

AMENDED IN SENATE AUGUST 26, 1999

AMENDED IN SENATE AUGUST 25, 1999

AMENDED IN ASSEMBLY JUNE 1, 1999

AMENDED IN ASSEMBLY MAY 6, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 1670**

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

March 15, 1999

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An act to amend Section 51.5 of the Civil Code, and to amend Sections 11139, 12921, 12926, 12927, *12930*, 12940, 12945, 12948, 12955, 12965, 12970, ~~and 12989.2~~ *12989.2*, and *12989.3* of the Government Code, relating to discrimination.

LEGISLATIVE COUNSEL'S DIGEST

AB 1670, as amended, 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 (1) because of a perception that any of those persons have one or more of the above characteristics or (2) because the person is associated with a person who has, or is perceived to have, any of those 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. The bill would also revise the definition of discrimination for the purposes of these provisions to include harassment in connection with housing accommodations.

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. This bill would also make it an unlawful employment practice to make, in connection with prospective employment, any inquiry as to, or a request for information regarding, the physical fitness or physical or mental condition of an applicant, except as specified.

Existing provisions of the California Fair Employment and Housing Act prohibit discrimination based on specified bases.

This bill would provide that those bases include a perception that the person has any of those characteristics or is associated with a person who has, or is perceived to have, any of those characteristics.

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 requested by an employee, with the advice of her health care provider, for conditions related to pregnancy, childbirth, or related medical conditions.

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 additionally make technical and conforming changes to provisions of the California Fair Employment and Housing Act.*

This bill would specify that the changes it would make in types of discrimination prohibited by the Unruh Civil Rights Act, and in certain of the definitional provisions of the California Fair Employment and Housing Act, are declaratory of existing law.

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. 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, contract with, sell to, or  
8 trade with any person in this state because of the race,  
9 creed, religion, color, national origin, sex, or disability of  
10 the person or of the person's partners, members,  
11 stockholders, directors, officers, managers,  
12 superintendents, agents, employees, business associates,  
13 suppliers, or customers, because the person is perceived  
14 to have one or more of those characteristics, or because  
15 the person is associated with a person who has, or is  
16 perceived to have, any of those characteristics.



1 As used in this section, “person” includes any person,  
2 firm, association, organization, partnership, business  
3 trust, corporation, limited liability company, or company.

4 This section shall not be construed to require any  
5 construction, alteration, repair, structural or otherwise,  
6 or modification of any sort whatsoever, beyond that  
7 construction, alteration, repair, or modification that is  
8 otherwise required by other provisions of law, to any new  
9 or existing establishment, facility, building,  
10 improvement, or any other structure, nor shall this  
11 section be construed to augment, restrict, or alter in any  
12 way the authority of the State Architect to require  
13 construction, alteration, repair, or modifications that the  
14 State Architect otherwise possesses pursuant to other  
15 laws.

16 SEC. 3. Section 11139 of the Government Code is  
17 amended to read:

18 11139. The prohibitions and sanctions imposed by this  
19 article are in addition to any other prohibitions and  
20 sanctions imposed by law.

21 This article shall not be interpreted in a manner that  
22 would frustrate its purpose.

23 This article shall not be interpreted in a manner that  
24 would adversely affect lawful programs which benefit the  
25 disabled, the aged, minorities, and women.

26 This article and regulations adopted pursuant to this  
27 article may be enforced by a civil action for equitable  
28 relief.

29 SEC. 4. Section 12921 of the Government Code is  
30 amended to read:

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

37 (b) The opportunity to seek, obtain, and hold housing  
38 without discrimination because of race, color, religion,  
39 sex, marital status, national origin, ancestry, familial  
40 status, disability, or any other basis prohibited by Section



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

3 SEC. 5. Section 12926 of the Government Code is  
4 amended to read:

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

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

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

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

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

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

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

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

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



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

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

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

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

11 (A) The employer's judgment as to which functions  
12 are essential.

