

ASSEMBLY BILL

No. 1670

**Introduced by Committee on Judiciary (Kuehl (Chair),
Aroner, Corbett, Hertzberg, Jackson, Knox, Shelley, and
Steinberg)**

March 15, 1999

An act to amend Section 51.5 of the Civil Code, and to amend Sections 11139, 12921, 12926, 12940, 12945, 12965, 12970, and 12989.2 of the Government Code, relating to discrimination, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1670, as introduced, Committee on Judiciary. California Civil Rights Amendments of 1999.

Existing law prohibits business establishments from discriminating against, boycotting or blacklisting, or refusing to buy from, sell to, or trade with any person because of the race, creed, religion, color, national origin, sex, or disability of any person or the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers.

This bill would additionally prohibit these forms of discrimination because of a perception that any of those persons have one or more of the above characteristics.

Existing law prohibits denial of benefits under, or discrimination against any person in, any program or activity funded or financially assisted by the state on the basis of ethnic group identification, religion, age, sex, color, or physical or

mental disability. Existing law specifies a hearing procedure for determining violations and requires curtailing state funding for any contractor, grantee, or local agency found to be in violation.

This bill would make these provisions and regulations adopted thereunder enforceable by a civil action for equitable relief.

Existing provisions of the California Fair Employment and Housing Act declare as a civil right the opportunity to seek, obtain, and hold employment without discrimination on specified bases.

This bill would declare as a civil right the opportunity to seek, obtain, and hold housing without discrimination on specified bases or any arbitrary basis prohibited by the Unruh Civil Rights Act.

Existing provisions of the California Fair Employment and Housing Act make it an unlawful employment practice for employers, including employer agents, among others, to harass an employee or applicant because of specified bases. Under existing law, harassment of an employee or applicant by other than an employer agent or supervisor is unlawful only if the employer, or its agents or supervisors, knows or should have known of the harassment and fails to take immediate and appropriate corrective action.

This bill would add a definition of “supervisor” to the act and expand the act’s provisions on harassment to make them applicable to harassment of persons providing services pursuant to a contract, as defined. The bill would provide that the definition of “supervisor” that it would add is declaratory of existing law.

Nothing in the California Fair Employment and Housing Act makes it an unlawful employment practice to require testing for a genetic characteristic.

This bill would make it an unlawful employment practice for an employer or other entity to require testing for a genetic characteristic.

Nothing in the California Fair Employment and Housing Act makes it an unlawful employment practice to refuse to provide a reasonable accommodation for a pregnant female employee during the pregnancy.



This bill would make it an unlawful employment practice for an employer to refuse to provide a reasonable accommodation for a pregnant female employee during the pregnancy.

In any civil action brought under the California Fair Employment and Housing Act the court, with certain exceptions, is authorized to award the prevailing party reasonable attorney's fees and costs.

This bill would additionally authorize the court to award the prevailing party his or her expert witness fees.

Under existing law, the respondent named in an administrative accusation under the California Fair Employment and Housing Act brought for damages for emotional injuries or for an administrative fine may elect to transfer the proceedings to a court. Existing law authorizes the court in those actions to grant specified relief.

This bill would additionally authorize the relief granted by the court to include a requirement that the employer conduct prescribed training.

Existing provisions of the California Fair Employment and Housing Act limit the total amount of damages that may be awarded by the Fair Employment and Housing Commission for nonpecuniary loss and administrative fines to \$50,000 per aggrieved person per respondent.

This bill would increase this limitation to \$150,000.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. This act shall be known, and may be
2 cited, as the California Civil Rights Amendments of 1999.

3 SEC. 2. Section 51.5 of the Civil Code is amended to
4 read:

5 51.5. No business establishment of any kind
6 whatsoever shall discriminate against, boycott or
7 blacklist, *or* refuse to buy from, sell to, or trade with any
8 person in this state because of the race, creed, religion,



1 color, national origin, sex, or disability of the person or of
2 the person's partners, members, stockholders, directors,
3 officers, managers, superintendents, agents, employees,
4 business associates, suppliers, or customers, *or because*
5 *the person is perceived to have one or more of those*
6 *characteristics.*

7 As used in this section, "person" includes any person,
8 firm, association, organization, partnership, business
9 trust, corporation, limited liability company, or company.

