

AMENDED IN SENATE AUGUST 24, 1999

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, 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 *Nothing in this section is intended to alter the definition*  
20 *of employer with regard to any bona fide scouting*



1 *organization covered under Section 1102.1 of the Labor*  
2 *Code as it read on December 1, 1999.*

3 SEC. 1.5. Section 12920 of the Government Code is  
4 amended to read:

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

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

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

24 It is the purpose of this part to provide effective  
25 remedies that will eliminate these discriminatory  
26 practices.

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

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

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

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



1 12926. As used in this part in connection with  
2 unlawful practices, unless a different meaning clearly  
3 appears from the context:

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

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

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

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

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

27 (2) “Employer,” for purposes of provisions defining  
28 unlawful employment practices related to mental  
29 disability, means any person regularly employing 15 or  
30 more persons, or any person directly or indirectly acting  
31 as an agent of such an employer, and also includes the  
32 state and municipalities and political subdivisions of the  
33 state.

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

37 (f) “Essential functions” means the fundamental job  
38 duties of the employment position the individual with a  
39 disability holds or desires. “Essential functions” does not  
40 include the marginal functions of the position.



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

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

6 (B) The function may be essential because of the  
7 limited number of employees available among whom the  
8 performance of that job function can be distributed.

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

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

14 (A) The employer's judgment as to which functions  
15 are essential.

16 (B) Written job descriptions prepared before  
17 advertising or interviewing applicants for the job.

18 (C) The amount of time spent on the job performing  
19 the function.

20 (D) The consequences of not requiring the incumbent  
21 to perform the function.

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

23 (F) The work experiences of past incumbents in the  
24 job.

25 (G) The current work experience of incumbents in  
26 similar jobs.

27 (g) "Labor organization" includes any organization  
28 that exists and is constituted for the purpose, in whole or  
29 in part, of collective bargaining or of dealing with  
30 employers concerning grievances, terms or conditions of  
31 employment, or of other mutual aid or protection.

32 (h) "Medical condition" includes (1) genetic  
33 characteristics, or (2) any health impairment related to  
34 or associated with a diagnosis of cancer, for which a  
35 person has been rehabilitated or cured, based on  
36 competent medical evidence. For purposes of this  
37 section, "genetic characteristics" means any scientifically  
38 or medically identifiable gene or chromosome, or  
39 combination or alteration thereof, that is known to be a  
40 cause of a disease or disorder in a person or his or her



1 offspring, or is determined to be associated with a  
2 statistically increased risk of development of a disease or  
3 disorder, or inherited characteristics that may derive  
4 from the individual or family member, that is presently  
5 not associated with any symptoms of any disease or  
6 disorder.

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

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

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

25 (1) Having any physiological disease, disorder,  
26 condition, cosmetic disfigurement, or anatomical loss that  
27 does both of the following:

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

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

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

38 (3) Being regarded as having or having had a disease,  
39 disorder, condition, cosmetic disfigurement, anatomical



1 loss, or health impairment described in paragraph (1) or  
2 (2).

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

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

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

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

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

36 (2) Job restructuring, part-time or modified work  
37 schedules, reassignment to a vacant position, acquisition  
38 or modification of equipment or devices, adjustment or  
39 modifications of examinations, training materials or  
40 policies, the provision of qualified readers or interpreters,



1 and other similar accommodations for individuals with  
2 disabilities.

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

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

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

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

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

30 12930. The department shall have the following  
31 functions, powers, and duties:

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

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

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



1 (d) To obtain upon request and utilize the services of  
2 all governmental departments and agencies and, in  
3 addition, with respect to housing discrimination, of  
4 conciliation councils.

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

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

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

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

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

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

24 (3) To issue written interrogatories.

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

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

32 (h) To issue accusations pursuant to Section 12965 or  
33 12981 and to prosecute those accusations before the  
34 commission.

35 (i) To issue those publications and those results of  
36 investigations and research as in its judgment will tend to  
37 promote good will and minimize or eliminate  
38 discrimination in employment on the bases enumerated  
39 in this part and discrimination in housing because of race,



1 religious creed, color, sex, marital status, national origin,  
2 ancestry, familial status, disability, or sexual orientation.

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

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

9 SEC. 5. Section 12931 of the Government Code is  
10 amended to read:

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

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

31 SEC. 6. Section 12935 of the Government Code is  
32 amended to read:

33 12935. The commission shall have the following  
34 functions, powers, and duties:

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



1 functions and duties of the commission pursuant to this  
2 part.