13 (B) Written job descriptions prepared before  
14 advertising or interviewing applicants for the job.

15 (C) The amount of time spent on the job performing  
16 the function.

17 (D) The consequences of not requiring the incumbent  
18 to perform the function.

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

20 (F) The work experiences of past incumbents in the  
21 job.

22 (G) The current work experience of incumbents in  
23 similar jobs.

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

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



1 from the individual or family member, that is presently  
2 not associated with any symptoms of any disease or  
3 disorder.

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

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

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

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

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

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

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

35 (3) Being regarded as having or having had a disease,  
36 disorder, condition, cosmetic disfigurement, anatomical  
37 loss, or health impairment described in paragraph (1) or  
38 (2).

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





1 loss, or health impairment that has no present disabling  
2 effect but may become a physical disability as described  
3 in paragraph (1) or (2).

4 It is the intent of the Legislature that the definition of  
5 “physical disability” in this subdivision shall have the  
6 same meaning as the term “physical handicap” formerly  
7 defined by this subdivision and construed in American  
8 National Ins. Co. v. Fair Employment & Housing Com.  
9 (1982) 32 Cal.3d 603. However, “physical disability” does  
10 not include conditions excluded from the federal  
11 definition of “disability” pursuant to Section 511 of the  
12 Americans with Disabilities Act of 1990 (42 U.S.C. Sec.  
13 12211). Additionally, for purposes of this part, the  
14 unlawful use of controlled substances or other drugs shall  
15 not be deemed, in and of itself, to constitute a physical  
16 disability.

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

28 (m) “Race, religious creed, color, national origin,  
29 ancestry, physical disability, mental disability, medical  
30 condition, marital status, sex, or age” includes a  
31 perception that the person has any of those  
32 characteristics or that the person is associated with a  
33 person who has, or is perceived to have, any of those  
34 characteristics.

35 (n) “Reasonable accommodation” may include either  
36 of the following:

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



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

8 (o) “Religious creed,” “religion,” “religious  
9 observance,” “religious belief,” and “creed” include all  
10 aspects of religious belief, observance, and practice.

11 (p) “Sex” includes, but is not limited to, pregnancy,  
12 childbirth, or medical conditions related to pregnancy or  
13 childbirth.

14 (q) “Supervisor” means any individual having the  
15 authority, in the interest of the employer, to hire,  
16 transfer, suspend, lay off, recall, promote, discharge,  
17 assign, reward, or discipline other employees, or the  
18 responsibility to direct them, or to adjust their grievances,  
19 or effectively to recommend that action, if, in connection  
20 with the foregoing, the exercise of that authority is not of  
21 a merely routine or clerical nature, but requires the use  
22 of independent judgment.

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



1 SEC. 6. Section 12927 of the Government Code is  
2 amended to read:

3 12927. As used in this part in connection with housing  
4 accommodations, unless a different meaning clearly  
5 appears from the context:

6 (a) “Affirmative actions” means any activity for the  
7 purpose of eliminating discrimination in housing  
8 accommodations because of race, color, religion, sex,  
9 marital status, national origin, ancestry, familial status, or  
10 disability.

11 (b) “Conciliation council” means a nonprofit  
12 organization, or a city or county human relations  
13 commission, which provides education, factfinding, and  
14 mediation or conciliation services in resolution of  
15 complaints of housing discrimination.

16 (c) (1) “Discrimination” includes refusal to sell, rent,  
17 or lease housing accommodations; includes refusal to  
18 negotiate for the sale, rental, or lease of housing  
19 accommodations; includes representation that a housing  
20 accommodation is not available for inspection, sale, or  
21 rental when that housing accommodation is in fact so  
22 available; includes any other denial or withholding of  
23 housing accommodations; includes provision of inferior  
24 terms, conditions, privileges, facilities, or services in  
25 connection with those housing accommodations; includes  
26 harassment in connection with those housing  
27 accommodations; includes the cancellation or  
28 termination of a sale or rental agreement; includes the  
29 provision of segregated or separated housing  
30 accommodations; includes the refusal to permit, at the  
31 expense of the disabled person, reasonable modifications  
32 of existing premises occupied or to be occupied by the  
33 disabled person, if the modifications may be necessary to  
34 afford the disabled person full enjoyment of the premises,  
35 except that, in the case of a rental, the landlord may,  
36 where it is reasonable to do so condition permission for a  
37 modification on the renter’s agreeing to restore the  
38 interior of the premises to the condition that existed  
39 before the modification (other than for reasonable wear  
40 and tear), and includes refusal to make reasonable



