12944. (a) It shall be unlawful for a licensing board to require any examination or establish any other qualification for licensing that has an adverse impact on any class by virtue of its race, creed, color, national origin or ancestry, sex, age, medical condition, physical disability, mental disability, or sexual orientation, unless the practice can be demonstrated to be job related.

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

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

(b) It shall be unlawful for a licensing board to fail or refuse to make reasonable accommodation to an

1 individual's mental or physical disability or medical
2 condition.

3 (c) It shall be unlawful for any licensing board, unless
4 specifically acting in accordance with federal equal
5 employment opportunity guidelines or regulations
6 approved by the commission, to print or circulate or
7 cause to be printed or circulated any publication, or to
8 make any non-job-related inquiry, either verbal or
9 through use of an application form, which expresses,
10 directly or indirectly, any limitation, specification, or
11 discrimination as to race, religious creed, color, national
12 origin, ancestry, physical disability, mental disability,
13 medical condition, sex, age, or sexual orientation or any
14 intent to make any such limitation, specification, or
15 discrimination. Nothing in this subdivision shall prohibit
16 any licensing board from making, in connection with
17 prospective licensure or certification, an inquiry as to, or
18 a request for information regarding, the physical fitness
19 of applicants if that inquiry or request for information is
20 directly related and pertinent to the license or the
21 licensed position the applicant is applying for. Nothing in
22 this subdivision shall prohibit any licensing board, in
23 connection with prospective examinations, licensure, or
24 certification, from inviting individuals with physical or
25 mental disabilities to request reasonable
26 accommodations or from making inquiries related to
27 reasonable accommodations.

28 (d) It is unlawful for a licensing board to discriminate
29 against any person because the person has filed a
30 complaint, testified, or assisted in any proceeding under
31 this part.

32 (e) It is unlawful for any licensing board to fail to keep
33 records of applications for licensing or certification for a
34 period of two years following the date of receipt of the
35 applications.

36 (f) As used in this section, "licensing board" means any
37 state board, agency, or authority in the State and
38 Consumer Services Agency that has the authority to grant
39 licenses or certificates which are prerequisites to
40 employment eligibility or professional status.

1 SEC. 9. Section 12955 of the Government Code is
2 amended to read:

3 12955. It shall be unlawful:

4 (a) For the owner of any housing accommodation to
5 discriminate against any person because of the race,
6 color, religion, sex, sexual orientation, marital status,
7 national origin, ancestry, familial status, or disability of
8 that person.

9 (b) For the owner of any housing accommodation to
10 make or to cause to be made any written or oral inquiry
11 concerning the race, color, religion, sex, sexual
12 orientation, marital status, national origin, ancestry,
13 familial status, or disability of any person seeking to
14 purchase, rent or lease any housing accommodation.

15 (c) For any person to make, print, or publish, or cause
16 to be made, printed, or published any notice, statement,
17 or advertisement, with respect to the sale or rental of a
18 housing accommodation that indicates any preference,
19 limitation, or discrimination based on race, color, religion,
20 sex, sexual orientation, marital status, national origin,
21 ancestry, familial status, or disability or an intention to
22 make any such preference, limitation, or discrimination.

23 (d) For any person subject to the provisions of Section
24 51 of the Civil Code, as that section applies to housing
25 accommodations, to discriminate against any person on
26 the basis of sex, sexual orientation, color, race, religion,
27 ancestry, national origin, familial status, marital status,
28 disability, or on any other basis prohibited by that section.

29 (e) For any person, bank, mortgage company or other
30 financial institution that provides financial assistance for
31 the purchase, organization, or construction of any
32 housing accommodation to discriminate against any
33 person or group of persons because of the race, color,
34 religion, sex, sexual orientation, marital status, national
35 origin, ancestry, familial status, or disability in the terms,
36 conditions, or privileges relating to the obtaining or use
37 of that financial assistance.

38 (f) For any owner of housing accommodations to
39 harass, evict, or otherwise discriminate against any
40 person in the sale or rental of housing accommodations

1 when the owner's dominant purpose is retaliation against
2 a person who has opposed practices unlawful under this
3 section, informed law enforcement agencies of practices
4 believed unlawful under this section, has testified or
5 assisted in any proceeding under this part, or has aided or
6 encouraged a person to exercise or enjoy the rights
7 secured by this part. Nothing herein is intended to cause
8 or permit the delay of an unlawful detainer action.

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

12 (h) For any person, for profit, to induce any person to
13 sell or rent any dwelling by representations regarding the
14 entry or prospective entry into the neighborhood of a
15 person or persons of a particular race, color, religion, sex,
16 sexual orientation, marital status, ancestry, disability,
17 familial status, or national origin.

18 (i) For any person or other organization or entity
19 whose business involves real estate-related transactions to
20 discriminate against any person in making available a
21 transaction, or in the terms and conditions of a
22 transaction, because of race, color, religion, sex, sexual
23 orientation, marital status, national origin, ancestry,
24 familial status, or disability.

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

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

34 (l) To discriminate through public or private land use
35 practices, decisions, and authorizations because of race,
36 color, religion, sex, sexual orientation, familial status,
37 marital status, disability, national origin, or ancestry.
38 Discrimination includes, but is not limited to, restrictive
39 covenants, zoning laws, denials of use permits, and other
40 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 unintended discriminatory effect shall not be considered to have committed an unlawful housing practice in violation of this part if the business establishment can establish that the action or inaction is necessary to the operation of the business and effectively carries out the significant business need it is alleged to serve. In cases that do not involve a business establishment, the person whose action or inaction has an unintended discriminatory effect shall not be considered to have committed an unlawful housing practice in violation of this part if the person can establish that the action or inaction is necessary to achieve an important purpose sufficiently compelling to override the discriminatory effect and effectively carries out the purpose it is alleged to serve.

1 (1) Any determination of a violation pursuant to this
2 subdivision shall consider whether or not there are
3 feasible alternatives that would equally well or better
4 accomplish the purpose advanced with a less
5 discriminatory effect.

6 (2) For purposes of this subdivision, the term “business
7 establishment” shall have the same meaning as in Section
8 51 of the Civil Code.

9 SEC. 11. Section 12993 of the Government Code is
10 amended to read:

11 12993. (a) The provisions of this part shall be
12 construed liberally for the accomplishment of the
13 purposes of this part. Nothing contained in this part shall
14 be deemed to repeal any of the provisions of the Civil
15 Rights Law or of any other law of this state relating to
16 discrimination because of race, religious creed, color,
17 national origin, ancestry, physical disability, mental
18 disability, medical condition, marital status, sex, age, or
19 sexual orientation, unless those provisions provide less
20 protection to the enumerated classes of persons covered
21 under this part.

22 (b) Nothing contained in this part relating to
23 discrimination in employment on account of sex or
24 medical condition shall be deemed to affect the operation
25 of the terms or conditions of any bona fide retirement,
26 pension, employee benefit, or insurance plan, provided
27 the terms or conditions are in accordance with customary
28 and reasonable or actuarially sound underwriting
29 practices.

30 (c) While it is the intention of the Legislature to
31 occupy the field of regulation of discrimination in
32 employment and housing encompassed by the provisions
33 of this part, exclusive of all other laws banning
34 discrimination in employment and housing by any city,
35 city and county, county, or other political subdivision of
36 the state, nothing contained in this part shall be
37 construed, in any manner or way, to limit or restrict the
38 application of Section 51 of the Civil Code.



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

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