

AMENDED IN ASSEMBLY APRIL 27, 2011

AMENDED IN ASSEMBLY MARCH 29, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 887

Introduced by Assembly Member Atkins

(Coauthors: Assembly Members Ammiano, *Dickinson, Gordon, Lara, Monning, and John A. Pérez*)

(Coauthors: Senators *De León, Kehoe, Leno, and Padilla, and Yee*)

February 17, 2011

An act to amend Section 51 of the Civil Code, to amend Sections 200, 210.2, 210.7, 220, 32228, 47605.6, 51007, 66260.6, 66260.7, and 66270 of the Education Code, to amend Sections 12920, 12921, 12926, 12930, 12931, 12935, 12940, 12944, 12949, 12955, 12955.8, 12956.1, and 12956.2 of the Government Code, to amend Sections 676.10, 10140, 10140.2, and 12693.28 of the Insurance Code, to amend Section 3600 of the Labor Code, and to amend Sections 186.21, 422.56, 422.85, 3053.4, and 11410 of the Penal Code, relating to gender.

LEGISLATIVE COUNSEL'S DIGEST

AB 887, as amended, Atkins. Gender.

(1) Existing law contains various provisions that define sex as including gender and define gender as including a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

This bill would make technical changes to those provisions by refining the definition of gender to also mean a person's gender identity and gender expression and would define gender expression as meaning a person's gender-related appearance and behavior whether or not

stereotypically associated with the person's assigned sex at birth. The bill would also replace cross-references to definitions of gender with the referenced definitions refined in the same manner as specified above.

(2) Existing law contains various provisions that require equal rights and opportunities in various aspects, including education, housing, and employment, regardless of gender and prohibits discrimination based on specified characteristics, including sex and gender. Existing law also includes various statements of legislative intent and the policies of the state regarding the equal treatment and equal rights of people regardless of certain enumerated characteristics, including sex and gender. Existing law authorizes the Fair Employment and Housing Commission and the Department of Fair Employment and Housing to perform certain functions to eliminate discrimination in employment and housing on the basis of sex. Existing law requires the county counsel to determine whether certain documents contain an unlawful restrictive covenant based on sex and other characteristics. In these provisions, sex and gender are defined in the same manner described above.

This bill would make technical changes to those provisions by including gender, gender identity, and gender expression among the enumerated characteristics. The bill would make related conforming changes.

(3) Existing law prohibits public schools, including charter schools, from discriminating on the basis of specified characteristics, including gender, and specifies various statements of legislative intent and the policies of the state in that regard. Existing law also prohibits discrimination based on specified characteristics by any postsecondary educational institution that receives, or benefits from, state financial assistance.

This bill would additionally include gender identity and gender expression among those characteristics.

(4) Existing law requires an employer to allow an employee to appear or dress consistently with the employee's gender identity.

This bill would additionally require an employer to allow an employee to appear or dress consistently with the employee's gender expression.

(5) Existing law requires a county recorder who provides a copy of a declaration, governing document, or deed to any person to place a cover page or stamp on the first page of the previously recorded document stating that if the document contains any restriction based on certain characteristics, including sex, that the restriction violates state and federal fair housing laws and is void, and may be removed.

This bill would require the specified language in the cover page or stamp to include the characteristics of gender, gender identity, and gender expression. By requiring the county recorder to change the cover page or stamp, this bill would impose a state-mandated local program.

(6) Existing law prohibits certain property insurance policies from being canceled or refused renewal, and prohibits any premium from being excessive or unfairly discriminatory, solely on the basis that one or more claims has been made against the policy during the preceding 60 months for a loss that is the result of a hate crime committed against the person or property of the insured. That provision defines hate crime as specified acts done to a person because of any enumerated characteristics of that person, including gender.

This bill would additionally include gender expression and gender identity among those characteristics.

(7) Existing law requires the Healthy Families Program to be administered without regard to gender, race, creed, color, sexual orientation, health status, disability, or occupation.

This bill would additionally require that program to be administered without regard to gender, gender identity, or gender expression.

(8) Existing law prohibits a personal relationship or personal connection from being deemed to exist between an employee who is injured or killed by a third party in the course of the employee's employment and that third party based only on a determination that the third party injured or killed the employee solely because of the third party's perception of the employee's race, religious creed, color, national origin, age, gender, disability, sex, or sexual orientation, for purposes of determining whether to grant or deny a workers' compensation claim.

This bill would include among those characteristics gender, gender identity, and gender expression.

(9) Existing law requires the parole authority upon the release of any person who has been imprisoned for any felony offense committed against someone due to the victim's actual or perceived gender, among other characteristics, to order the defendant to refrain from further acts of violence, threats, stalking, or harassment of the victim as a condition of parole, as specified. Existing law also requires the court in any case when a person is convicted of an offense against someone due to the victim's actual or perceived gender, among other characteristics, to make an order protecting the victim, or known immediate family or domestic partner of the victim.

This bill would additionally require the parole authority and the court to make those orders when the offense was due to a victim's actual or perceived gender identity or gender expression.

(10) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 51 of the Civil Code is amended to read:
2 51. (a) This section shall be known, and may be cited, as the
3 Unruh Civil Rights Act.

4 (b) All persons within the jurisdiction of this state are free and
5 equal, and no matter what their sex, race, color, religion, ancestry,
6 national origin, disability, medical condition, marital status, or
7 sexual orientation are entitled to the full and equal
8 accommodations, advantages, facilities, privileges, or services in
9 all business establishments of every kind whatsoever.

10 (c) This section shall not be construed to confer any right or
11 privilege on a person that is conditioned or limited by law or that
12 is applicable alike to persons of every sex, color, race, religion,
13 ancestry, national origin, disability, medical condition, marital
14 status, or sexual orientation.

15 (d) Nothing in this section shall be construed to require any
16 construction, alteration, repair, structural or otherwise, or
17 modification of any sort whatsoever, beyond that construction,
18 alteration, repair, or modification that is otherwise required by
19 other provisions of law, to any new or existing establishment,
20 facility, building, improvement, or any other structure, nor shall
21 anything in this section be construed to augment, restrict, or alter
22 in any way the authority of the State Architect to require
23 construction, alteration, repair, or modifications that the State
24 Architect otherwise possesses pursuant to other laws.

25 (e) For purposes of this section:

1 (1) “Disability” means any mental or physical disability as
2 defined in Sections 12926 and 12926.1 of the Government Code.

3 (2) “Medical condition” has the same meaning as defined in
4 subdivision (h) of Section 12926 of the Government Code.

5 (3) “Religion” includes all aspects of religious belief,
6 observance, and practice.

7 (4) “Sex” includes, but is not limited to, pregnancy, childbirth,
8 or medical conditions related to pregnancy or childbirth. “Sex”
9 also includes, but is not limited to, a person’s gender. “Gender”
10 means sex, and includes a person’s gender identity and gender
11 expression. “Gender expression” means a person’s gender-related
12 appearance and behavior whether or not stereotypically associated
13 with the person’s assigned sex at birth.

14 (5) “Sex, race, color, religion, ancestry, national origin,
15 disability, medical condition, marital status, or sexual orientation”
16 includes a perception that the person has any particular
17 characteristic or characteristics within the listed categories or that
18 the person is associated with a person who has, or is perceived to
19 have, any particular characteristic or characteristics within the
20 listed categories.

21 (6) “Sexual orientation” has the same meaning as defined in
22 subdivision (q) of Section 12926 of the Government Code.

23 (f) A violation of the right of any individual under the Americans
24 with Disabilities Act of 1990 (Public Law 101-336) shall also
25 constitute a violation of this section.

26 SEC. 2. Section 200 of the Education Code is amended to read:
27 200. It is the policy of the State of California to afford all
28 persons in public schools, regardless of their disability, gender,
29 gender identity, gender expression, nationality, race or ethnicity,
30 religion, sexual orientation, or any other characteristic that is
31 contained in the definition of hate crimes set forth in Section 422.55
32 of the Penal Code, equal rights and opportunities in the educational
33 institutions of the state. The purpose of this chapter is to prohibit
34 acts that are contrary to that policy and to provide remedies
35 therefor.

36 SEC. 3. Section 210.2 of the Education Code is amended to
37 read:

38 210.2. “Disability, gender, gender identity, gender expression,
39 nationality, race or ethnicity, religion, sexual orientation, or any
40 other characteristic that is contained in the definition of hate crimes

1 set forth in Section 422.55 of the Penal Code” includes a perception
2 that the person has any of those characteristics or that the person
3 is associated with a person who has, or is perceived to have, any
4 of those characteristics.

5 SEC. 4. Section 210.7 of the Education Code is amended to
6 read:

7 210.7. “Gender” means sex, and includes a person’s gender
8 identity and gender expression. “Gender expression” means a
9 person’s gender-related appearance and behavior whether or not
10 stereotypically associated with the person’s assigned sex at birth.

