

AMENDED IN SENATE APRIL 12, 2007

SENATE BILL

No. 836

Introduced by Senator Kuehl

February 23, 2007

An act to amend Sections 12920, 12921, 12926, 12940, and 12955.2 of the Government Code, relating to fair employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 836, as amended, Kuehl. Fair employment: familial status.

Existing law, the Fair Employment and Housing Act, protects and safeguards the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

This bill would include "familial status" as an additional basis upon which the right to seek, obtain, and hold employment cannot be denied.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 12920 of the Government Code is
2 amended to read:
3 12920. It is hereby declared as the public policy of this state
4 that it is necessary to protect and safeguard the right and
5 opportunity of all persons to seek, obtain, and hold employment
6 without discrimination or abridgment on account of race, religious
7 creed, color, national origin, ancestry, physical disability, mental

1 disability, medical condition, marital status, familial status, sex,
2 age, or sexual orientation.

3 It is recognized that the practice of denying employment
4 opportunity and discriminating in the terms of employment for
5 these reasons foments domestic strife and unrest, deprives the state
6 of the fullest utilization of its capacities for development and
7 advancement, and substantially and adversely affects the interest
8 of employees, employers, and the public in general.

9 Further, the practice of discrimination because of race, color,
10 religion, sex, marital status, national origin, ancestry, familial
11 status, disability, or sexual orientation in housing accommodations
12 is declared to be against public policy.

13 It is the purpose of this part to provide effective remedies that
14 will eliminate these discriminatory practices.

15 This part shall be deemed an exercise of the police power of the
16 state for the protection of the welfare, health, and peace of the
17 people of this state.

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

20 12921. (a) The opportunity to seek, obtain and hold
21 employment without discrimination because of race, religious
22 creed, color, national origin, ancestry, physical disability, mental
23 disability, medical condition, marital status, familial status, sex,
24 age, or sexual orientation is hereby recognized as and declared to
25 be a civil right.

26 (b) The opportunity to seek, obtain, and hold housing without
27 discrimination because of race, color, religion, sex, sexual
28 orientation, marital status, national origin, ancestry, familial status,
29 disability, or any other basis prohibited by Section 51 of the Civil
30 Code is hereby recognized as and declared to be a civil right.

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

33 12926. As used in this part in connection with unlawful
34 practices, unless a different meaning clearly appears from the
35 context:

36 (a) “Affirmative relief” or “prospective relief” includes the
37 authority to order reinstatement of an employee, awards of backpay,
38 reimbursement of out-of-pocket expenses, hiring, transfers,
39 reassignments, grants of tenure, promotions, cease and desist
40 orders, posting of notices, training of personnel, testing, expunging

1 of records, reporting of records, and any other similar relief that
2 is intended to correct unlawful practices under this part.

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

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

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

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

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

17 (f) “Essential functions” means the fundamental job duties of
18 the employment position the individual with a disability holds or
19 desires. “Essential functions” does not include the marginal
20 functions of the position.

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

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

26 (B) The function may be essential because of the limited number
27 of employees available among whom the performance of that job
28 function can be distributed.

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

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

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

35 (B) Written job descriptions prepared before advertising or
36 interviewing applicants for the job.

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

38 (D) The consequences of not requiring the incumbent to perform
39 the function.

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

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

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

3 (g) “Labor organization” includes any organization that exists
4 and is constituted for the purpose, in whole or in part, of collective
5 bargaining or of dealing with employers concerning grievances,
6 terms or conditions of employment, or of other mutual aid or
7 protection.

8 (h) “Medical condition” means either of the following:

9 (1) Any health impairment related to or associated with a
10 diagnosis of cancer or a record or history of cancer.

11 (2) Genetic characteristics. For purposes of this section, “genetic
12 characteristics” means either of the following:

13 (A) Any scientifically or medically identifiable gene or
14 chromosome, or combination or alteration thereof, that is known
15 to be a cause of a disease or disorder in a person or his or her
16 offspring, or that is determined to be associated with a statistically
17 increased risk of development of a disease or disorder, and that is
18 presently not associated with any symptoms of any disease or
19 disorder.

20 (B) Inherited characteristics that may derive from the individual
21 or family member, that are known to be a cause of a disease or
22 disorder in a person or his or her offspring, or that are determined
23 to be associated with a statistically increased risk of development
24 of a disease or disorder, and that are presently not associated with
25 any symptoms of any disease or disorder.

26 (i) “Mental disability” includes, but is not limited to, all of the
27 following:

28 (1) Having any mental or psychological disorder or condition,
29 such as mental retardation, organic brain syndrome, emotional or
30 mental illness, or specific learning disabilities, that limits a major
31 life activity. For purposes of this section:

32 (A) “Limits” shall be determined without regard to mitigating
33 measures, such as medications, assistive devices, or reasonable
34 accommodations, unless the mitigating measure itself limits a
35 major life activity.