10 ~~Nothing in this~~ This section shall *not* be construed to
11 require any construction, alteration, repair, structural or
12 otherwise, or modification of any sort whatsoever,
13 beyond that construction, alteration, repair, or
14 modification that is otherwise required by other
15 provisions of law, to any new or existing establishment,
16 facility, building, improvement, or any other structure,
17 nor shall ~~anything in~~ this section be construed to
18 augment, restrict, or alter in any way the authority of the
19 State Architect to require construction, alteration, repair,
20 or modifications that the State Architect otherwise
21 possesses pursuant to other laws.

22 SEC. 3. Section 11139 of the Government Code is
23 amended to read:

24 11139. The prohibitions and sanctions imposed by this
25 article ~~shall be~~ *are* in addition to any other prohibitions
26 and sanctions imposed by law.

27 This article shall not be interpreted in ~~such~~ *a* manner
28 ~~so as to~~ *that would* frustrate its purpose.

29 This article shall not be interpreted in ~~such~~ *a* manner
30 ~~so as to~~ *that would* adversely affect lawful programs
31 which benefit the disabled, the aged, minorities, and
32 women.

33 *This article and regulations adopted pursuant to this*
34 *article may be enforced by a civil action for equitable*
35 *relief.*

36 SEC. 4. Section 12921 of the Government Code is
37 amended to read:

38 12921. (a) The opportunity to seek, obtain, and hold
39 employment without discrimination because of race,
40 religious creed, color, national origin, ancestry, physical



1 disability, mental disability, medical condition, marital
2 status, sex, or age is hereby recognized as and declared to
3 be a civil right.

4 (b) *The opportunity to seek, obtain, and hold housing*
5 *without discrimination because of race, color, religion,*
6 *sex, marital status, national origin, ancestry, familial*
7 *status, disability, or any other basis prohibited by Section*
8 *51 of the Civil Code is hereby recognized as and declared*
9 *to be a civil right.*

10 SEC. 5. Section 12926 of the Government Code is
11 amended to read:

12 12926. As used in this part in connection with
13 unlawful practices, unless a different meaning clearly
14 appears from the context:

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

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

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

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

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

38 (2) “Employer,” for purposes of provisions defining
39 unlawful employment practices related to mental
40 disability, means any person regularly employing 15 or



1 more persons, or any person directly or indirectly acting
2 as an agent of such an employer, and also includes the
3 state and municipalities and political subdivisions of the
4 state.

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

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

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

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

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

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

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

25 (A) The employer's judgment as to which functions
26 are essential.

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

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

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

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

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

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

38 (g) "Labor organization" includes any organization
39 that exists and is constituted for the purpose, in whole or
40 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.

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 (1982) 32 Cal.—3d Cal.3d 603. However, "physical
24 disability" does not include conditions excluded from the
25 federal definition of "disability" pursuant to Section 511
26 of the Americans with Disabilities Act of 1990 (42 U.S.C.;
27 Sec. 12211). Additionally, for purposes of this part, the
28 unlawful use of controlled substances or other drugs shall
29 not be deemed, in and of itself, to constitute a physical
30 disability.

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



1 conflicting provisions of, the definitions in subdivisions
2 (i) and (k).

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

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

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

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

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

21 (p) “Supervisor” means any individual having the
22 authority, in the interest of the employer, to hire,
23 transfer, suspend, lay off, recall, promote, discharge,
24 assign, reward, or discipline other employees, or the
25 responsibility to direct them, or to adjust their grievances,
26 or effectively to recommend that action, if, in connection
27 with the foregoing, the exercise of that authority is not of
28 a merely routine or clerical nature, but requires the use
29 of independent judgment.