11 SEC. 5. Section 220 of the Education Code is amended to read:

12 220. No person shall be subjected to discrimination on the basis
13 of disability, gender, gender identity, gender expression,
14 nationality, race or ethnicity, religion, sexual orientation, or any
15 other characteristic that is contained in the definition of hate crimes
16 set forth in Section 422.55 of the Penal Code in any program or
17 activity conducted by an educational institution that receives, or
18 benefits from, state financial assistance or enrolls pupils who
19 receive state student financial aid.

20 SEC. 6. Section 32228 of the Education Code is amended to
21 read:

22 32228. (a) It is the intent of the Legislature that public schools
23 serving pupils in any of grades 8 to 12, inclusive, have access to
24 supplemental resources to establish programs and strategies that
25 promote school safety and emphasize violence prevention among
26 children and youth in the public schools.

27 (b) It is also the intent of the Legislature that public schools
28 have access to supplemental resources to combat bias on the basis
29 of race, color, religion, ancestry, national origin, disability, gender,
30 gender identity, gender expression, or sexual orientation, as defined
31 in subdivision (q) of Section 12926 of the Government Code, and
32 to prevent and respond to acts of hate violence and bias-related
33 incidents. Sexual orientation shall not include pedophilia.

34 (c) It is further the intent of the Legislature that schoolsites
35 receiving funds pursuant to this article accomplish all of the
36 following goals:

37 (1) Teach pupils techniques for resolving conflicts without
38 violence.

1 (2) Train school staff and administrators to support and promote
2 conflict resolution and mediation techniques for resolving conflicts
3 between and among pupils.

4 (3) Reduce incidents of violence at the schoolsite with an
5 emphasis on prevention and early detection.

6 (4) Provide age-appropriate instruction in domestic violence
7 prevention, dating violence prevention, and interpersonal violence
8 prevention.

9 SEC. 7. Section 47605.6 of the Education Code is amended to
10 read:

11 47605.6. (a) (1) In addition to the authority provided by
12 Section 47605.5, a county board of education may also approve a
13 petition for the operation of a charter school that operates at one
14 or more sites within the geographic boundaries of the county and
15 that provides instructional services that are not generally provided
16 by a county office of education. A county board of education may
17 only approve a countywide charter *only* if it finds, in addition to
18 the other requirements of this section, that the educational services
19 to be provided by the charter school will offer services to a pupil
20 population that will benefit from those services and that cannot be
21 served as well by a charter school that operates in only one school
22 district in the county. A petition for the establishment of a
23 countywide charter school pursuant to this subdivision may be
24 circulated throughout the county by any one or more persons
25 seeking to establish the charter school. The petition may be
26 submitted to the county board of education for review after either
27 of the following conditions are met:

28 (A) The petition has been signed by a number of parents or
29 guardians of pupils residing within the county that is equivalent
30 to at least one-half of the number of pupils that the charter school
31 estimates will enroll in the school for its first year of operation and
32 each of the school districts where the charter school petitioner
33 proposes to operate a facility has received at least 30 days notice
34 of the petitioner's intent to operate a school pursuant to this section.

35 (B) The petition has been signed by a number of teachers that
36 is equivalent to at least one-half of the number of teachers that the
37 charter school estimates will be employed at the school during its
38 first year of operation and each of the school districts where the
39 charter school petitioner proposes to operate a facility has received

1 at least 30 days notice of the petitioner's intent to operate a school
2 pursuant to this section.

3 (2) An existing public school may not be converted to a charter
4 school in accordance with this section.

5 (3) After receiving approval of its petition, a charter school that
6 proposes to establish operations at additional sites within the
7 geographic boundaries of the county board of education shall notify
8 the school districts where those sites will be located. The charter
9 school shall also request a material revision of its charter by the
10 county board of education that approved its charter and the county
11 board shall consider whether to approve those additional locations
12 at an open, public meeting, held no sooner than 30 days following
13 notification of the school districts where the sites will be located.
14 If approved, the location of the approved sites shall be a material
15 revision of the school's approved charter.

16 (4) A petition shall include a prominent statement indicating
17 that a signature on the petition means that the parent or guardian
18 is meaningfully interested in having his or her child or ward attend
19 the charter school, or in the case of a teacher's signature, means
20 that the teacher is meaningfully interested in teaching at the charter
21 school. The proposed charter shall be attached to the petition.

22 (b) No later than 60 days after receiving a petition, in accordance
23 with subdivision (a), the county board of education shall hold a
24 public hearing on the provisions of the charter, at which time the
25 county board of education shall consider the level of support for
26 the petition by teachers, parents or guardians, and the school
27 districts where the charter school petitioner proposes to place
28 school facilities. Following review of the petition and the public
29 hearing, the county board of education shall either grant or deny
30 the charter within 90 days of receipt of the petition. However, this
31 date may be extended by an additional 30 days if both parties agree
32 to the extension. A county board of education may impose any
33 additional requirements beyond those required by this section that
34 it considers necessary for the sound operation of a countywide
35 charter school. A county board of education may grant a charter
36 for the operation of a school under this part only if the board is
37 satisfied that granting the charter is consistent with sound
38 educational practice and that the charter school has reasonable
39 justification for why it could not be established by petition to a
40 school district pursuant to Section 47605. The county board of

1 education shall deny a petition for the establishment of a charter
2 school if the board finds, one or more of the following:

3 (1) The charter school presents an unsound educational program
4 for the pupils to be enrolled in the charter school.

5 (2) The petitioners are demonstrably unlikely to successfully
6 implement the program set forth in the petition.

7 (3) The petition does not contain the number of signatures
8 required by subdivision (a).

9 (4) The petition does not contain an affirmation of each of the
10 conditions described in subdivision (d).

11 (5) The petition does not contain reasonably comprehensive
12 descriptions of all of the following:

13 (A) (i) A description of the educational program of the school,
14 designed, among other things, to identify those pupils whom the
15 school is attempting to educate, what it means to be an “educated
16 person” in the 21st century, and how learning best occurs. The
17 goals identified in that program shall include the objective of
18 enabling pupils to become self-motivated, competent, and lifelong
19 learners.

20 (ii) If the proposed charter school will enroll high school pupils,
21 a description of the manner in which the manner in which the
22 charter school will inform parents regarding the transferability of
23 courses to other public high schools. Courses offered by the charter
24 school that are accredited by the Western Association of Schools
25 and Colleges may be considered to be transferable to other public
26 high schools.

27 (iii) If the proposed charter school will enroll high school pupils,
28 information as to the manner in which the charter school will
29 inform parents as to whether each individual course offered by the
30 charter school meets college entrance requirements. Courses
31 approved by the University of California or the California State
32 University as satisfying their prerequisites for admission may be
33 considered as meeting college entrance requirements for purposes
34 of this clause.

35 (B) The measurable pupil outcomes identified for use by the
36 charter school. “Pupil outcomes,” for purposes of this part, means
37 the extent to which all pupils of the school demonstrate that they
38 have attained the skills, knowledge, and attitudes specified as goals
39 in the school’s educational program.

- 1 (C) The method by which pupil progress in meeting those pupil
2 outcomes is to be measured.
- 3 (D) The location of each charter school facility that the petitioner
4 proposes to operate.
- 5 (E) The governance structure of the school, including, but not
6 limited to, the process to be followed by the school to ensure
7 parental involvement.
- 8 (F) The qualifications to be met by individuals to be employed
9 by the school.
- 10 (G) The procedures that the school will follow to ensure the
11 health and safety of pupils and staff. These procedures shall include
12 the requirement that each employee of the school furnish the school
13 with a criminal record summary as described in Section 44237.
- 14 (H) The means by which the school will achieve a racial and
15 ethnic balance among its pupils that is reflective of the general
16 population residing within the territorial jurisdiction of the school
17 district to which the charter petition is submitted.
- 18 (I) The manner in which annual, independent, financial audits
19 shall be conducted, in accordance with regulations established by
20 the State Board of Education, and the manner in which audit
21 exceptions and deficiencies shall be resolved.
- 22 (J) The procedures by which pupils can be suspended or
23 expelled.
- 24 (K) The manner by which staff members of the charter schools
25 will be covered by the State Teachers' Retirement System, the
26 Public Employees' Retirement System, or federal social security.
- 27 (L) The procedures to be followed by the charter school and the
28 county board of education to resolve disputes relating to provisions
29 of the charter.
- 30 (M) A declaration whether or not the charter school shall be
31 deemed the exclusive public school employer of the employees of
32 the charter school for the purposes of the Educational Employment
33 Relations Act (Chapter 10.7 (commencing with Section 3540) of
34 Division 4 of Title 1 of the Government Code).
- 35 (N) Admission requirements, of the charter school, if applicable.
- 36 (O) The public school attendance alternatives for pupils residing
37 within the county who choose not to attend the charter school.
- 38 (P) A description of the rights of an employee of the county
39 office of education, upon leaving the employment of the county
40 office of education, to be employed by the charter school, and a

1 description of any rights of return to the county office of education
2 that an employee may have upon leaving the employ of the charter
3 school.