3 (b) To conduct hearings pursuant to Sections 12967  
4 and 12981.

5 (c) To establish and maintain a principal office within  
6 the state.

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

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

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

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

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



1 (i) To issue publications and results of inquiries and  
2 research that in its judgment will tend to promote good  
3 will and minimize or eliminate unlawful discrimination.  
4 These publications shall include an annual report to the  
5 Governor and the Legislature of its activities and  
6 recommendations.

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

12 SEC. 7. Section 12940 of the Government Code is  
13 amended to read:

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

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

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



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

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

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

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

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

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



1 election of officers of the labor organization or in the  
2 selection of the labor organization's staff or to  
3 discriminate in any way against any of its members or  
4 against any employer or against any person employed by  
5 an employer.

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

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

39 (e) For any employer, labor organization, or  
40 employment agency to harass, discharge, expel, or



1 otherwise discriminate against any person because the  
2 person has made a report pursuant to Section 11161.8 of  
3 the Penal Code that prohibits retaliation against hospital  
4 employees who report suspected patient abuse by health  
5 facilities or community care facilities.

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

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

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

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

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

38 (B) Notwithstanding subparagraph (A), for purposes  
39 of this subdivision, “employer” does not include a



1 religious association or corporation not organized for  
2 private profit.

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

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

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

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

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



1 reasonable time necessary for travel prior and subsequent  
2 to a religious observance.

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

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

14 (1) Commencing January 1, 1993, for employers with  
15 25 or more employees, the state, and its municipalities  
16 and political subdivisions.

17 (2) Commencing July 26, 1994, for all other employers  
18 specified in paragraph (2) of the subdivision of Section  
19 12926 that defines "employer."

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

22 12944. (a) It shall be unlawful for a licensing board to  
23 require any examination or establish any other  
24 qualification for licensing that has an adverse impact on  
25 any class by virtue of its race, creed, color, national origin  
26 or ancestry, sex, age, medical condition, physical  
27 disability, mental disability, or sexual orientation, unless  
28 the practice can be demonstrated to be job related.

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

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

1 (b) It shall be unlawful for a licensing board to fail or  
2 refuse to make reasonable accommodation to an  
3 individual's mental or physical disability or medical  
4 condition.

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

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

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

38 (f) As used in this section, "licensing board" means any  
39 state board, agency, or authority in the State and  
40 Consumer Services Agency that has the authority to grant



1 licenses or certificates which are prerequisites to  
2 employment eligibility or professional status.

3 SEC. 9. Section 12955 of the Government Code is  
4 amended to read:

5 12955. It shall be unlawful:

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

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

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

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

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



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

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

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

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

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

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

37 (l) To discriminate through public or private land use  
38 practices, decisions, and authorizations because of race,  
39 color, religion, sex, sexual orientation, familial status,  
40 marital status, disability, national origin, or ancestry.



1 Discrimination includes, but is not limited to, restrictive  
2 covenants, zoning laws, denials of use permits, and other  
3 actions authorized under the Planning and Zoning Law  
4 (Title 7 (commencing with Section 65000)), that make  
5 housing opportunities unavailable.

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

8 12955.8. For purposes of this article, in connection  
9 with unlawful practices:

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

21 (b) Proof of a violation causing a discriminatory effect  
22 is shown if an act or failure to act that is otherwise covered  
23 by this part, and that has the effect, regardless of intent,  
24 of unlawfully discriminating on the basis of race, color,  
25 religion, sex, sexual orientation, familial status, marital  
26 status, disability, national origin, or ancestry. A business  
27 establishment whose action or inaction has an  
28 unintended discriminatory effect shall not be considered  
29 to have committed an unlawful housing practice in  
30 violation of this part if the business establishment can  
31 establish that the action or inaction is necessary to the  
32 operation of the business and effectively carries out the  
33 significant business need it is alleged to serve. In cases  
34 that do not involve a business establishment, the person  
35 whose action or inaction has an unintended  
36 discriminatory effect shall not be considered to have  
37 committed an unlawful housing practice in violation of  
38 this part if the person can establish that the action or  
39 inaction is necessary to achieve an important purpose  
40 sufficiently compelling to override the discriminatory



1 effect and effectively carries out the purpose it is alleged  
2 to serve.

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

8 (2) For purposes of this subdivision, the term “business  
9 establishment” shall have the same meaning as in Section  
10 51 of the Civil Code.

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

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

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

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



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

O