30 (q) “Undue hardship” means an action requiring
31 significant difficulty or expense, when considered in light
32 of the following factors: (1) the nature and cost of the
33 accommodation needed, (2) the overall financial
34 resources of the facilities involved in the provision of the
35 reasonable accommodations, the number of persons
36 employed at the facility, and the effect on expenses and
37 resources or the impact otherwise of these
38 accommodations upon the operation of the facility, (3)
39 the overall financial resources of the covered entity, the
40 overall size of the business of a covered entity with



1 respect to the number of employees, and the number,
2 type, and location of its facilities, (4) the type of
3 operations, including the composition, structure, and
4 functions of the work force of the entity, and (5) the
5 geographic separateness, administrative, or fiscal
6 relationship of the facility or facilities.

7 SEC. 6. Section 12940 of the Government Code is
8 amended to read:

9 12940. It shall be an unlawful employment practice,
10 unless based upon a bona fide occupational qualification,
11 or, except where based upon applicable security
12 regulations established by the United States or the State
13 of California:

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

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

36 (2) ~~Nothing in this~~ This part shall does not prohibit an
37 employer from refusing to hire or discharging an
38 employee who, because of the employee's medical
39 condition, is unable to perform his or her essential duties
40 even with reasonable accommodations, or cannot



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

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

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

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

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

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



1 any of its members or against any employer or against any
2 person employed by an employer.

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

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

34 (e) For any employer, labor organization, or
35 employment agency to harass, discharge, expel, or
36 otherwise discriminate against any person because the
37 person has made a report pursuant to Section 11161.8 of
38 the Penal Code, which prohibits retaliation against
39 hospital employees who report suspected patient abuse
40 by health facilities or community care facilities.



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

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

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

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

30 (3) (A) For purposes of this subdivision only,
31 “employer” means any person regularly employing one
32 or more persons *or regularly receiving the services of one*
33 *or more persons providing services pursuant to a*
34 *contract*, or any person acting as an agent of an employer,
35 directly or indirectly, the state, or any political or civil
36 subdivision thereof, and cities. *The definition of*
37 *“employer” in subdivision (d) of Section 12926 applies to*
38 *all provisions of this section other than this subdivision.*

39 (B) Notwithstanding subparagraph (A), for purposes
40 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)~~ *For purposes of this
13 subdivision, “a person providing services pursuant to a
14 contract” means a person who meets all of the following
15 criteria:*

16 *(A) The person has the right to control the
17 performance of the contract for services and discretion as
18 to the manner of performance.*

19 *(B) The person is customarily engaged in an
20 independently established business.*

21 *(C) The person has control over the time and place the
22 work is performed, supplies the tools and instruments
23 used in the work, and performs work that requires a
24 particular skill not ordinarily used in the course of the
25 employer’s work.*

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

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



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

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

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

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

30 (2) Commencing July 26, 1994, for all other employers
31 specified in paragraph (2) of the subdivision of Section
32 12926 that defines "employer."

33 (m) *For an employer or other entity covered by this*
34 *part, to subject, directly or indirectly, any employee,*
35 *applicant, or other person to a test for the presence of a*
36 *genetic characteristic.*

37 SEC. 7. Section 12945 of the Government Code is
38 amended to read:

39 12945. It shall be an unlawful employment practice,
40 unless based upon a bona fide occupational qualification:



1 (a) For any employer, because of the pregnancy,
2 childbirth, or related medical condition of any female
3 employee, to refuse to promote her, or to refuse to select
4 her for a training program leading to promotion,
5 provided she is able to complete the training program at
6 least three months prior to the anticipated date of
7 departure for her pregnancy leave, or to discharge her
8 from employment or from a training program leading to
9 promotion, or to discriminate against her in
10 compensation or in terms, conditions, or privileges of
11 employment.

12 (b) For any employer to refuse to allow a female
13 employee affected by pregnancy, childbirth, or related
14 medical conditions either:

15 (1) To receive the same benefits or privileges of
16 employment granted by that employer to other persons
17 not so affected who are similar in their ability or inability
18 to work, including to take disability or sick leave or any
19 other accrued leave ~~which~~ *that* is made available by the
20 employer to temporarily disabled employees. For
21 purposes of this section, pregnancy, childbirth, and
22 related medical conditions are treated as any other
23 temporary disability. However, no employer shall be
24 required to provide a female employee disability leave on
25 account of normal pregnancy, childbirth, or related
26 medical condition for a period exceeding six weeks.
27 ~~Nothing in this~~ *This* section shall *not* be construed to
28 require an employer to provide his or her employees with
29 health insurance coverage for the medical costs of
30 pregnancy, childbirth, or related medical conditions. The
31 inclusion in any health insurance coverage of any
32 provisions or coverage relating to medical costs of
33 pregnancy, childbirth, or related medical conditions shall
34 not be construed to require the inclusion of any other
35 provisions or coverage, nor shall coverage of any related
36 medical conditions be required by virtue of coverage of
37 any medical costs of pregnancy, childbirth, or other
38 related medical conditions.