4 (Q) A description of the procedures to be used if the charter
5 school closes. The procedures shall ensure a final audit of the
6 school to determine the disposition of all assets and liabilities of
7 the charter school, including plans for disposing of any net assets
8 and for the maintenance and transfer of public records.

9 (6) Any other basis that the board finds justifies the denial of
10 the petition.

11 (c) A county board of education that approves a petition for the
12 operation of a countywide charter may, as a condition of charter
13 approval, enter into an agreement with a third party, at the expense
14 of the charter school, to oversee, monitor, and report to the county
15 board of education on the operations of the charter school. The
16 county board of education may prescribe the aspects of the charter
17 school's operations to be monitored by the third party and may
18 prescribe appropriate requirements regarding the reporting of
19 information concerning the operations of the charter school to the
20 county board of education.

21 (d) (1) Charter schools shall meet all statewide standards and
22 conduct the pupil assessments required pursuant to Section 60605
23 and any other statewide standards authorized in statute or pupil
24 assessments applicable to pupils in noncharter public schools.

25 (2) Charter schools shall on a regular basis consult with their
26 parents and teachers regarding the school's educational programs.

27 (e) (1) In addition to any other requirement imposed under this
28 part, a charter school shall be nonsectarian in its programs,
29 admission policies, employment practices, and all other operations,
30 shall not charge tuition, and shall not discriminate against any
31 pupil on the basis of ethnicity, national origin, gender, gender
32 identity, gender expression, or disability. Except as provided in
33 paragraph (2), admission to a charter school shall not be determined
34 according to the place of residence of the pupil, or of his or her
35 parent or guardian, within this state.

36 (2) (A) A charter school shall admit all pupils who wish to
37 attend the school.

38 (B) However, if the number of pupils who wish to attend the
39 charter school exceeds the school's capacity, attendance, except
40 for existing pupils of the charter school, shall be determined by a

1 public random drawing. Preference shall be extended to pupils
2 currently attending the charter school and pupils who reside in the
3 county except as provided for in Section 47614.5. Other preferences
4 may be permitted by the chartering authority on an individual
5 school basis and only if consistent with the law.

6 (C) In the event of a drawing, the county board of education
7 shall make reasonable efforts to accommodate the growth of the
8 charter school and, in no event, shall take any action to impede
9 the charter school from expanding enrollment to meet pupil
10 demand.

11 (f) No county board of education shall require any employee of
12 the county or a school district to be employed in a charter school.

13 (g) No county board of education shall require any pupil enrolled
14 in a county program to attend a charter school.

15 (h) The county board of education shall require that the
16 petitioner or petitioners provide information regarding the proposed
17 operation and potential effects of the school, including, but not
18 limited to, the facilities to be utilized by the school, the manner in
19 which administrative services of the school are to be provided,
20 and potential civil liability effects, if any, upon the school, any
21 school district where the charter school may operate and upon the
22 county board of education. The petitioner or petitioners shall also
23 be required to provide financial statements that include a proposed
24 first-year operational budget, including startup costs, and cashflow
25 and financial projections for the first three years of operation.

26 (i) In reviewing petitions for the establishment of charter schools
27 within the county, the county board of education shall give
28 preference to petitions that demonstrate the capability to provide
29 comprehensive learning experiences to pupils identified by the
30 petitioner or petitioners as academically low-achieving pursuant
31 to the standards established by the State Department of Education
32 under Section 54032.

33 (j) Upon the approval of the petition by the county board of
34 education, the petitioner or petitioners shall provide written notice
35 of that approval, including a copy of the petition, to the school
36 districts within the county, the Superintendent of Public Instruction
37 and to the State Board of Education.

38 (k) If a county board of education denies a petition, the petitioner
39 may not elect to submit the petition for the establishment of the
40 charter school to the State Board of Education.

1 (l) Teachers in charter schools shall be required to hold a
2 Commission on Teacher Credentialing certificate, permit, or other
3 document equivalent to that which a teacher in other public schools
4 would be required to hold. These documents shall be maintained
5 on file at the charter school and shall be subject to periodic
6 inspection by the chartering authority.

7 (m) A charter school shall transmit a copy of its annual,
8 independent, financial audit report for the preceding fiscal year,
9 as described in subparagraph (I) of paragraph (5) of subdivision
10 (b), to the county office of education, State Controller and the State
11 Department of Education by December 15 of each year. This
12 subdivision shall not apply if the audit of the charter school is
13 encompassed in the audit of the chartering entity pursuant to
14 Section 41020.

15 SEC. 8. Section 51007 of the Education Code is amended to
16 read:

17 51007. (a) It is the policy of the State of California that all
18 students enrolled in the state's public elementary and secondary
19 schools, regardless of race, creed, color, national origin, gender,
20 gender identity, gender expression, physical disability, geographic
21 location, or socioeconomic background, shall have equitable access
22 to educational programs designed to strengthen technological skills,
23 including, but not limited to, computer education programs.

24 (b) It is the intent of the Legislature that state appropriations
25 for educational programs designed to strengthen technological
26 skills, including, but not limited to, computer education programs,
27 shall have the goal of ensuring equitable access to those programs
28 for all students.

29 (c) It is the intent of the Legislature that this section shall not
30 be construed to preclude funding of programs designed to serve
31 certain categories of students as part of the state's efforts to target
32 areas of high need.

33 SEC. 9. Section 66260.6 of the Education Code is amended to
34 read:

35 66260.6. “Disability, gender, gender identity, gender
36 expression, nationality, race or ethnicity, religion, sexual
37 orientation, or any other characteristic that is contained in the
38 definition of hate crimes set forth in Section 422.55 of the Penal
39 Code” includes a perception that the person has any of those

1 characteristics or that the person is associated with a person who
2 has, or is perceived to have, any of those characteristics.

3 SEC. 10. Section 66260.7 of the Education Code is amended
4 to read:

5 66260.7. “Gender” means sex, and includes a person’s gender
6 identity and gender expression. “Gender expression” means a
7 person’s gender-related appearance and behavior whether or not
8 stereotypically associated with the person’s assigned sex at birth.

9 SEC. 11. Section 66270 of the Education Code is amended to
10 read:

11 66270. No person shall be subjected to discrimination on the
12 basis of disability, gender, gender identity, gender expression,
13 nationality, race or ethnicity, religion, sexual orientation, or any
14 characteristic listed or defined in Section 11135 of the Government
15 Code or any other characteristic that is contained in the prohibition
16 of hate crimes set forth in subdivision (a) of Section 422.6 of the
17 Penal Code in any program or activity conducted by any
18 postsecondary educational institution that receives, or benefits
19 from, state financial assistance or enrolls students who receive
20 state student financial aid.

21 SEC. 12. Section 12920 of the Government Code is amended
22 to read:

23 12920. It is hereby declared as the public policy of this state
24 that it is necessary to protect and safeguard the right and
25 opportunity of all persons to seek, obtain, and hold employment
26 without discrimination or abridgment on account of race, religious
27 creed, color, national origin, ancestry, physical disability, mental
28 disability, medical condition, marital status, sex, gender, gender
29 identity, gender expression, age, or sexual orientation.

30 It is recognized that the practice of denying employment
31 opportunity and discriminating in the terms of employment for
32 these reasons foments domestic strife and unrest, deprives the state
33 of the fullest utilization of its capacities for development and
34 advancement, and substantially and adversely affects the interest
35 of employees, employers, and the public in general.

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

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

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

6 SEC. 13. Section 12921 of the Government Code is amended
7 to read:

8 12921. (a) The opportunity to seek, obtain and hold
9 employment without discrimination because of race, religious
10 creed, color, national origin, ancestry, physical disability, mental
11 disability, medical condition, marital status, sex, gender, gender
12 identity, gender expression, age, or sexual orientation is hereby
13 recognized as and declared to be a civil right.

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

20 SEC. 14. Section 12926 of the Government Code is amended
21 to read:

22 12926. As used in this part in connection with unlawful
23 practices, unless a different meaning clearly appears from the
24 context:

25 (a) “Affirmative relief” or “prospective relief” includes the
26 authority to order reinstatement of an employee, awards of backpay,
27 reimbursement of out-of-pocket expenses, hiring, transfers,
28 reassessments, grants of tenure, promotions, cease and desist
29 orders, posting of notices, training of personnel, testing, expunging
30 of records, reporting of records, and any other similar relief that
31 is intended to correct unlawful practices under this part.

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

34 (c) “Employee” does not include any individual employed by
35 his or her parents, spouse, or child, or any individual employed
36 under a special license in a nonprofit sheltered workshop or
37 rehabilitation facility.

