

Senate Bill No. 1252

CHAPTER 524

An act to amend Sections 51.2 and 51.10 of the Civil Code, and to amend Sections 12920, 12921, 12927, 12955, 12955.8, and 12987 of the Government Code, relating to housing discrimination.

[Approved by Governor September 29, 2010. Filed with Secretary of State September 29, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1252, Corbett. Housing: discrimination.

(1) Existing law presumes that a housing development for senior citizens constructed on or after January 1, 2001, is designed to meet the physical and social needs of senior citizens for purposes of meeting existing laws regarding age discrimination in housing if the housing development includes specified elements, except housing as to which these provisions are preempted by federal law, as provided.

This bill would provide that selection preferences based on age, imposed in connection with federally approved housing programs, do not constitute age discrimination in housing.

(2) Under the California Fair Employment and Housing Act, it is unlawful for the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability of that person. The act also provides that, with respect to these unlawful practices, proof of a violation of these provisions includes an act that demonstrates an intent to, or has the effect of, discriminating against a person on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, or disability.

This bill would specify that an act that demonstrates an intent to, or has the effect of, discriminating against a person based on his or her source of income is proof of a violation of these provisions. The bill would also define "source of income" for purposes of these provisions.

(3) Existing law requires the Fair Employment and Housing Commission, if it finds that a respondent has engaged in any unlawful practice under the California Fair Employment and Housing Act, to require the respondent to cease and desist from the practice and take actions to effectuate the purposes of the act, including, but not limited to, the payment to the complainant of a civil penalty, not to exceed \$10,000, or not to exceed \$25,000 if there had been a prior violation within 5 years preceding the filing of the complaint, or not to exceed \$50,000 if there had been 2 or more violations within 7 years preceding the filing of the complaint.

This bill would increase the payment of a civil penalty to not exceed \$16,000, or not to exceed \$37,500 if there had been a prior violation within 5 years preceding the filing of the complaint, or not to exceed \$65,000 if there had been 2 or more violations within 7 years preceding the filing of the complaint.

(4) The bill would also include a statement of legislative intent regarding discrimination in housing.

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

SECTION 1. It is the intent of the Legislature in enacting this act to clarify the characteristics that may not serve as a basis for discrimination in housing under the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code). The addition of “source of income” to Sections 12920, 12921, and 12955.8 of the Government Code is strictly intended to create consistency within the California Fair Employment and Housing Act, and does not create any substantive rights in addition to those already provided for under current law.

SEC. 2. Section 51.2 of the Civil Code is amended to read:

51.2. (a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. Where accommodations are designed to meet the physical and social needs of senior citizens, a business establishment may establish and preserve that housing for senior citizens, pursuant to Section 51.3, except housing as to which Section 51.3 is preempted by the prohibition in the federal Fair Housing Amendments Act of 1988 (Public Law 100-430) and implementing regulations against discrimination on the basis of familial status. For accommodations constructed before February 8, 1982, that meet all the criteria for senior citizen housing specified in Section 51.3, a business establishment may establish and preserve that housing development for senior citizens without the housing development being designed to meet physical and social needs of senior citizens.

(b) This section is intended to clarify the holdings in *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 72 and *O’Connor v. Village Green Owners Association* (1983) 33 Cal.3d 790.

(c) This section shall not apply to the County of Riverside.

(d) A housing development for senior citizens constructed on or after January 1, 2001, shall be presumed to be designed to meet the physical and social needs of senior citizens if it includes all of the following elements:

(1) Entryways, walkways, and hallways in the common areas of the development, and doorways and paths of access to and within the housing units, shall be as wide as required by current laws applicable to new multifamily housing construction for provision of access to persons using a standard-width wheelchair.

(2) Walkways and hallways in the common areas of the development shall be equipped with standard height railings or grab bars to assist persons who have difficulty with walking.

(3) Walkways and hallways in the common areas shall have lighting conditions which are of sufficient brightness to assist persons who have difficulty seeing.