39 (2) To take a leave on account of pregnancy for a
40 reasonable period of time not to exceed four months. The



1 employee shall be entitled to utilize any accrued vacation
2 leave during this period of time. Reasonable period of
3 time means that period during which the female
4 employee is disabled on account of pregnancy, childbirth,
5 or related medical conditions. ~~Nothing herein~~ This
6 paragraph shall not be construed to limit the provisions
7 of paragraph (1) of subdivision (b).

8 An employer may require any employee who plans to
9 take a leave pursuant to this subdivision to give the
10 employer reasonable notice of the date the leave shall
11 commence and the estimated duration of the leave.

12 (c) (1) *For any employer, including both employers*
13 *subject to and not subject to Title VII of the Civil Rights*
14 *Act of 1964, to refuse to provide reasonable*
15 *accommodation for a pregnant female employee for the*
16 *duration of her pregnancy.*

17 (2) For any employer, ~~which shall include~~ including
18 both employers subject to and not subject to Title VII of
19 the federal Civil Rights Act of 1964, who has a policy,
20 practice, or collective bargaining agreement requiring or
21 authorizing the transfer of temporarily disabled
22 employees to less strenuous or hazardous positions for the
23 duration of the disability to refuse to transfer a pregnant
24 female employee who so requests.

25 ~~(2)~~
26 (3) For any employer, ~~which shall include~~ including
27 both employers subject to and not subject to Title VII of
28 the federal Civil Rights Act of 1964, to refuse to
29 temporarily transfer a pregnant female employee to a less
30 strenuous or hazardous position for the duration of her
31 pregnancy if she so requests, with the advice of her
32 physician, where that transfer can be reasonably
33 accommodated. However, no employer shall be required
34 by this section to create additional employment that the
35 employer would not otherwise have created, nor shall the
36 employer be required to discharge any employee,
37 transfer any employee with more seniority, or promote
38 any employee who is not qualified to perform the job.

39 (d) This section shall not be construed to affect any
40 other provision of law relating to sex discrimination or



1 pregnancy, or in any way to diminish the coverage of
2 pregnancy, childbirth, or medical conditions related to
3 pregnancy or childbirth under any other provisions of this
4 part, including subdivision (a) of Section 12940.

5 (e) Except for *subdivision (c) and* paragraph (2) of
6 subdivision (b), ~~and paragraphs (1) and (2) of~~
7 ~~subdivision (e)~~, this section ~~shall be~~ *is* inapplicable to any
8 employer subject to Title VII of the federal Civil Rights
9 Act of 1964.

10 SEC. 8. Section 12965 of the Government Code is
11 amended to read:

12 12965. (a) In the case of failure to eliminate an
13 unlawful practice under this part through conference,
14 conciliation, or persuasion, or in advance thereof if
15 circumstances warrant, the director in his or her
16 discretion may cause to be issued in the name of the
17 department a written accusation. The accusation shall
18 contain the name of the person, employer, labor
19 organization, or employment agency accused, which
20 shall be known as the respondent, shall set forth the
21 nature of the charges, shall be served upon the
22 respondent together with a copy of the verified
23 complaint, as amended, and shall require the respondent
24 to answer the charges at a hearing.