38 (d) “Employer” includes any person regularly employing five
39 or more persons, or any person acting as an agent of an employer,

- 1 directly or indirectly, the state or any political or civil subdivision
2 of the state, and cities, except as follows:
3 “Employer” does not include a religious association or
4 corporation not organized for private profit.
5 (e) “Employment agency” includes any person undertaking for
6 compensation to procure employees or opportunities to work.
7 (f) “Essential functions” means the fundamental job duties of
8 the employment position the individual with a disability holds or
9 desires. “Essential functions” does not include the marginal
10 functions of the position.
11 (1) A job function may be considered essential for any of several
12 reasons, including, but not limited to, any one or more of the
13 following:
14 (A) The function may be essential because the reason the
15 position exists is to perform that function.
16 (B) The function may be essential because of the limited number
17 of employees available among whom the performance of that job
18 function can be distributed.
19 (C) The function may be highly specialized, so that the
20 incumbent in the position is hired for his or her expertise or ability
21 to perform the particular function.
22 (2) Evidence of whether a particular function is essential
23 includes, but is not limited to, the following:
24 (A) The employer’s judgment as to which functions are essential.
25 (B) Written job descriptions prepared before advertising or
26 interviewing applicants for the job.
27 (C) The amount of time spent on the job performing the function.
28 (D) The consequences of not requiring the incumbent to perform
29 the function.
30 (E) The terms of a collective bargaining agreement.
31 (F) The work experiences of past incumbents in the job.
32 (G) The current work experience of incumbents in similar jobs.
33 (g) “Labor organization” includes any organization that exists
34 and is constituted for the purpose, in whole or in part, of collective
35 bargaining or of dealing with employers concerning grievances,
36 terms or conditions of employment, or of other mutual aid or
37 protection.
38 (h) “Medical condition” means either of the following:
39 (1) Any health impairment related to or associated with a
40 diagnosis of cancer or a record or history of cancer.

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

3 (A) Any scientifically or medically identifiable gene or
4 chromosome, or combination or alteration thereof, that is known
5 to be a cause of a disease or disorder in a person or his or her
6 offspring, or that is determined to be associated with a statistically
7 increased risk of development of a disease or disorder, and that is
8 presently not associated with any symptoms of any disease or
9 disorder.

10 (B) Inherited characteristics that may derive from the individual
11 or family member, that are known to be a cause of a disease or
12 disorder in a person or his or her offspring, or that are determined
13 to be associated with a statistically increased risk of development
14 of a disease or disorder, and that are presently not associated with
15 any symptoms of any disease or disorder.

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

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

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

26 (B) A mental or psychological disorder or condition limits a
27 major life activity if it makes the achievement of the major life
28 activity difficult.

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

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

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

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

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

6 “Mental disability” does not include sexual behavior disorders,
7 compulsive gambling, kleptomania, pyromania, or psychoactive
8 substance use disorders resulting from the current unlawful use of
9 controlled substances or other drugs.

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

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

17 (1) Having any physiological disease, disorder, condition,
18 cosmetic disfigurement, or anatomical loss that does both of the
19 following:

20 (A) Affects one or more of the following body systems:
21 neurological, immunological, musculoskeletal, special sense
22 organs, respiratory, including speech organs, cardiovascular,
23 reproductive, digestive, genitourinary, hemic and lymphatic, skin,
24 and endocrine.

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

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

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

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

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

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

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

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

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

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

22 (m) “Race, religious creed, color, national origin, ancestry,
23 physical disability, mental disability, medical condition, marital
24 status, sex, age, or sexual orientation” includes a perception that
25 the person has any of those characteristics or that the person is
26 associated with a person who has, or is perceived to have, any of
27 those characteristics.

28 (n) “Reasonable accommodation” may include either of the
29 following:

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

32 (2) Job restructuring, part-time or modified work schedules,
33 reassignment to a vacant position, acquisition or modification of
34 equipment or devices, adjustment or modifications of examinations,
35 training materials or policies, the provision of qualified readers or
36 interpreters, and other similar accommodations for individuals
37 with disabilities.

38 (o) “Religious creed,” “religion,” “religious observance,”
39 “religious belief,” and “creed” include all aspects of religious
40 belief, observance, and practice.

1 (p) "Sex" includes, but is not limited to, pregnancy, childbirth,
2 or medical conditions related to pregnancy or childbirth. "Sex"
3 also includes, but is not limited to, a person's gender. "Gender"
4 means sex, and includes a person's gender identity and gender
5 expression. "Gender expression" means a person's gender-related
6 appearance and behavior whether or not stereotypically associated
7 with the person's assigned sex at birth.

8 (q) "Sexual orientation" means heterosexuality, homosexuality,
9 and bisexuality.

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

18 (s) "Undue hardship" means an action requiring significant
19 difficulty or expense, when considered in light of the following
20 factors:

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

22 (2) The overall financial resources of the facilities involved in
23 the provision of the reasonable accommodations, the number of
24 persons employed at the facility, and the effect on expenses and
25 resources or the impact otherwise of these accommodations upon
26 the operation of the facility.

27 (3) The overall financial resources of the covered entity, the
28 overall size of the business of a covered entity with respect to the
29 number of employees, and the number, type, and location of its
30 facilities.

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

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

35 SEC. 15. Section 12930 of the Government Code is amended
36 to read:

37 12930. The department shall have the following functions,
38 powers, and duties:

- 1 (a) To establish and maintain a principal office and any other
2 offices within the state as are necessary to carry out the purposes
3 of this part.
- 4 (b) To meet and function at any place within the state.
- 5 (c) To appoint attorneys, investigators, conciliators, and other
6 employees as it may deem necessary, fix their compensation within
7 the limitations provided by law, and prescribe their duties.
- 8 (d) To obtain upon request and utilize the services of all
9 governmental departments and agencies and, in addition, with
10 respect to housing discrimination, of conciliation councils.
- 11 (e) To adopt, promulgate, amend, and rescind suitable rules and
12 regulations to carry out the functions and duties of the department
13 pursuant to this part.
- 14 (f) (1) To receive, investigate, and conciliate complaints
15 alleging practices made unlawful pursuant to Chapter 6
16 (commencing with Section 12940).
17 (2) To receive, investigate, and conciliate complaints alleging
18 a violation of Section 51, 51.5, 51.7, 54, 54.1, or 54.2 of the Civil
19 Code. The remedies and procedures of this part shall be
20 independent of any other remedy or procedure that might apply.
- 21 (g) In connection with any matter under investigation or in
22 question before the department pursuant to a complaint filed under
23 Section 12960, 12961, or 12980:
 - 24 (1) To issue subpoenas to require the attendance and testimony
25 of witnesses and the production of books, records, documents, and
26 physical materials.
 - 27 (2) To administer oaths, examine witnesses under oath and take
28 evidence, and take depositions and affidavits.
 - 29 (3) To issue written interrogatories.
 - 30 (4) To request the production for inspection and copying of
31 books, records, documents, and physical materials.
 - 32 (5) To petition the superior courts to compel the appearance
33 and testimony of witnesses, the production of books, records,
34 documents, and physical materials, and the answering of
35 interrogatories.
- 36 (h) To issue accusations pursuant to Section 12965 or 12981
37 and to prosecute those accusations before the commission.
- 38 (i) To issue those publications and those results of investigations
39 and research as in its judgment will tend to promote good will and
40 minimize or eliminate discrimination in employment on the bases

1 enumerated in this part and discrimination in housing because of
2 race, religious creed, color, sex, gender, gender identity, gender
3 expression, marital status, national origin, ancestry, familial status,
4 disability, or sexual orientation.

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

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

10 SEC. 16. Section 12931 of the Government Code is amended
11 to read:

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

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

31 SEC. 17. Section 12935 of the Government Code is amended
32 to read:

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

35 (a) To adopt, promulgate, amend, and rescind suitable rules,
36 regulations, and standards (1) to interpret, implement, and apply
37 all provisions of this part, (2) to regulate the conduct of hearings
38 held pursuant to Sections 12967 and 12981, and (3) to carry out
39 all other functions and duties of the commission pursuant to this
40 part.

1 (b) To conduct hearings pursuant to Sections 12967 and 12981.
2 (c) To conduct mediations at the request of the department at
3 any time after a complaint is filed pursuant to Section 12960,
4 12961, or 12980. The department may withdraw a request for
5 mediation at any time to pursue an investigation.

6 (d) To establish and maintain a principal office within the state
7 and to meet and function at any place within the state.

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

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

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

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

37 (i) To issue publications and results of inquiries and research
38 that in its judgment will tend to promote good will and minimize
39 or eliminate unlawful discrimination. These publications shall

1 include an annual report to the Governor and the Legislature of its
2 activities and recommendations.

3 (j) Notwithstanding Sections 11370.3 and 11502, to appoint
4 administrative law judges, as it may deem necessary, to conduct
5 hearings and mediations. Each administrative law judge shall
6 possess the qualifications established by the State Personnel Board
7 for the particular class of position involved. The hearing officers
8 of the commission shall become administrative law judges on the
9 effective date of this subdivision.