1 accommodations in rules, policies, practices, or services  
2 when these accommodations may be necessary to afford  
3 a disabled person equal opportunity to use and enjoy a  
4 dwelling.

5 (2) “Discrimination” does not include either of the  
6 following:

7 (A) Refusal to rent or lease a portion of an  
8 owner-occupied single-family house to a person as a  
9 roomer or boarder living within the household, provided  
10 that no more than one roomer or boarder is to live within  
11 the household, and the owner complies with subdivision  
12 (c) of Section 12955, which prohibits discriminatory  
13 notices, statements, and advertisements.

14 (B) Where the sharing of living areas in a single  
15 dwelling unit is involved, the use of words stating or  
16 tending to imply that the housing being advertised is  
17 available only to persons of one sex.

18 (d) “Housing accommodation” means any building,  
19 structure, or portion thereof that is occupied as, or  
20 intended for occupancy as, a residence by one or more  
21 families and any vacant land that is offered for sale or  
22 lease for the construction thereon of any building,  
23 structure, or portion thereof intended to be so occupied.

24 (e) “Owner” includes the lessee, sublessee, assignee,  
25 managing agent, real estate broker or salesperson, or any  
26 person having any legal or equitable right of ownership  
27 or possession or the right to rent or lease housing  
28 accommodations, and includes the state and any of its  
29 political subdivisions and any agency thereof.

30 (f) “Person” includes all individuals and entities that  
31 are described in Section 3602(d) of Title 42 of the United  
32 States Code, and in the definition of “owner” in  
33 subdivision (e) of this section, and all institutional third  
34 parties, including the Federal Home Loan Mortgage  
35 Corporation.

36 (g) “Aggrieved person” includes any person who  
37 claims to have been injured by a discriminatory housing  
38 practice or believes that the person will be injured by a  
39 discriminatory housing practice that is about to occur.



1 (h) “Real estate-related transactions” include any of  
2 the following:

3 (1) The making or purchasing of loans or providing  
4 other financial assistance that is for the purpose of  
5 purchasing, constructing, improving, repairing, or  
6 maintaining a dwelling, or that is secured by residential  
7 real estate.

8 (2) The selling, brokering, or appraising of residential  
9 real property.

10 (3) The use of territorial underwriting requirements,  
11 for the purpose of requiring a borrower in a specific  
12 geographic area to obtain earthquake insurance,  
13 required by an institutional third party on a loan secured  
14 by residential real property.

15 SEC. 7. *Section 12930 of the Government Code is*  
16 *amended to read:*

17 12930. The department shall have the following  
18 functions, powers and duties:

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

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

23 (c) To appoint attorneys, investigators, conciliators,  
24 and other employees as it may deem necessary, fix their  
25 compensation within the limitations provided by law, and  
26 prescribe their duties.

27 (d) To obtain upon request and utilize the services of  
28 all governmental departments and agencies and, in  
29 addition, with respect to housing discrimination, of  
30 conciliation councils.

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

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

37 (2) To receive, investigate, and conciliate complaints  
38 alleging a violation of Section 51 ~~or~~, 51.5, 51.7, 54, 54.1, or  
39 54.2 of the Civil Code. The remedies and procedures of



1 this part shall be independent of any other remedy or  
2 procedure that might apply.

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

6 (1) To issue subpoenas to require the attendance and  
7 testimony of witnesses and the production of books,  
8 records, documents, and physical materials.