25 For any complaint treated by the director as a group or
26 class complaint for purposes of investigation, conciliation,
27 and accusation pursuant to Section 12961, an accusation
28 shall be issued, if at all, within two years after the filing of
29 the complaint. For all other complaints, an accusation
30 shall be issued, if at all, within one year after the filing of
31 a complaint. If the director determines, pursuant to
32 Section 12961, that a complaint investigated as a group or
33 class complaint under Section 12961 is to be treated as a
34 group or class complaint for purposes of conciliation and
35 accusation as well, ~~such~~ *that* determination shall be made
36 and shall be communicated in writing within one year
37 after the filing of the complaint to each person, employer,
38 labor organization, employment agency, or public entity
39 alleged in the complaint to have committed an unlawful
40 practice.



1 (b) If an accusation is not issued within 150 days after
2 the filing of a complaint, or if the department earlier
3 determines that no accusation will issue, the department
4 shall promptly notify, in writing, the person claiming to
5 be aggrieved that the department shall issue, on his or her
6 request, the right-to-sue notice. This notice shall indicate
7 that the person claiming to be aggrieved may bring a civil
8 action under this part against the person, employer, labor
9 organization, or employment agency named in the
10 verified complaint within one year from the date of that
11 notice. If the person claiming to be aggrieved does not
12 request a right-to-sue notice, the department shall issue
13 the notice upon completion of its investigation, and not
14 later than one year after the filing of the complaint. A city,
15 county, or district attorney in a location having an
16 enforcement unit established on or before March 1, 1991,
17 pursuant to a local ordinance enacted for the purpose of
18 prosecuting ~~AIDS/HIV~~ HIV/AIDS discrimination
19 claims, acting on behalf of any person claiming to be
20 aggrieved due to HIV/AIDS discrimination, may also
21 bring a civil action under this part against the person,
22 employer, labor organization, or employment agency
23 named in the notice. The superior and municipal courts
24 of the State of California shall have jurisdiction of those
25 actions, and the aggrieved person may file in any of these
26 courts. Such an action may be brought in any county in
27 the state in which the unlawful practice is alleged to have
28 been committed, in the county in which the records
29 relevant to the practice are maintained and
30 administered, or in the county in which the aggrieved
31 person would have worked or would have had access to
32 the public accommodation but for the alleged unlawful
33 practice, but if the defendant is not found within any of
34 these counties, an action may be brought within the
35 county of the defendant's residence or principal office. A
36 copy of any complaint filed pursuant to this part shall be
37 served on the principal offices of the department and of
38 the commission. The remedy for failure to send a copy of
39 a complaint is an order to do so. Those actions may not be
40 filed as class actions or may not be maintained as class



1 actions by the person or persons claiming to be aggrieved
2 where those persons have filed a civil class action in the
3 federal courts alleging a comparable claim of
4 employment discrimination against the same defendant
5 or defendants. In actions brought under this section, the
6 court, in its discretion, may award to the prevailing party
7 reasonable ~~attorneys'~~ *attorney's* fees and costs, *including*
8 *expert witness fees*, except where ~~such~~ *the* action is filed
9 by a public agency or a public official, acting in an official
10 capacity.

11 (c) (1) If an accusation or amended accusation
12 includes a prayer either for damages for emotional
13 injuries as a component of actual damages, or for
14 administrative fines, or for both, the respondent may
15 within 30 days after service of the accusation or amended
16 accusation, elect to transfer the proceedings to a court in
17 lieu of a hearing pursuant to subdivision (a) by serving a
18 written notice to that effect on the department, the
19 commission, and the person claiming to be aggrieved.
20 The commission shall prescribe the form and manner of
21 giving written notice.

22 (2) No later than 30 days after the completion of
23 service of the notice of election pursuant to paragraph
24 (1), the department shall dismiss the accusation and shall,
25 either itself or, at its election, through the Attorney
26 General, file in the appropriate court an action in its own
27 name on behalf of the person claiming to be aggrieved as
28 the real party in interest. In this action, the person
29 claiming to be aggrieved shall be the real party in interest
30 and shall have the right to participate as a party and be
31 represented by his or her own counsel. Complaints filed
32 pursuant to this section shall be filed in the appropriate
33 superior or municipal court in any county in which
34 unlawful practices are alleged to have been committed,
35 in the county in which records relevant to the alleged
36 unlawful practices are maintained and administered, or
37 in the county in which the person claiming to be
38 aggrieved would have worked or would have had access
39 to public accommodation, but for the alleged unlawful
40 practices. If the defendant is not found in any of these



1 counties, the action may be brought within the county of
2 the defendant's residence or principal office. Those
3 actions shall be assigned to the court's delay reduction
4 program, or otherwise given priority for disposition by
5 the court in which the action is filed.