10 SEC. 18. Section 12940 of the Government Code is amended
11 to read:

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

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

25 (1) This part does not prohibit an employer from refusing to
26 hire or discharging an employee with a physical or mental
27 disability, or subject an employer to any legal liability resulting
28 from the refusal to employ or the discharge of an employee with
29 a physical or mental disability, where the employee, because of
30 his or her physical or mental disability, is unable to perform his
31 or her essential duties even with reasonable accommodations, or
32 cannot perform those duties in a manner that would not endanger
33 his or her health or safety or the health or safety of others even
34 with reasonable accommodations.

35 (2) This part does not prohibit an employer from refusing to
36 hire or discharging an employee who, because of the employee's
37 medical condition, is unable to perform his or her essential duties
38 even with reasonable accommodations, or cannot perform those
39 duties in a manner that would not endanger the employee's health
40 or safety or the health or safety of others even with reasonable

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

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

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

14 (B) Prohibit bona fide health plans from providing additional
15 or greater benefits to employees with dependents than to those
16 employees without or with fewer dependents.

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

21 (5) (A) This part does not prohibit an employer from refusing
22 to employ an individual because of his or her age if the law
23 compels or provides for that refusal. Promotions within the existing
24 staff, hiring or promotion on the basis of experience and training,
25 rehiring on the basis of seniority and prior service with the
26 employer, or hiring under an established recruiting program from
27 high schools, colleges, universities, or trade schools do not, in and
28 of themselves, constitute unlawful employment practices.

29 (B) The provisions of this part relating to discrimination on the
30 basis of age do not prohibit an employer from providing health
31 benefits or health care reimbursement plans to retired persons that
32 are altered, reduced, or eliminated when the person becomes
33 eligible for Medicare health benefits. This subparagraph applies
34 to all retiree health benefit plans and contractual provisions or
35 practices concerning retiree health benefits and health care
36 reimbursement plans in effect on or after January 1, 2011.

37 (b) For a labor organization, because of the race, religious creed,
38 color, national origin, ancestry, physical disability, mental
39 disability, medical condition, marital status, sex, age, or sexual
40 orientation of any person, to exclude, expel, or restrict from its

1 membership the person, or to provide only second-class or
2 segregated membership or to discriminate against any person
3 because of the race, religious creed, color, national origin, ancestry,
4 physical disability, mental disability, medical condition, marital
5 status, sex, gender, gender identity, gender expression, age, or
6 sexual orientation of the person in the election of officers of the
7 labor organization or in the selection of the labor organization's
8 staff or to discriminate in any way against any of its members or
9 against any employer or against any person employed by an
10 employer.

11 (c) For any person to discriminate against any person in the
12 selection or training of that person in any apprenticeship training
13 program or any other training program leading to employment
14 because of the race, religious creed, color, national origin, ancestry,
15 physical disability, mental disability, medical condition, marital
16 status, sex, gender, gender identity, gender expression, age, or
17 sexual orientation of the person discriminated against.

18 (d) For any employer or employment agency to print or circulate
19 or cause to be printed or circulated any publication, or to make
20 any non-job-related inquiry of an employee or applicant, either
21 verbal or through use of an application form, that expresses,
22 directly or indirectly, any limitation, specification, or discrimination
23 as to race, religious creed, color, national origin, ancestry, physical
24 disability, mental disability, medical condition, marital status, sex,
25 gender, gender identity, gender expression, age, or sexual
26 orientation, or any intent to make any such limitation, specification,
27 or discrimination. This part does not prohibit an employer or
28 employment agency from inquiring into the age of an applicant,
29 or from specifying age limitations, where the law compels or
30 provides for that action.

31 (e) (1) Except as provided in paragraph (2) or (3), for any
32 employer or employment agency to require any medical or
33 psychological examination of an applicant, to make any medical
34 or psychological inquiry of an applicant, to make any inquiry
35 whether an applicant has a mental disability or physical disability
36 or medical condition, or to make any inquiry regarding the nature
37 or severity of a physical disability, mental disability, or medical
38 condition.

39 (2) Notwithstanding paragraph (1), an employer or employment
40 agency may inquire into the ability of an applicant to perform

1 job-related functions and may respond to an applicant's request
2 for reasonable accommodation.

3 (3) Notwithstanding paragraph (1), an employer or employment
4 agency may require a medical or psychological examination or
5 make a medical or psychological inquiry of a job applicant after
6 an employment offer has been made but prior to the
7 commencement of employment duties, provided that the
8 examination or inquiry is job-related and consistent with business
9 necessity and that all entering employees in the same job
10 classification are subject to the same examination or inquiry.

11 (f) (1) Except as provided in paragraph (2), for any employer
12 or employment agency to require any medical or psychological
13 examination of an employee, to make any medical or psychological
14 inquiry of an employee, to make any inquiry whether an employee
15 has a mental disability, physical disability, or medical condition,
16 or to make any inquiry regarding the nature or severity of a physical
17 disability, mental disability, or medical condition.

18 (2) Notwithstanding paragraph (1), an employer or employment
19 agency may require any examinations or inquiries that it can show
20 to be job-related and consistent with business necessity. An
21 employer or employment agency may conduct voluntary medical
22 examinations, including voluntary medical histories, which are
23 part of an employee health program available to employees at that
24 worksite.

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

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

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

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

1 to employment, or any other person, because of race, religious
2 creed, color, national origin, ancestry, physical disability, mental
3 disability, medical condition, marital status, sex, gender, gender
4 identity, gender expression, age, or sexual orientation, to harass
5 an employee, an applicant, or a person providing services pursuant
6 to a contract. Harassment of an employee, an applicant, or a person
7 providing services pursuant to a contract by an employee, other
8 than an agent or supervisor, shall be unlawful if the entity, or its
9 agents or supervisors, knows or should have known of this conduct
10 and fails to take immediate and appropriate corrective action. An
11 employer may also be responsible for the acts of nonemployees,
12 with respect to sexual harassment of employees, applicants, or
13 persons providing services pursuant to a contract in the workplace,
14 where the employer, or its agents or supervisors, knows or should
15 have known of the conduct and fails to take immediate and
16 appropriate corrective action. In reviewing cases involving the
17 acts of nonemployees, the extent of the employer's control and
18 any other legal responsibility which the employer may have with
19 respect to the conduct of those nonemployees shall be considered.
20 An entity shall take all reasonable steps to prevent harassment
21 from occurring. Loss of tangible job benefits shall not be necessary
22 in order to establish harassment.

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

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

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

39 (B) Notwithstanding subparagraph (A), for purposes of this
40 subdivision, "employer" does not include a religious association

1 or corporation not organized for private profit, except as provided
2 in Section 12926.2.

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

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

9 (A) The person has the right to control the performance of the
10 contract for services and discretion as to the manner of
11 performance.

12 (B) The person is customarily engaged in an independently
13 established business.

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

18 (k) For an employer, labor organization, employment agency,
19 apprenticeship training program, or any training program leading
20 to employment, to fail to take all reasonable steps necessary to
21 prevent discrimination and harassment from occurring.

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

1 Sabbath or other religious holy day or days, and reasonable time
2 necessary for travel prior and subsequent to a religious observance.

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

10 (n) For an employer or other entity covered by this part to fail
11 to engage in a timely, good faith, interactive process with the
12 employee or applicant to determine effective reasonable
13 accommodations, if any, in response to a request for reasonable
14 accommodation by an employee or applicant with a known physical
15 or mental disability or known medical condition.

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

19 SEC. 19. Section 12944 of the Government Code is amended
20 to read:

21 12944. (a) It shall be unlawful for a licensing board to require
22 any examination or establish any other qualification for licensing
23 that has an adverse impact on any class by virtue of its race, creed,
24 color, national origin or ancestry, sex, gender, gender identity,
25 gender expression, age, medical condition, physical disability,
26 mental disability, or sexual orientation, unless the practice can be
27 demonstrated to be job related.

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

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

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

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

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

29 (e) It is unlawful for any licensing board to fail to keep records
30 of applications for licensing or certification for a period of two
31 years following the date of receipt of the applications.

32 (f) As used in this section, "licensing board" means any state
33 board, agency, or authority in the State and Consumer Services
34 Agency that has the authority to grant licenses or certificates which
35 are prerequisites to employment eligibility or professional status.

36 SEC. 20. Section 12949 of the Government Code is amended
37 to read:

38 12949. Nothing in this part relating to gender-based
39 discrimination affects the ability of an employer to require an
40 employee to adhere to reasonable workplace appearance, grooming,

1 and dress standards not precluded by other provisions of state or
2 federal law, provided that an employer shall allow an employee
3 to appear or dress consistently with the employee's gender identity
4 or gender expression.