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

11 (3) To issue written interrogatories.

12 (4) To request the production for inspection and  
13 copying of books, records, documents, and physical  
14 materials.

15 (5) To petition the superior courts to compel the  
16 appearance and testimony of witnesses, the production of  
17 books, records, documents, and physical materials, and  
18 the answering of interrogatories.

19 (h) To issue accusations pursuant to Section 12965 or  
20 12981 and to prosecute those accusations before the  
21 commission.

22 (i) To issue those publications and those results of  
23 investigations and research as in its judgment will tend to  
24 promote good will and minimize or eliminate  
25 discrimination in employment on the bases enumerated  
26 in this part and discrimination in housing because of race,  
27 religious creed, color, sex, marital status, national origin,  
28 ancestry, familial status, or disability.

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

32 (k) To render annually to the Governor and to the  
33 Legislature a written report of its activities and of its  
34 recommendations.

35 *SEC. 8.* Section 12940 of the Government Code is  
36 amended to read:

37 12940. It shall be an unlawful employment practice,  
38 unless based upon a bona fide occupational qualification,  
39 or, except where based upon applicable security



1 regulations established by the United States or the State  
2 of California:

3 (a) For an employer, because of the race, religious  
4 creed, color, national origin, ancestry, physical disability,  
5 mental disability, medical condition, marital status, or sex  
6 of any person, to refuse to hire or employ the person or  
7 to refuse to select the person for a training program  
8 leading to employment, or to bar or to discharge the  
9 person from employment or from a training program  
10 leading to employment, or to discriminate against the  
11 person in compensation or in terms, conditions, or  
12 privileges of employment.

13 (1) This part does not prohibit an employer from  
14 refusing to hire or discharging an employee with a  
15 physical or mental disability, or subject an employer to  
16 any legal liability resulting from the refusal to employ or  
17 the discharge of an employee with a physical or mental  
18 disability, where the employee, because of his or her  
19 physical or mental disability, is unable to perform his or  
20 her essential duties even with reasonable  
21 accommodations, or cannot perform those duties in a  
22 manner that would not endanger his or her health or  
23 safety or the health or safety of others even with  
24 reasonable accommodations.

25 (2) This part does not prohibit an employer from  
26 refusing to hire or discharging an employee who, because  
27 of the employee's medical condition, is unable to perform  
28 his or her essential duties even with reasonable  
29 accommodations, or cannot perform those duties in a  
30 manner that would not endanger the employee's health  
31 or safety or the health or safety of others even with  
32 reasonable accommodations. Nothing in this part shall  
33 subject an employer to any legal liability resulting from  
34 the refusal to employ or the discharge of an employee  
35 who, because of the employee's medical condition, is  
36 unable to perform his or her essential duties, or cannot  
37 perform those duties in a manner that would not  
38 endanger the employee's health or safety or the health or  
39 safety of others even with reasonable accommodations.



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

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

8 (B) Prohibit bona fide health plans from providing  
9 additional or greater benefits to employees with  
10 dependents than to those employees without or with  
11 fewer dependents.

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

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

30 (c) For any person to discriminate against any person  
31 in the selection or training of that person in any  
32 apprenticeship training program or any other training  
33 program leading to employment because of the race,  
34 religious creed, color, national origin, ancestry, physical  
35 disability, mental disability, medical condition, marital  
36 status, or sex of the person discriminated against.