6 (3) A court may grant as relief in any action filed
7 pursuant to this subdivision any relief a court is
8 empowered to grant in a civil action brought pursuant to
9 subdivision (b), in addition to any other relief that, in the
10 judgment of the court, will effectuate the purpose of this
11 part. *This relief may include a requirement that the*
12 *employer conduct training for all employees, supervisors,*
13 *and management on the requirements of this part, the*
14 *rights and remedies of those who allege a violation of this*
15 *part, and the employer's internal grievance procedures.*

16 (4) The department may amend an accusation to pray
17 for either damages for emotional injury or for
18 administrative fines, or both, provided that the
19 amendment is made within 30 days of the issuance of the
20 original accusation.

21 SEC. 9. Section 12970 of the Government Code is
22 amended to read:

23 12970. (a) If the commission finds that a respondent
24 has engaged in any unlawful practice under this part, it
25 shall state its findings of fact and determination and shall
26 issue and cause to be served on the parties an order
27 requiring the respondent to cease and desist from the
28 unlawful practice and to take action, including, but not
29 limited to, any of the following:

30 (1) The hiring, reinstatement, or upgrading of
31 employees, with or without ~~backpay~~ *back pay*.

32 (2) The admission or restoration to membership in any
33 respondent labor organization.

34 (3) The payment of actual damages as may be
35 available in civil actions under this part, except as
36 otherwise provided in this section. Actual damages
37 include, but are not limited to, damages for emotional
38 injuries if the accusation or amended accusation prays for
39 those damages. Actual damages awarded under this
40 section for emotional pain, suffering, inconvenience,



1 mental anguish, loss of enjoyment of life, and other
2 nonpecuniary losses shall not exceed, in combination with
3 the amounts of any administrative fines imposed
4 pursuant to subdivision (c), *one hundred* fifty thousand
5 dollars—~~(\$50,000)~~ (\$150,000) per aggrieved person per
6 respondent.

7 (4) Notwithstanding paragraph (3), the payment of
8 actual damages up to one hundred fifty thousand dollars
9 (\$150,000) assessed against a respondent for a violation of
10 Section 51.7 of the Civil Code, as an unlawful practice
11 under this part.

12 (5) Affirmative or prospective relief to prevent the
13 recurrence of the unlawful practice.

14 (6) A report to the commission as to the manner of
15 compliance with the commission's order.

16 (b) An unlawful practice under this part alone is not
17 sufficient to sustain an award of actual damages pursuant
18 to this section. The department is required to prove, by
19 a preponderance of the evidence, that an aggrieved
20 person has sustained actual injury. In determining
21 whether to award damages for emotional injuries, and the
22 amount of any award for these damages, the commission
23 shall consider relevant evidence of the effects of
24 discrimination on the aggrieved person with respect to
25 any or all of the following:

26 (1) Physical and mental well-being.

27 (2) Personal integrity, dignity, and privacy.

28 (3) Ability to work, earn a living, and advance in his or
29 her career.

30 (4) Personal and professional reputation.

31 (5) Family relationships.

32 (6) Access to the job and ability to associate with peers
33 and coworkers.

34 The commission shall also consider the duration of the
35 emotional injury, and whether that injury was caused or
36 exacerbated by an aggrieved person's knowledge of a
37 respondent's failure to respond adequately to, or to
38 correct, the discriminatory practice or by the
39 egregiousness of the discriminatory practice.



1 (c) In addition to the foregoing, in order to vindicate
2 the purposes and policies of this part, the commission may
3 assess against the respondent, if the accusation or
4 amended accusation so prays, an administrative fine per
5 aggrieved person per respondent, the amount of which
6 shall be determined in accordance with the combined
7 amount limitation of paragraph (3) of subdivision (a).