5 SEC. 21. Section 12955 of the Government Code is amended
6 to read:

7 12955. It shall be unlawful:

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

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

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

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

36 (e) For any person, bank, mortgage company or other financial
37 institution that provides financial assistance for the purchase,
38 organization, or construction of any housing accommodation to
39 discriminate against any person or group of persons because of
40 the race, color, religion, sex, gender, gender identity, gender

1 expression, sexual orientation, marital status, national origin,
2 ancestry, familial status, source of income, or disability in the
3 terms, conditions, or privileges relating to the obtaining or use of
4 that financial assistance.

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

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

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

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

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

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

1 (l) To discriminate through public or private land use practices,
2 decisions, and authorizations because of race, color, religion, sex,
3 gender, gender identity, gender expression, sexual orientation,
4 familial status, marital status, disability, national origin, source of
5 income, or ancestry. Discrimination includes, but is not limited
6 to, restrictive covenants, zoning laws, denials of use permits, and
7 other actions authorized under the Planning and Zoning Law (Title
8 7 (commencing with Section 65000)), that make housing
9 opportunities unavailable.

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

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

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

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

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

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

36 SEC. 22. Section 12955.8 of the Government Code is amended
37 to read:

38 12955.8. For purposes of this article, in connection with
39 unlawful practices:

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

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

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

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

38 SEC. 23. Section 12956.1 of the Government Code is amended
39 to read:

1 12956.1. (a) As used in this section, “association,” “governing
2 documents,” and “declaration” have the same meanings as set forth
3 in Section 1351 of the Civil Code.

4 (b) (1) A county recorder, title insurance company, escrow
5 company, real estate broker, real estate agent, or association that
6 provides a copy of a declaration, governing document, or deed to
7 any person shall place a cover page or stamp on the first page of
8 the previously recorded document or documents stating, in at least
9 14-point boldface type, the following:

10 “If this document contains any restriction based on race, color,
11 religion, sex, gender, gender identity, gender expression, sexual
12 orientation, familial status, marital status, disability, national origin,
13 source of income as defined in subdivision (p) of Section 12955,
14 or ancestry, that restriction violates state and federal fair housing
15 laws and is void, and may be removed pursuant to Section 12956.2
16 of the Government Code. Lawful restrictions under state and
17 federal law on the age of occupants in senior housing or housing
18 for older persons shall not be construed as restrictions based on
19 familial status.”

20 (2) The requirements set forth in paragraph (1) shall not apply
21 to documents being submitted for recordation to a county recorder.

22 (c) Any person who records a document for the express purpose
23 of adding a racially restrictive covenant is guilty of a misdemeanor.
24 The county recorder shall not incur any liability for recording the
25 document. Notwithstanding any other provision of law, a
26 prosecution for a violation of this subdivision shall commence
27 within three years after the discovery of the recording of the
28 document.

29 SEC. 24. Section 12956.2 of the Government Code is amended
30 to read:

31 12956.2. (a) A person who holds an ownership interest of
32 record in property that he or she believes is the subject of an
33 unlawfully restrictive covenant in violation of subdivision (*l*) of
34 Section 12955 may record a document titled Restrictive Covenant
35 Modification. The county recorder may choose to waive the fee
36 prescribed for recording and indexing instruments pursuant to
37 Section 27361 in the case of the modification document provided
38 for in this section. The modification document shall include a
39 complete copy of the original document containing the unlawfully

1 restrictive language with the unlawfully restrictive language
2 stricken.

3 (b) Before recording the modification document, the county
4 recorder shall submit the modification document and the original
5 document to the county counsel who shall determine whether the
6 original document contains an unlawful restriction based on race,
7 color, religion, sex, gender, gender identity, gender expression,
8 sexual orientation, familial status, marital status, disability, national
9 origin, source of income as defined in subdivision (p) of Section
10 12955, or ancestry. The county counsel shall return the documents
11 and inform the county recorder of its determination. The county
12 recorder shall refuse to record the modification document if the
13 county counsel finds that the original document does not contain
14 an unlawful restriction as specified in this paragraph.

15 (c) The modification document shall be indexed in the same
16 manner as the original document being modified. It shall contain
17 a recording reference to the original document in the form of a
18 book and page or instrument number, and date of the recording.

19 (d) Subject to covenants, conditions, and restrictions that were
20 recorded after the recording of the original document that contains
21 the unlawfully restrictive language and subject to covenants,
22 conditions, and restrictions that will be recorded after the
23 Restrictive Covenant Modification, the restrictions in the
24 Restrictive Covenant Modification, once recorded, are the only
25 restrictions having effect on the property. The effective date of the
26 terms and conditions of the modification document shall be the
27 same as the effective date of the original document.

28 (e) The county recorder shall make available to the public
29 Restrictive Covenant Modification forms.

30 (f) If the holder of an ownership interest of record in property
31 causes to be recorded a modified document pursuant to this section
32 that contains modifications not authorized by this section, the
33 county recorder shall not incur liability for recording the document.
34 The liability that may result from the unauthorized recordation is
35 the sole responsibility of the holder of the ownership interest of
36 record who caused the modified recordation.

37 (g) This section does not apply to persons holding an ownership
38 interest in property that is part of a common interest development
39 as defined in subdivision (c) of Section 1351 of the Civil Code if
40 the board of directors of that common interest development is

1 subject to the requirements of subdivision (b) of Section 1352.5
2 of the Civil Code.

3 SEC. 25. Section 676.10 of the Insurance Code is amended to
4 read:

5 676.10. (a) This section applies to policies covered by Section
6 675, 675.5, or 676.5 if the insured is a religious organization
7 described in clause (i) of subparagraph (A) of paragraph (1) of
8 subsection (b) of Section 170 of Title 26 of the United States Code,
9 an educational organization described in clause (ii) of subparagraph
10 (A) of paragraph (1) of subsection (b) of Section 170 of Title 26
11 of the United States Code, or other nonprofit organization described
12 in clause (vi) of subparagraph (A) of paragraph (1) of subsection
13 (b) of Section 170 of Title 26 of the United States Code that is
14 organized and operated for religious, charitable, or educational
15 purposes, or a reproductive health services facility, as defined in
16 subdivision (h) of Section 423.1 of the Penal Code, or its
17 administrative offices.

18 (b) No insurer issuing policies subject to this section shall cancel
19 or refuse to renew the policy, nor shall any premium be excessive
20 or unfairly discriminatory solely on the basis that one or more
21 claims has been made against the policy during the preceding 60
22 months for a loss that is the result of a hate crime committed
23 against the person or property of the insured, or an
24 anti-reproductive-rights crime.

25 (c) As it relates to this section, if determined by a law
26 enforcement agency, a "hate crime" may include any of the
27 following:

28 (1) By force or threat of force, willfully injure, intimidate,
29 interfere with, oppress, or threaten any other person in the free
30 exercise or enjoyment of any right or privilege secured to him or
31 her by the Constitution or laws of this state or by the Constitution
32 or laws of the United States because of the other person's race,
33 color, religion, ancestry, national origin, disability, gender, gender
34 identity, gender expression, or sexual orientation, or because he
35 or she perceives that the other person has one or more of those
36 characteristics. However, the foregoing offense does not include
37 speech alone, except upon a showing that the speech itself
38 threatened violence against a specific person or group of persons
39 and that the defendant had the apparent ability to carry out the
40 threat.

1 (2) Knowingly deface, damage, or destroy the real or personal
2 property of any other person for the purpose of intimidating or
3 interfering with the free exercise or enjoyment of any right or
4 privilege secured to the other person by the Constitution or laws
5 of this state or by the Constitution or laws of the United States,
6 because of the other person's race, color, religion, ancestry, national
7 origin, disability, gender, gender identity, gender expression, or
8 sexual orientation, or because he or she perceives that the other
9 person has one or more of those characteristics.

10 (d) As it relates to this section, if determined by a law
11 enforcement agency, "anti-reproductive-rights crime" shall have
12 the meaning set forth in subdivision (a) of Section 13776 of the
13 Penal Code, and shall also include a violation of subdivision (e)
14 of Section 423.2 of the Penal Code, if the crime results in a covered
15 loss under a policy subject to this section.

16 (e) Upon cancellation of or refusal to renew a policy subject to
17 this section after an insured has submitted a claim to the insurer
18 that is the result of a hate crime committed against the person or
19 property of the insured, or an anti-reproductive-rights crime, the
20 insurer shall report the cancellation or nonrenewal to the
21 commissioner.

22 (f) A violation of this section shall be an unfair practice subject
23 to Article 6.5 (commencing with Section 790) of Chapter 1 of
24 Division 2.

25 (g) Nothing in this section shall prevent an insurer subject to
26 this section from taking any of the actions set forth in subdivision
27 (b) on the basis of criteria not otherwise made invalid by this
28 section or any other act, regulation, or law.