(4) Access to all common areas and housing units within the development shall be provided without use of stairs, either by means of an elevator or sloped walking ramps.

(5) The development shall be designed to encourage social contact by providing at least one common room and at least some common open space.

(6) Refuse collection shall be provided in a manner that requires a minimum of physical exertion by residents.

(7) The development shall comply with all other applicable requirements for access and design imposed by law, including, but not limited to, the Fair Housing Act (42 U.S.C. Sec. 3601 et seq.), the Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.), and the regulations promulgated at Title 24 of the California Code of Regulations that relate to access for persons with disabilities or handicaps. Nothing in this section shall be construed to limit or reduce any right or obligation applicable under those laws.

(e) Selection preferences based on age, imposed in connection with a federally approved housing program, do not constitute age discrimination in housing.

SEC. 3. Section 51.10 of the Civil Code is amended to read:

51.10. (a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. A business establishment may establish and preserve housing for senior citizens, pursuant to Section 51.11, except housing as to which Section 51.11 is preempted by the prohibition in the federal Fair Housing Amendments Act of 1988 (Public Law 100-430) and implementing regulations against discrimination on the basis of familial status.

(b) This section is intended to clarify the holdings in *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, and *O'Connor v. Village Green Owners Association* (1983) 33 Cal.3d 790.

(c) Selection preferences based on age, imposed in connection with a federally approved housing program, do not constitute age discrimination in housing.

(d) This section shall only apply to the County of Riverside.

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

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

It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment for these reasons foments

domestic strife and unrest, deprives the state of the fullest utilization of its capacities for development and advancement, and substantially and adversely affects the interest of employees, employers, and the public in general.

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

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

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

SEC. 5. Section 12921 of the Government Code is amended to read:

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

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

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

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

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

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

(c) (1) “Discrimination” includes refusal to sell, rent, or lease housing accommodations; includes refusal to negotiate for the sale, rental, or lease of housing accommodations; includes representation that a housing accommodation is not available for inspection, sale, or rental when that housing accommodation is in fact so available; includes any other denial or withholding of housing accommodations; includes provision of inferior terms, conditions, privileges, facilities, or services in connection with those housing accommodations; includes harassment in connection with those housing accommodations; includes the cancellation or termination of a sale or rental agreement; includes the provision of segregated or separated housing accommodations; includes the refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the disabled person, if the modifications may be necessary to afford the disabled person full enjoyment of the premises,

except that, in the case of a rental, the landlord may, where it is reasonable to do so condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification (other than for reasonable wear and tear), and includes refusal to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.

(2) "Discrimination" does not include either of the following:

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

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

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

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

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

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

(h) "Real estate-related transactions" include any of the following:

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

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

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

(i) "Source of income" means lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant. For the purposes of this definition, a landlord is not considered a representative of a tenant.

SEC. 7. Section 12955 of the Government Code is amended to read:

12955. It shall be unlawful:

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

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

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

(d) For any person subject to the provisions of Section 51 of the Civil Code, as that section applies to housing accommodations, to discriminate against any person on the basis of sex, sexual orientation, color, race, religion, ancestry, national origin, familial status, marital status, disability, source of income, or on any other basis prohibited by that section. Selection preferences based on age, imposed in connection with a federally approved housing program, do not constitute age discrimination in housing.

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

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

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

(h) For any person, for profit, to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion,

sex, sexual orientation, marital status, ancestry, disability, source of income, familial status, or national origin.

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

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

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

(l) To discriminate through public or private land use practices, decisions, and authorizations because of race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry. Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law (Title 7 (commencing with Section 65000)), that make housing opportunities unavailable.

Discrimination under this subdivision also includes the existence of a restrictive covenant, regardless of whether accompanied by a statement that the restrictive covenant is repealed or void. This paragraph shall become operative on January 1, 2001.