37 (d) For any employer or employment agency, unless  
38 specifically acting in accordance with federal equal  
39 employment opportunity guidelines and regulations  
40 approved by the commission, to print or circulate or





1 cause to be printed or circulated any publication, or to  
2 make any non-job-related inquiry of an employee or  
3 applicant, either verbal or through use of an application  
4 form, which expresses, directly or indirectly, any  
5 limitation, specification, or discrimination as to race,  
6 religious creed, color, national origin, ancestry, physical  
7 disability, mental disability, medical condition, marital  
8 status, or sex, or any intent to make that limitation,  
9 specification or discrimination. Except as provided in the  
10 Americans with Disabilities Act of 1990 (P.L. 101-336) and  
11 the regulations adopted pursuant thereto, nothing in this  
12 subdivision shall prohibit any employer from making, in  
13 connection with prospective employment, an inquiry as  
14 to, or a request for information regarding, the physical  
15 fitness, medical condition, physical condition, or medical  
16 history of applicants if that inquiry or request for  
17 information is directly related and pertinent to the  
18 position the applicant is applying for or directly related  
19 to a determination of whether the applicant would  
20 endanger his or her health or safety or the health or safety  
21 of others.

22 (e) For any employer, labor organization, or  
23 employment agency to harass, discharge, expel, or  
24 otherwise discriminate against any person because the  
25 person has made a report pursuant to Section 11161.8 of  
26 the Penal Code, which prohibits retaliation against  
27 hospital employees who report suspected patient abuse  
28 by health facilities or community care facilities.

29 (f) For any employer, labor organization,  
30 employment agency, or person to discharge, expel, or  
31 otherwise discriminate against any person because the  
32 person has opposed any practices forbidden under this  
33 part or because the person has filed a complaint, testified,  
34 or assisted in any proceeding under this part.

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

38 (h) (1) For an employer, labor organization,  
39 employment agency, apprenticeship training program or  
40 any training program leading to employment, or any



1 other person, because of race, religious creed, color,  
2 national origin, ancestry, physical disability, mental  
3 disability, medical condition, marital status, sex, or age, to  
4 harass an employee, an applicant, or a person providing  
5 services pursuant to a contract. Harassment of an  
6 employee, an applicant, or a person providing services  
7 pursuant to a contract by an employee other than an  
8 agent or supervisor shall be unlawful if the entity, or its  
9 agents or supervisors, knows or should have known of this  
10 conduct and fails to take immediate and appropriate  
11 corrective action. An entity shall take all reasonable steps  
12 to prevent harassment from occurring. Loss of tangible  
13 job benefits shall not be necessary in order to establish  
14 harassment.

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

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

27 (B) Notwithstanding subparagraph (A), for purposes  
28 of this subdivision, “employer” does not include a  
29 religious association or corporation not organized for  
30 private profit.

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

35 (4) For purposes of this subdivision, “a person  
36 providing services pursuant to a contract” means a  
37 person who meets all of the following criteria:

38 (A) The person has the right to control the  
39 performance of the contract for services and discretion as  
40 to the manner of performance.



1 (B) The person is customarily engaged in an  
2 independently established business.

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

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

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

38 (k) For an employer or other entity covered by this  
39 part to fail to make reasonable accommodation for the  
40 known physical or mental disability of an applicant or



1 employee. Nothing in this subdivision or in paragraph (1)  
2 or (2) of subdivision (a) shall be construed to require an  
3 accommodation that is demonstrated by the employer or  
4 other covered entity to produce undue hardship to its  
5 operation.

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

9 ~~(1) Commencing January 1, 1993, for employers with~~  
10 ~~25 or more employees, the state, and its municipalities~~  
11 ~~and political subdivisions.~~

12 ~~(2) Commencing July 26, 1994, for all other employers~~  
13 ~~specified in paragraph (2) of the subdivision of Section~~  
14 ~~12926 that defines "employer."~~

15 ~~(m)~~

16 (l) For an employer or other entity covered by this  
17 part, to subject, directly or indirectly, any employee,  
18 applicant, or other person to a test for the presence of a  
19 genetic characteristic.

20 ~~SEC. 8.—~~

21 *SEC. 9.* Section 12945 of the Government Code is  
22 amended to read:

23 12945. It shall be an unlawful employment practice,  
24 unless based upon a bona fide occupational qualification:

25 (a) For any employer, because of the pregnancy,  
26 childbirth, or related medical condition of any female  
27 employee, to refuse to promote her, or to refuse to select  
28 her for a training program leading to promotion,  
29 provided she is able to complete the training program at  
30 least three months prior to the anticipated date of  
31 departure for her pregnancy leave, or to discharge her  
32 from employment or from a training program leading to  
33 promotion, or to discriminate against her in  
34 compensation or in terms, conditions, or privileges of  
35 employment.