8 (d) In determining whether to assess an
9 administrative fine pursuant to this section, the
10 commission shall find that the respondent has been guilty
11 of oppression, fraud, or malice, expressed or implied, as
12 required by Section 3294 of the Civil Code. In
13 determining the amount of fines, the commission shall
14 consider relevant evidence of, including, but not limited
15 to, the following:

- 16 (1) Willful, intentional, or purposeful conduct.
- 17 (2) Refusal to prevent or eliminate discrimination.
- 18 (3) Conscious disregard for the rights of employees.
- 19 (4) Commission of unlawful conduct.
- 20 (5) Intimidation or harassment.
- 21 (6) Conduct without just cause or excuse.
- 22 (7) Multiple violations of the Fair Employment and
23 Housing Act.

24 The moneys derived from an administrative fine
25 assessed pursuant to this subdivision shall be deposited in
26 the General Fund. No administrative fine shall be
27 assessed against a public entity. The commission shall
28 have no authority to award punitive damages as a remedy
29 for a finding of employment discrimination.

30 (e) In addition to the foregoing, in order to vindicate
31 the purposes and policies of this part, the commission may
32 assess against the respondent if the accusation or
33 amended accusation so prays, a civil penalty of up to
34 twenty-five thousand dollars (\$25,000) to be awarded to
35 a person denied any right provided for by Section 51.7 of
36 the Civil Code, as an unlawful practice prohibited under
37 this part.

38 (f) If the commission finds the respondent has
39 engaged in an unlawful practice under this part, and the
40 respondent is licensed or granted a privilege by an agency



1 of the state to do business, provide a service, or conduct
2 activities, and the unlawful practice is determined to
3 have occurred in connection with the exercise of that
4 license or privilege, the commission shall provide the
5 licensing or privilege granting agency with a copy of its
6 decision or order.

7 (g) If the commission finds that a respondent has not
8 engaged in an unlawful practice under this part, the
9 commission shall state its findings of fact and
10 determination and issue and cause to be served on the
11 parties an order dismissing the accusation as to that
12 respondent.

13 (h) Any findings and determination made or any
14 order issued pursuant to this section shall be written and
15 shall indicate the identity of the members of the
16 commission who participated ~~herein~~ *therein*.

17 (i) Any order issued by the commission shall have
18 printed on its face references to the rights of appeal of any
19 party to the proceeding to whose position the order is
20 adverse.

21 (j) If the commission finds that a respondent has
22 engaged in an unlawful practice under this part, and it
23 appears that this practice consisted of acts described in
24 Section 243.4, 261, 262, 286, 288, 288a, or 289 of the Penal
25 Code, the commission, with the consent of the
26 complainant, shall provide the local district attorney's
27 office with a copy of its decision and order.

28 (k) Notwithstanding Section 12960, if the commission
29 finds that a respondent has engaged in unlawful
30 discrimination in housing under Section 12948, the
31 remedies afforded in Section 12987 or any other provision
32 in this part pertaining to housing discrimination, shall
33 apply.

34 SEC. 10. Section 12989.2 of the Government Code is
35 amended to read:

36 12989.2. In a civil action brought under Section 12989
37 or 12989.1, if the court finds that a discriminatory housing
38 practice has occurred or is about to occur, the court may
39 award the plaintiff or complainant actual and punitive
40 damages and may grant other relief, including the



1 issuance of a temporary or permanent injunction, or
2 temporary restraining order, or other order, as it deems
3 appropriate to prevent any defendant from engaging in
4 or continuing to engage in an unlawful practice. The
5 court may, at its discretion, award the prevailing party,
6 other than the state, reasonable attorney's fees and costs,
7 *including expert witness fees.*

8 SEC. 11. The amendment of Section 12926 of the
9 Government Code made by this act does not constitute
10 a change in, but is declaratory of, existing law.

11 SEC. 12. This act is an urgency statute necessary for
12 the immediate preservation of the public peace, health,
13 or safety within the meaning of Article IV of the
14 Constitution and shall go into immediate effect. The facts
15 constituting the necessity are:

16 To protect Californians against invidious
17 discrimination in the areas of housing, employment, and
18 business, it is necessary that this act go into effect
19 immediately.