36 (B) A mental or psychological disorder or condition limits a
37 major life activity if it makes the achievement of the major life
38 activity difficult.

39 (C) “Major life activities” shall be broadly construed and shall
40 include physical, mental, and social activities and working.

1 (2) Any other mental or psychological disorder or condition not
2 described in paragraph (1) that requires special education or related
3 services.

4 (3) Having a record or history of a mental or psychological
5 disorder or condition described in paragraph (1) or (2), which is
6 known to the employer or other entity covered by this part.

7 (4) Being regarded or treated by the employer or other entity
8 covered by this part as having, or having had, any mental condition
9 that makes achievement of a major life activity difficult.

10 (5) Being regarded or treated by the employer or other entity
11 covered by this part as having, or having had, a mental or
12 psychological disorder or condition that has no present disabling
13 effect, but that may become a mental disability as described in
14 paragraph (1) or (2).

15 “Mental disability” does not include sexual behavior disorders,
16 compulsive gambling, kleptomania, pyromania, or psychoactive
17 substance use disorders resulting from the current unlawful use of
18 controlled substances or other drugs.

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

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

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

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

34 (B) Limits a major life activity. For purposes of this section:

35 (i) “Limits” shall be determined without regard to mitigating
36 measures such as medications, assistive devices, prosthetics, or
37 reasonable accommodations, unless the mitigating measure itself
38 limits a major life activity.

1 (ii) A physiological disease, disorder, condition, cosmetic
2 disfigurement, or anatomical loss limits a major life activity if it
3 makes the achievement of the major life activity difficult.

4 (iii) “Major life activities” shall be broadly construed and
5 includes physical, mental, and social activities and working.

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

8 (3) Having a record or history of a disease, disorder, condition,
9 cosmetic disfigurement, anatomical loss, or health impairment
10 described in paragraph (1) or (2), which is known to the employer
11 or other entity covered by this part.

12 (4) Being regarded or treated by the employer or other entity
13 covered by this part as having, or having had, any physical
14 condition that makes achievement of a major life activity difficult.

15 (5) Being regarded or treated by the employer or other entity
16 covered by this part as having, or having had, a disease, disorder,
17 condition, cosmetic disfigurement, anatomical loss, or health
18 impairment that has no present disabling effect but may become
19 a physical disability as described in paragraph (1) or (2).

20 (6) “Physical disability” does not include sexual behavior
21 disorders, compulsive gambling, kleptomania, pyromania, or
22 psychoactive substance use disorders resulting from the current
23 unlawful use of controlled substances or other drugs.

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

33 (m) “Race, religious creed, color, national origin, ancestry,
34 physical disability, mental disability, medical condition, marital
35 status, familial status, sex, age, or sexual orientation” includes a
36 perception that the person has any of those characteristics or that
37 the person is associated with a person who has, or is perceived to
38 have, any of those characteristics.

39 (n) “Reasonable accommodation” may include either of the
40 following:

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

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

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

12 (p) “Sex” includes, but is not limited to, pregnancy, childbirth,
13 or medical conditions related to pregnancy or childbirth. “Sex”
14 also includes, but is not limited to, a person’s gender, as defined
15 in Section 422.56 of the Penal Code.

16 (q) “Sexual orientation” means heterosexuality, homosexuality,
17 and bisexuality.

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

26 (s) “Undue hardship” means an action requiring significant
27 difficulty or expense, when considered in light of the following
28 factors:

29 (1) The nature and cost of the accommodation needed.

30 (2) The overall financial resources of the facilities involved in
31 the provision of the reasonable accommodations, the number of
32 persons employed at the facility, and the effect on expenses and
33 resources or the impact otherwise of these accommodations upon
34 the operation of the facility.

35 (3) The overall financial resources of the covered entity, the
36 overall size of the business of a covered entity with respect to the
37 number of employees, and the number, type, and location of its
38 facilities.

39 (4) The type of operations, including the composition, structure,
40 and functions of the workforce of the entity.

1 (5) The geographic separateness, administrative, or fiscal
2 relationship of the facility or facilities.

3 (t) (1) In connection with unlawful employment practices, the
4 meaning of “familial status” includes being an individual who is
5 or *who* will be caring for or supporting a family member.