29 SEC. 26. Section 10140 of the Insurance Code is amended to
30 read:

31 10140. (a) No admitted insurer, licensed to issue life or
32 disability insurance, shall fail or refuse to accept an application
33 for that insurance, to issue that insurance to an applicant therefor,
34 or issue or cancel that insurance, under conditions less favorable
35 to the insured than in other comparable cases, except for reasons
36 applicable alike to persons of every race, color, religion, sex,
37 gender, gender identity, gender expression, national origin,
38 ancestry, or sexual orientation. Race, color, religion, national
39 origin, ancestry, or sexual orientation shall not, of itself, constitute
40 a condition or risk for which a higher rate, premium, or charge

1 may be required of the insured for that insurance. Unless otherwise
2 prohibited by law, premium, price, or charge differentials because
3 of the sex of any individual when based on objective, valid, and
4 up-to-date statistical and actuarial data or sound underwriting
5 practices are not prohibited.

6 (b) Except as otherwise permitted by law, no admitted insurer,
7 licensed to issue disability insurance policies for hospital, medical,
8 and surgical expenses, shall fail or refuse to accept an application
9 for that insurance, fail or refuse to issue that insurance to an
10 applicant therefor, cancel that insurance, refuse to renew that
11 insurance, charge a higher rate or premium for that insurance, or
12 offer or provide different terms, conditions, or benefits, or place
13 a limitation on coverage under that insurance, on the basis of a
14 person's genetic characteristics that may, under some
15 circumstances, be associated with disability in that person or that
16 person's offspring.

17 (c) No admitted insurer, licensed to issue disability insurance
18 for hospital, medical, and surgical expenses, shall seek information
19 about a person's genetic characteristics for any nontherapeutic
20 purpose.

21 (d) No discrimination shall be made in the fees or commissions
22 of agents or brokers for writing or renewing a policy of disability
23 insurance, other than disability income, on the basis of a person's
24 genetic characteristics that may, under some circumstances, be
25 associated with disability in that person or that person's offspring.

26 (e) It shall be deemed a violation of subdivision (a) for any
27 insurer to consider sexual orientation in its underwriting criteria
28 or to utilize marital status, living arrangements, occupation, sex,
29 beneficiary designation, ZIP Codes or other territorial classification
30 within this state, or any combination thereof for the purpose of
31 establishing sexual orientation or determining whether to require
32 a test for the presence of the human immunodeficiency virus or
33 antibodies to that virus, where that testing is otherwise permitted
34 by law. Nothing in this section shall be construed to alter, expand,
35 or limit in any manner the existing law respecting the authority of
36 insurers to conduct tests for the presence of human
37 immunodeficiency virus or evidence thereof.

38 (f) This section shall not be construed to limit the authority of
39 the commissioner to adopt regulations prohibiting discrimination
40 because of sex, marital status, or sexual orientation or to enforce

1 these regulations, whether adopted before or on or after January
2 1, 1991.

3 (g) “Genetic characteristics” as used in this section shall have
4 the same meaning as defined in Section 10123.3.

5 (h) “Sex” as used in this section shall have the same meaning
6 as “gender.” “Gender” means sex, and includes a person’s gender
7 identity and gender expression. “Gender expression” means a
8 person’s gender-related appearance and behavior whether or not
9 stereotypically associated with the person’s assigned sex at birth.

10 SEC. 27. Section 10140.2 of the Insurance Code is amended
11 to read:

12 10140.2. (a) Notwithstanding Section 10140, a health insurance
13 policy issued, amended, or renewed on or after January 1, 2011,
14 shall not be subject to premium, price, or charge differentials
15 because of the sex of any contracting party, potential contracting
16 party, or person reasonably expected to benefit from the policy as
17 a policyholder, insured, or otherwise.

18 (b) For purposes of this section, “sex” shall have the same
19 meaning as “gender.” “Gender” means sex, and includes a person’s
20 gender identity and gender expression. “Gender expression” means
21 a person’s gender-related appearance and behavior whether or not
22 stereotypically associated with the person’s assigned sex at birth.

23 SEC. 28. Section 12693.28 of the Insurance Code is amended
24 to read:

25 12693.28. The program shall be administered without regard
26 to gender, gender identity, gender expression, race, creed, color,
27 sexual orientation, health status, disability, or occupation.

28 SEC. 29. Section 3600 of the Labor Code is amended to read:

29 3600. (a) Liability for the compensation provided by this
30 division, in lieu of any other liability whatsoever to any person
31 except as otherwise specifically provided in Sections 3602, 3706,
32 and 4558, shall, without regard to negligence, exist against an
33 employer for any injury sustained by his or her employees arising
34 out of and in the course of the employment and for the death of
35 any employee if the injury proximately causes death, in those cases
36 where the following conditions of compensation concur:

37 (1) Where, at the time of the injury, both the employer and the
38 employee are subject to the compensation provisions of this
39 division.

1 (2) Where, at the time of the injury, the employee is performing
2 service growing out of and incidental to his or her employment
3 and is acting within the course of his or her employment.

4 (3) Where the injury is proximately caused by the employment,
5 either with or without negligence.

6 (4) Where the injury is not caused by the intoxication, by alcohol
7 or the unlawful use of a controlled substance, of the injured
8 employee. As used in this paragraph, “controlled substance” shall
9 have the same meaning as prescribed in Section 11007 of the
10 Health and Safety Code.

11 (5) Where the injury is not intentionally self-inflicted.

12 (6) Where the employee has not willfully and deliberately caused
13 his or her own death.

14 (7) Where the injury does not arise out of an altercation in which
15 the injured employee is the initial physical aggressor.

16 (8) Where the injury is not caused by the commission of a
17 felony, or a crime which is punishable as specified in subdivision
18 (b) of Section 17 of the Penal Code, by the injured employee, for
19 which he or she has been convicted.

20 (9) Where the injury does not arise out of voluntary participation
21 in any off-duty recreational, social, or athletic activity not
22 constituting part of the employee’s work-related duties, except
23 where these activities are a reasonable expectancy of, or are
24 expressly or impliedly required by, the employment. The
25 administrative director shall promulgate reasonable rules and
26 regulations requiring employers to post and keep posted in a
27 conspicuous place or places a notice advising employees of the
28 provisions of this subdivision. Failure of the employer to post the
29 notice shall not constitute an expression of intent to waive the
30 provisions of this subdivision.

31 (10) Except for psychiatric injuries governed by subdivision (e)
32 of Section 3208.3, where the claim for compensation is filed after
33 notice of termination or layoff, including voluntary layoff, and the
34 claim is for an injury occurring prior to the time of notice of
35 termination or layoff, no compensation shall be paid unless the
36 employee demonstrates by a preponderance of the evidence that
37 one or more of the following conditions apply:

38 (A) The employer has notice of the injury, as provided under
39 Chapter 2 (commencing with Section 5400), prior to the notice of
40 termination or layoff.

1 (B) The employee's medical records, existing prior to the notice
2 of termination or layoff, contain evidence of the injury.

3 (C) The date of injury, as specified in Section 5411, is
4 subsequent to the date of the notice of termination or layoff, but
5 prior to the effective date of the termination or layoff.

6 (D) The date of injury, as specified in Section 5412, is
7 subsequent to the date of the notice of termination or layoff.

8 For purposes of this paragraph, an employee provided notice
9 pursuant to Sections 44948.5, 44949, 44951, 44955, 72411, 87740,
10 and 87743 of the Education Code shall be considered to have been
11 provided a notice of termination or layoff only upon a district's
12 final decision not to reemploy that person.

13 A notice of termination or layoff that is not followed within 60
14 days by that termination or layoff shall not be subject to the
15 provisions of this paragraph, and this paragraph shall not apply
16 until receipt of a later notice of termination or layoff. The issuance
17 of frequent notices of termination or layoff to an employee shall
18 be considered a bad faith personnel action and shall make this
19 paragraph inapplicable to the employee.

20 (b) Where an employee, or his or her dependents, receives the
21 compensation provided by this division and secures a judgment
22 for, or settlement of, civil damages pursuant to those specific
23 exemptions to the employee's exclusive remedy set forth in
24 subdivision (b) of Section 3602 and Section 4558, the
25 compensation paid under this division shall be credited against the
26 judgment or settlement, and the employer shall be relieved from
27 the obligation to pay further compensation to, or on behalf of, the
28 employee or his or her dependents up to the net amount of the
29 judgment or settlement received by the employee or his or her
30 heirs, or that portion of the judgment as has been satisfied.

31 (c) For purposes of determining whether to grant or deny a
32 workers' compensation claim, if an employee is injured or killed
33 by a third party in the course of the employee's employment, no
34 personal relationship or personal connection shall be deemed to
35 exist between the employee and the third party based only on a
36 determination that the third party injured or killed the employee
37 solely because of the third party's personal beliefs relating to his
38 or her perception of the employee's race, religious creed, color,
39 national origin, age, gender, disability, sex, gender, gender identity,
40 gender expression, or sexual orientation.