36 (b) For any employer to refuse to allow a female  
37 employee affected by pregnancy, childbirth, or related  
38 medical conditions either:

39 (1) To receive the same benefits or privileges of  
40 employment granted by that employer to other persons



1 not so affected who are similar in their ability or inability  
2 to work, including to take disability or sick leave or any  
3 other accrued leave that is made available by the  
4 employer to temporarily disabled employees. For  
5 purposes of this section, pregnancy, childbirth, and  
6 related medical conditions are treated as any other  
7 temporary disability. However, no employer shall be  
8 required to provide a female employee disability leave on  
9 account of normal pregnancy, childbirth, or related  
10 medical condition for a period exceeding six weeks. This  
11 section shall not be construed to require an employer to  
12 provide his or her employees with health insurance  
13 coverage for the medical costs of pregnancy, childbirth,  
14 or related medical conditions. The inclusion in any health  
15 insurance coverage of any provisions or coverage relating  
16 to medical costs of pregnancy, childbirth, or related  
17 medical conditions shall not be construed to require the  
18 inclusion of any other provisions or coverage, nor shall  
19 coverage of any related medical conditions be required  
20 by virtue of coverage of any medical costs of pregnancy,  
21 childbirth, or other related medical conditions.

22 (2) To take a leave on account of pregnancy for a  
23 reasonable period of time not to exceed four months. The  
24 employee shall be entitled to utilize any accrued vacation  
25 leave during this period of time. Reasonable period of  
26 time means that period during which the female  
27 employee is disabled on account of pregnancy, childbirth,  
28 or related medical conditions. This paragraph shall not be  
29 construed to limit the provisions of paragraph (1) of  
30 subdivision (b).

31 An employer may require any employee who plans to  
32 take a leave pursuant to this subdivision to give the  
33 employer reasonable notice of the date the leave shall  
34 commence and the estimated duration of the leave.

35 (c) (1) For any employer, including both employers  
36 subject to and not subject to Title VII of the federal Civil  
37 Rights Act of 1964, to refuse to provide reasonable  
38 accommodation for an employee for conditions related to  
39 pregnancy, childbirth, or related medical conditions, if



1 she so requests, with the advice of her health care  
2 provider.

3 (2) For any employer, including both employers  
4 subject to and not subject to Title VII of the federal Civil  
5 Rights Act of 1964, who has a policy, practice, or collective  
6 bargaining agreement requiring or authorizing the  
7 transfer of temporarily disabled employees to less  
8 strenuous or hazardous positions for the duration of the  
9 disability to refuse to transfer a pregnant female  
10 employee who so requests.

11 (3) For any employer, including both employers  
12 subject to and not subject to Title VII of the federal Civil  
13 Rights Act of 1964, to refuse to temporarily transfer a  
14 pregnant female employee to a less strenuous or  
15 hazardous position for the duration of her pregnancy if  
16 she so requests, with the advice of her physician, where  
17 that transfer can be reasonably accommodated.  
18 However, no employer shall be required by this section  
19 to create additional employment that the employer  
20 would not otherwise have created, nor shall the employer  
21 be required to discharge any employee, transfer any  
22 employee with more seniority, or promote any employee  
23 who is not qualified to perform the job.

24 (d) This section shall not be construed to affect any  
25 other provision of law relating to sex discrimination or  
26 pregnancy, or in any way to diminish the coverage of  
27 pregnancy, childbirth, or medical conditions related to  
28 pregnancy or childbirth under any other provisions of this  
29 part, including subdivision (a) of Section 12940.