6 *For purposes of this section:*

7 (A) “Caring for or supporting” means any of the following:

8 (i) *Providing supervision or transportation.*

9 (ii) *Providing psychological or emotional comfort and support.*

10 (iii) *Addressing medical, educational, nutritional, hygienic, or*
11 *safety needs.*

12 (iv) *Attending to an illness, injury, or mental or physical*
13 *disability.*

14 (B) “Family member” means any of the following:

15 (i) *A child as defined in Section 3302 of the Unemployment*
16 *Insurance Code.*

17 (ii) *A parent as defined in Section 3302 of the Unemployment*
18 *Insurance Code.*

19 (iii) *A spouse, which means the partner to a lawful marriage.*

20 (iv) *A domestic partner as defined in Section 297 of the Family*
21 *Code.*

22 (v) *A parent-in-law which means the parent of a spouse or*
23 *domestic partner.*

24 (vi) *A sibling as defined in paragraph (c) of Section 362.1 of*
25 *the Welfare and Institutions Code.*

26 (vii) *A grandparent.*

27 (viii) *A grandchild.*

28 (2) In connection, with unlawful housing practices, “familial
29 status” has the same meaning as defined in Section 12955.2.

30 SEC. 4. Section 12940 of the Government Code is amended
31 to read:

32 12940. It shall be an unlawful employment practice, unless
33 based upon a bona fide occupational qualification, or, except where
34 based upon applicable security regulations established by the
35 United States or the State of California:

36 (a) For an employer, because of the race, religious creed, color,
37 national origin, ancestry, physical disability, mental disability,
38 medical condition, marital status, familial status, sex, age, or sexual
39 orientation of any person, to refuse to hire or employ the person
40 or to refuse to select the person for a training program leading to

1 employment, or to bar or to discharge the person from employment
2 or from a training program leading to employment, or to
3 discriminate against the person in compensation or in terms,
4 conditions, or privileges of employment.

5 (1) This part does not prohibit an employer from refusing to
6 hire or discharging an employee with a physical or mental
7 disability, or subject an employer to any legal liability resulting
8 from the refusal to employ or the discharge of an employee with
9 a physical or mental disability, where the employee, because of
10 his or her physical or mental disability, is unable to perform his
11 or her essential duties even with reasonable accommodations, or
12 cannot perform those duties in a manner that would not endanger
13 his or her health or safety or the health or safety of others even
14 with reasonable accommodations.

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

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

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

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

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

1 (5) Nothing in this part prohibits an employer from refusing to
2 employ an individual because of his or her age if the law compels
3 or provides for that refusal. Promotions within the existing staff,
4 hiring or promotion on the basis of experience and training, rehiring
5 on the basis of seniority and prior service with the employer, or
6 hiring under an established recruiting program from high schools,
7 colleges, universities, or trade schools do not, in and of themselves,
8 constitute unlawful employment practices.

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

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

29 (d) For any employer or employment agency to print or circulate
30 or cause to be printed or circulated any publication, or to make
31 any non-job-related inquiry of an employee or applicant, either
32 verbal or through use of an application form, that expresses,
33 directly or indirectly, any limitation, specification, or discrimination
34 as to race, religious creed, color, national origin, ancestry, physical
35 disability, mental disability, medical condition, marital status,
36 familial status, sex, age, or sexual orientation, or any intent to make
37 any such limitation, specification or discrimination. Nothing in
38 this part prohibits an employer or employment agency from
39 inquiring into the age of an applicant, or from specifying age
40 limitations, where the law compels or provides for that action.

1 (e) (1) Except as provided in paragraph (2) or (3), for any
2 employer or employment agency to require any medical or
3 psychological examination of an applicant, to make any medical
4 or psychological inquiry of an applicant, to make any inquiry
5 whether an applicant has a mental disability or physical disability
6 or medical condition, or to make any inquiry regarding the nature
7 or severity of a physical disability, mental disability, or medical
8 condition.

9 (2) Notwithstanding paragraph (1), an employer or employment
10 agency may inquire into the ability of an applicant to perform
11 job-related functions and may respond to an applicant's request
12 for reasonable accommodation.

13 (3) Notwithstanding paragraph (1), an employer or employment
14 agency may require a medical or psychological examination or
15 make a medical or psychological inquiry of a job applicant after
16 an employment offer has been made but prior to the
17 commencement of employment duties, provided that the
18 examination or inquiry is job-related and consistent with business
19 necessity and that all entering employees in the same job
20 classification are subject to the same examination or inquiry.

21 (f) (1) Except as provided in paragraph (2), for any employer
22 or employment agency to require any medical or psychological
23 examination of an employee, to make any medical or psychological
24 inquiry of an employee, to make any inquiry whether an employee
25 has a mental disability, physical disability, or medical condition,
26 or to make any inquiry regarding the nature or severity of a physical
27 disability, mental disability, or medical condition.