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

(n) To use a financial or income standard in the rental of housing that fails to account for the aggregate income of persons residing together or proposing to reside together on the same basis as the aggregate income of married persons residing together or proposing to reside together.

(o) In instances where there is a government rent subsidy, to use a financial or income standard in assessing eligibility for the rental of housing that is not based on the portion of the rent to be paid by the tenant.

(p) (1) For the purposes of this section, “source of income” means lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant. For the purposes of this section, a landlord is not considered a representative of a tenant.

(2) For the purposes of this section, it shall not constitute discrimination based on source of income to make a written or oral inquiry concerning the level or source of income.

SEC. 8. Section 12955.8 of the Government Code is amended to read:

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

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

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

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

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

SEC. 9. Section 12987 of the Government Code is amended to read:

12987. (a) If the commission, after hearing, finds that a respondent has engaged in any unlawful practice as defined in this part, the commission shall state its findings of fact and shall issue and cause to be served on the respondent an order requiring the respondent to cease and desist from the practice and to take those actions, as, in the judgment of the commission, will effectuate the purpose of this part, including, but not limited to, any of the following:

(1) The sale or rental of the housing accommodation if it is still available, or the sale or rental of a like housing accommodation, if one is available, or the provision of financial assistance, terms, conditions, or privileges previously denied in violation of subdivision (f) of Section 12955 in the purchase, organization, or construction of the housing accommodation, if available.

(2) Affirmative or prospective relief, including injunctive or other equitable relief.

(3) The payment to the complainant of a civil penalty against any named respondent, not to exceed sixteen thousand dollars (\$16,000), unless, in a separate accusation, the respondent has been adjudged to have, with intent, committed a prior violation of Section 12955. If the respondent has, in a separate accusation, been adjudged to have committed a prior violation of Section 12955 within the five years preceding the filing of the complaint, the amount of the civil penalty may exceed sixteen thousand dollars (\$16,000), but may not exceed thirty-seven thousand five hundred dollars (\$37,500). If the respondent, in separate accusations, has been adjudged to have, with intent, violated Section 12955 two or more times within the seven-year period preceding the filing of the complaint, the civil penalty may exceed thirty-seven thousand five hundred dollars (\$37,500), but may not exceed sixty-five thousand dollars (\$65,000). All civil penalties awarded under this provision shall be collected by the department. The commission may award the prevailing party, other than the state, reasonable attorney's fees and costs against any party other than the state, including expert witness fees.

(4) The payment of actual damages to the complainant.

(b) In determining whether to assess a civil penalty pursuant to this section, the commission shall find that the respondent has been guilty of oppression, fraud, or malice, expressed or implied, as required by Section 3294 of the Civil Code. In determining the amount of a civil penalty, the commission shall consider Section 12955.6 and relevant evidence of, including, but not limited to, the following:

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

(c) If the commission finds that the respondent has engaged in an unlawful practice under this part, and the respondent is licensed or granted a privilege by an agency of the state or the federal government to do business, provide a service, or conduct activities, and the unlawful practice is determined to have occurred in connection with the exercise of that license or privilege, the commission shall provide the licensing or privilege granting agency with a copy of its decision or order.

(d) If the commission finds that the respondent has engaged in an unlawful practice under this part and is liable for actual damages or a civil penalty, any amount due to the respondent by a state agency may be offset to satisfy the commission's final order or decision.

(e) No remedy shall be available to the aggrieved person unless the aggrieved person waives any and all rights or claims under Section 52 of the Civil Code prior to receiving a remedy, and signs a written waiver to that effect.

(f) The commission may require a report of the manner of compliance.

(g) If the commission finds that a respondent has not engaged in any practice which constitutes a violation of this part, the commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the accusation as to that respondent.

(h) Any order issued by the commission shall have printed on its face references to the provisions of the Administrative Procedure Act which prescribe the rights of appeal of any party to the proceeding to whose position the order is adverse.