30 (e) Except for subdivision (c) and paragraph (2) of  
31 subdivision (b), this section is inapplicable to any  
32 employer subject to Title VII of the federal Civil Rights  
33 Act of 1964.

34 ~~SEC. 9.~~

35 *SEC. 10.* Section 12948 of the Government Code is  
36 amended to read:

37 12948. It is an unlawful practice under this part for a  
38 person to deny or to aid, incite, or conspire in the denial  
39 of the rights created by Section 51, 51.5, 51.7, 54, 54.1, or  
40 54.2 of the Civil Code.



1 ~~SEC. 10.~~

2 *SEC. 11.* Section 12955 of the Government Code is  
3 amended to read:

4 12955. It shall be unlawful:

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

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

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

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

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

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



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

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

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

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

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

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

33 (l) To discriminate through public or private land use  
34 practices, decisions, and authorizations because of race,  
35 color, religion, sex, familial status, marital status,  
36 disability, national origin, or ancestry. Discrimination  
37 includes, but is not limited to, restrictive covenants,  
38 zoning laws, denials of use permits, and other actions  
39 authorized under the Planning and Zoning Law (Title 7





1 (commencing with Section 65000)), that make housing  
2 opportunities unavailable.

3 (m) As used in this section, “race, color, religion, sex,  
4 marital status, national origin, ancestry, familial status, or  
5 disability” includes a perception that the person has any  
6 of those characteristics or that the person is associated  
7 with a person who has, or is perceived to have, any of  
8 those characteristics.

9 ~~SEC. 11.~~

10 *SEC. 12.* 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, that determination shall be made and  
36 shall be communicated in writing within one year after  
37 the filing of the complaint to each person, employer, labor  
38 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 HIV/AIDS discrimination claims, acting on  
19 behalf of any person claiming to be aggrieved due to  
20 HIV/AIDS discrimination, may also bring a civil action  
21 under this part against the person, employer, labor  
22 organization, or employment agency named in the  
23 notice. The superior and municipal courts of the State of  
24 California shall have jurisdiction of those actions, and the  
25 aggrieved person may file in any of these courts. Such an  
26 action may be brought in any county in the state in which  
27 the unlawful practice is alleged to have been committed,  
28 in the county in which the records relevant to the  
29 practice are maintained and administered, or in the  
30 county in which the aggrieved person would have  
31 worked or would have had access to the public  
32 accommodation but for the alleged unlawful practice, but  
33 if the defendant is not found within any of these counties,  
34 an action may be brought within the county of the  
35 defendant's residence or principal office. A copy of any  
36 complaint filed pursuant to this part shall be served on the  
37 principal offices of the department and of the  
38 commission. The remedy for failure to send a copy of a  
39 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 attorney's fees and costs, including expert  
8 witness fees, except where the action is filed by a public  
9 agency or a public official, acting in an official capacity.

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

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



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

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

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

20 ~~SEC. 12.~~

21 *SEC. 13.* 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.

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 (\$150,000) per aggrieved person per respondent.

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

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

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

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

- 25 (1) Physical and mental well-being.
- 26 (2) Personal integrity, dignity, and privacy.
- 27 (3) Ability to work, earn a living, and advance in his or  
28 her career.
- 29 (4) Personal and professional reputation.
- 30 (5) Family relationships.
- 31 (6) Access to the job and ability to associate with peers  
32 and coworkers.

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

39 (c) In addition to the foregoing, in order to vindicate  
40 the purposes and policies of this part, the commission may



1 assess against the respondent, if the accusation or  
2 amended accusation so prays, an administrative fine per  
3 aggrieved person per respondent, the amount of which  
4 shall be determined in accordance with the combined  
5 amount limitation of paragraph (3) of subdivision (a).

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

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

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

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

36 (f) If the commission finds the respondent has  
37 engaged in an unlawful practice under this part, and the  
38 respondent is licensed or granted a privilege by an agency  
39 of the state to do business, provide a service, or conduct  
40 activities, and the unlawful practice is determined to



1 have occurred in connection with the exercise of that  
2 license or privilege, the commission shall provide the  
3 licensing or privilege granting agency with a copy of its  
4 decision or order.