28 (2) Notwithstanding paragraph (1), an employer or employment
29 agency may require any examinations or inquiries that it can show
30 to be job-related and consistent with business necessity. An
31 employer or employment agency may conduct voluntary medical
32 examinations, including voluntary medical histories, which are
33 part of an employee health program available to employees at that
34 worksite.

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

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

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

9 (j) (1) For an employer, labor organization, employment agency,
10 apprenticeship training program or any training program leading
11 to employment, or any other person, because of race, religious
12 creed, color, national origin, ancestry, physical disability, mental
13 disability, medical condition, marital status, familial status, sex,
14 age, or sexual orientation, to harass an employee, an applicant, or
15 a person providing services pursuant to a contract. Harassment of
16 an employee, an applicant, or a person providing services pursuant
17 to a contract by an employee, other than an agent or supervisor,
18 shall be unlawful if the entity, or its agents or supervisors, knows
19 or should have known of this conduct and fails to take immediate
20 and appropriate corrective action. An employer may also be
21 responsible for the acts of nonemployees, with respect to sexual
22 harassment of employees, applicants, or persons providing services
23 pursuant to a contract in the workplace, where the employer, or
24 its agents or supervisors, knows or should have known of the
25 conduct and fails to take immediate and appropriate corrective
26 action. In reviewing cases involving the acts of nonemployees, the
27 extent of the employer's control and any other legal responsibility
28 which the employer may have with respect to the conduct of those
29 nonemployees shall be considered. An entity shall take all
30 reasonable steps to prevent harassment from occurring. Loss of
31 tangible job benefits shall not be necessary in order to establish
32 harassment.

33 (2) The provisions of this subdivision are declaratory of existing
34 law, except for the new duties imposed on employers with regard
35 to harassment.

36 (3) An employee of an entity subject to this subdivision is
37 personally liable for any harassment prohibited by this section that
38 is perpetrated by the employee, regardless of whether the employer
39 or covered entity knows or should have known of the conduct and
40 fails to take immediate and appropriate corrective action.

1 (4) (A) For purposes of this subdivision only, “employer” means
2 any person regularly employing one or more persons or regularly
3 receiving the services of one or more persons providing services
4 pursuant to a contract, or any person acting as an agent of an
5 employer, directly or indirectly, the state, or any political or civil
6 subdivision of the state, and cities. The definition of “employer”
7 in subdivision (d) of Section 12926 applies to all provisions of this
8 section other than this subdivision.

9 (B) Notwithstanding subparagraph (A), for purposes of this
10 subdivision, “employer” does not include a religious association
11 or corporation not organized for private profit, except as provided
12 in Section 12926.2.

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

16 (5) For purposes of this subdivision, “a person providing services
17 pursuant to a contract” means a person who meets all of the
18 following criteria:

19 (A) The person has the right to control the performance of the
20 contract for services and discretion as to the manner of
21 performance.

22 (B) The person is customarily engaged in an independently
23 established business.

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

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

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

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

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

19 (n) For an employer or other entity covered by this part to fail
20 to engage in a timely, good faith, interactive process with the
21 employee or applicant to determine effective reasonable
22 accommodations, if any, in response to a request for reasonable
23 accommodation by an employee or applicant with a known physical
24 or mental disability or known medical condition.

25 (o) For an employer or other entity covered by this part, to
26 subject, directly or indirectly, any employee, applicant, or other
27 person to a test for the presence of a genetic characteristic.

28 SEC. 5. Section 12955.2 of the Government Code is amended
29 to read:

30 12955.2. For purposes of this part in connection with unlawful
31 housing practices, ~~unless a different meaning clearly appears from~~
32 ~~the context,~~ “familial status” means one or more individuals under
33 18 years of age who reside with a parent, another person with care
34 and legal custody of that individual, a person who has been given
35 care and custody of that individual by a state or local governmental
36 agency that is responsible for the welfare of children, or the
37 designee of that parent or other person with legal custody of any
38 individual under 18 years of age by written consent of the parent
39 or designated custodian. The protections afforded by this part
40 against discrimination on the basis of familial status also apply to

1 any individual who is pregnant, who is in the process of securing
2 legal custody of any individual under 18 years of age, or who is
3 in the process of being given care and custody of any individual
4 under 18 years of age by a state or local governmental agency
5 responsible for the welfare of children.

6 SEC. 6. The Legislature intends that nothing in these
7 amendments of Sections 12920, 12921, and 12940, and 12955.2
8 to the Government Code supersedes, limits, or preempts any
9 provision of federal, state, or local law that provides greater
10 protections from employment discrimination than those provided
11 in these sections. The Legislature further intends that these
12 amendments are not intended to limit or preclude any claim or
13 cause of action on the basis of familial status or family
14 responsibilities under federal, state, or local law.

O