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

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

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

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

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

32 ~~SEC. 13.—~~

33 *SEC. 14.* Section 12989.2 of the Government Code is  
34 amended to read:

35 12989.2. In a civil action brought under Section 12989  
36 or 12989.1, if the court finds that a discriminatory housing  
37 practice has occurred or is about to occur, the court may  
38 award the plaintiff or complainant actual and punitive  
39 damages and may grant other relief, including the  
40 issuance of a temporary or permanent injunction, or



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

8 ~~SEC. 14. The amendments made by this act to Section~~  
9 ~~51.5 of the Civil Code, to Section 12926 of the Government~~  
10 ~~Code, and in the subdivision (m) added to Section 12955~~  
11 ~~of the Government Code do not constitute a change in,~~  
12 ~~but is declaratory of, existing law.~~

13 *SEC. 15. Section 12989.3 of the Government Code is*  
14 *amended to read:*

15 12989.3. (a) Whenever the Attorney General has  
16 reasonable cause to believe that any person or group of  
17 persons is engaged in a pattern or practice of denying to  
18 others the full enjoyment of any of the rights granted by  
19 this article, or that any group of persons has been denied  
20 any of the rights granted by this article and that denial  
21 raises an issue of general public importance, the Attorney  
22 General shall commence a civil action in any court.

23 (b) Upon referral from the department, the Attorney  
24 General may commence a civil action in any appropriate  
25 court for appropriate relief with respect to a  
26 discriminatory housing practice referred to the Attorney  
27 General by the department under subdivision (b) of  
28 Section 12981.

29 (c) A civil action under this section may be  
30 commenced not later than the expiration of 18 months  
31 after the date of the occurrence or termination of the  
32 alleged discriminatory housing practice.

33 (d) The Attorney General shall commence a civil  
34 action in any appropriate court for appropriate relief with  
35 respect to breach of a conciliation agreement referred to  
36 the Attorney General by the department. A civil action  
37 shall be commenced under this paragraph not later than  
38 the expiration of 90 days after the referral of the alleged  
39 breach.





1 (e) The Attorney General, on behalf of the  
2 department or other party at whose request a subpoena  
3 is issued, under this article, shall enforce that subpoena in  
4 appropriate proceedings in the court for the judicial  
5 district in which the person to whom the subpoena was  
6 addressed resides, was served, or transacts business.

7 (f) In a civil action under this section, the court may  
8 award any of the following:

9 (1) Preventive relief, including a permanent or  
10 temporary injunction, restraining order, or other order  
11 against the person responsible for a violation of this title  
12 as is necessary to assure the full enjoyment of the rights  
13 granted by this title.

14 (2) Other relief as the court deems appropriate,  
15 including monetary damages to persons aggrieved.

16 (3) A civil penalty in an amount not exceeding fifty  
17 thousand dollars (\$50,000), for a first violation, and in an  
18 amount not exceeding one hundred thousand dollars  
19 (\$100,000), for any subsequent violation.

20 (g) In a civil action under this section, the court, in its  
21 discretion, may allow the prevailing party, other than the  
22 state, reasonable attorney's fees and costs, *including*  
23 *expert witness fees*, against any party other than the state.

24 (h) Upon timely application, any person may  
25 intervene in a civil action commenced by the Attorney  
26 General under this section that involves an alleged  
27 discriminatory housing practice with respect to which  
28 that person is an aggrieved person or a conciliation  
29 agreement to which that person is a party. The court may  
30 grant appropriate relief to any intervening party as is  
31 authorized to be granted to a plaintiff in a civil action  
32 under Section 12989.2.

33 *SEC. 16. The amendments made by this act to Section*  
34 *51.5 of the Civil Code and to Sections 12926, 12927, and*  
35 *12955 of the Government Code do not constitute a change*  
36 *in, but are declaratory of existing law.*