1 SEC. 30. Section 186.21 of the Penal Code is amended to read:

2 186.21. The Legislature hereby finds and declares that it is the
3 right of every person, regardless of race, color, creed, religion,
4 national origin, gender, gender identity, gender expression, age,
5 sexual orientation, or handicap, to be secure and protected from
6 fear, intimidation, and physical harm caused by the activities of
7 violent groups and individuals. It is not the intent of this chapter
8 to interfere with the exercise of the constitutionally protected rights
9 of freedom of expression and association. The Legislature hereby
10 recognizes the constitutional right of every citizen to harbor and
11 express beliefs on any lawful subject whatsoever, to lawfully
12 associate with others who share similar beliefs, to petition lawfully
13 constituted authority for a redress of perceived grievances, and to
14 participate in the electoral process.

15 The Legislature, however, further finds that the State of
16 California is in a state of crisis which has been caused by violent
17 street gangs whose members threaten, terrorize, and commit a
18 multitude of crimes against the peaceful citizens of their
19 neighborhoods. These activities, both individually and collectively,
20 present a clear and present danger to public order and safety and
21 are not constitutionally protected. The Legislature finds that there
22 are nearly 600 criminal street gangs operating in California, and
23 that the number of gang-related murders is increasing. The
24 Legislature also finds that in Los Angeles County alone there were
25 328 gang-related murders in 1986, and that gang homicides in
26 1987 have increased 80 percent over 1986. It is the intent of the
27 Legislature in enacting this chapter to seek the eradication of
28 criminal activity by street gangs by focusing upon patterns of
29 criminal gang activity and upon the organized nature of street
30 gangs, which together, are the chief source of terror created by
31 street gangs. The Legislature further finds that an effective means
32 of punishing and deterring the criminal activities of street gangs
33 is through forfeiture of the profits, proceeds, and instrumentalities
34 acquired, accumulated, or used by street gangs.

35 SEC. 31. Section 422.56 of the Penal Code is amended to read:

36 422.56. For purposes of this title, the following definitions
37 shall apply:

38 (a) "Association with a person or group with these actual or
39 perceived characteristics" includes advocacy for, identification
40 with, or being on the ground owned or rented by, or adjacent to,

1 any of the following: a community center, educational facility,
2 family, individual, office, meeting hall, place of worship, private
3 institution, public agency, library, or other entity, group, or person
4 that has, or is identified with people who have, one or more of
5 those characteristics listed in the definition of “hate crime” under
6 paragraphs 1 to 6, inclusive, of subdivision (a) of Section 422.55.

7 (b) “Disability” includes mental disability and physical disability
8 as defined in Section 12926 of the Government Code.

9 (c) “Gender” means sex, and includes a person’s gender identity
10 and gender expression. “Gender expression” means a person’s
11 gender-related appearance and behavior whether or not
12 stereotypically associated with the person’s assigned sex at birth.

13 (d) “In whole or in part because of” means that the bias
14 motivation must be a cause in fact of the offense, whether or not
15 other causes also exist. When multiple concurrent motives exist,
16 the prohibited bias must be a substantial factor in bringing about
17 the particular result. There is no requirement that the bias be a
18 main factor, or that the crime would not have been committed but
19 for the actual or perceived characteristic. This subdivision does
20 not constitute a change in, but is declaratory of, existing law under
21 In re M.S. (1995) 10 Cal.4th 698 and People v. Superior Court
22 (Aishman) (1995) 10 Cal.4th 735.

23 (e) “Nationality” includes citizenship, country of origin, and
24 national origin.

25 (f) “Race or ethnicity” includes ancestry, color, and ethnic
26 background.

27 (g) “Religion” includes all aspects of religious belief,
28 observance, and practice and includes agnosticism and atheism.

29 (h) “Sexual orientation” means heterosexuality, homosexuality,
30 or bisexuality.

31 (i) “Victim” includes, but is not limited to, a community center,
32 educational facility, entity, family, group, individual, office,
33 meeting hall, person, place of worship, private institution, public
34 agency, library, or other victim or intended victim of the offense.

35 SEC. 32. Section 422.85 of the Penal Code is amended to read:

36 422.85. (a) In the case of any person who is convicted of any
37 offense against the person or property of another individual, private
38 institution, or public agency, committed because of the victim’s
39 actual or perceived race, color, ethnicity, religion, nationality,
40 country of origin, ancestry, disability, gender, gender identity,

1 gender expression, or sexual orientation, including, but not limited
2 to offenses defined in Section 302, 423.2, 594.3, 11411, 11412,
3 or 11413, or for any hate crime, the court, absent compelling
4 circumstances stated on the record, shall make an order protecting
5 the victim, or known immediate family or domestic partner of the
6 victim, from further acts of violence, threats, stalking, or
7 harassment by the defendant, including any stay-away conditions
8 the court deems appropriate, and shall make obedience of that
9 order a condition of the defendant's probation. In these cases the
10 court may also order that the defendant be required to do one or
11 more of the following as a condition of probation:

12 (1) Complete a class or program on racial or ethnic sensitivity,
13 or other similar training in the area of civil rights, or a one-year
14 counseling program intended to reduce the tendency toward violent
15 and antisocial behavior if that class, program, or training is
16 available and was developed or authorized by the court or local
17 agencies in cooperation with organizations serving the affected
18 community.

19 (2) Make payments or other compensation to a community-based
20 program or local agency that provides services to victims of hate
21 violence.

22 (3) Reimburse the victim for reasonable costs of counseling and
23 other reasonable expenses that the court finds are the direct result
24 of the defendant's acts.

25 (b) Any payments or other compensation ordered under this
26 section shall be in addition to restitution payments required under
27 Section 1203.04, and shall be made only after that restitution is
28 paid in full.

29 SEC. 33. Section 3053.4 of the Penal Code is amended to read:

30 3053.4. In the case of any person who is released from prison
31 on parole or after serving a term of imprisonment for any felony
32 offense committed against the person or property of another
33 individual, private institution, or public agency because of the
34 victim's actual or perceived race, color, ethnicity, religion,
35 nationality, country of origin, ancestry, disability, gender, gender
36 identity, gender expression, or sexual orientation, including, but
37 not limited to, offenses defined in Section 422.6, 422.7, 422.75,
38 594.3, or 11411, the parole authority, absent compelling
39 circumstances, shall order the defendant as a condition of parole
40 to refrain from further acts of violence, threats, stalking, or

1 harassment of the victim, or known immediate family or domestic
2 partner of the victim, including stay-away conditions when
3 appropriate. In these cases, the parole authority may also order
4 that the defendant be required as a condition of parole to complete
5 a class or program on racial or ethnic sensitivity, or other similar
6 training in the area of civil rights, or a one-year counseling program
7 intended to reduce the tendency toward violent and antisocial
8 behavior if that class, program, or training is available and was
9 developed or authorized by the court or local agencies in
10 cooperation with organizations serving the affected community.

11 SEC. 34. Section 11410 of the Penal Code is amended to read:

12 11410. (a) The Legislature finds and declares that it is the right
13 of every person regardless of actual or perceived disability, gender,
14 gender identity, gender expression, nationality, race or ethnicity,
15 religion, sexual orientation, or association with a person or group
16 of these actual or perceived characteristics, to be secure and
17 protected from fear, intimidation, and physical harm caused by
18 the activities of violent groups and individuals. It is not the intent
19 of this chapter to interfere with the exercise of rights protected by
20 the Constitution of the United States. The Legislature recognizes
21 the constitutional right of every citizen to harbor and express beliefs
22 on any subject whatsoever and to associate with others who share
23 similar beliefs. The Legislature further finds however, that the
24 advocacy of unlawful violent acts by groups against other persons
25 or groups under circumstances where death or great bodily injury
26 is likely to result is not constitutionally protected, poses a threat
27 to public order and safety and should be subject to criminal and
28 civil sanctions.

29 (b) For purposes of this section, the following definitions shall
30 apply:

31 (1) “Association with a person or group with these actual or
32 perceived characteristics” includes advocacy for, identification
33 with, or being on the ground owned or rented by, or adjacent to,
34 any of the following: a community center, educational facility,
35 family, individual, office, meeting hall, place of worship, private
36 institution, public agency, library, or other entity, group, or person
37 that has, or is identified with people who have, one or more of
38 those characteristics listed in the definition of “hate crime” under
39 paragraphs (1) to (6), inclusive, of subdivision (a) of Section
40 422.55.

1 (2) “Disability” includes mental disability and physical disability
2 as defined in Section 12926 of the Government Code.

3 (3) “Gender” means sex, and includes a person’s gender identity
4 and gender expression. “Gender expression” means a person’s
5 gender-related appearance and behavior whether or not
6 stereotypically associated with the person’s assigned sex at birth.

7 (4) “Nationality” includes citizenship, country of origin, and
8 national origin.

9 (5) “Race or ethnicity” includes ancestry, color, and ethnic
10 background.

11 (6) “Religion” includes all aspects of religious belief,
12 observance, and practice and includes agnosticism and atheism.

13 (7) “Sexual orientation” means heterosexuality, homosexuality,
14 or bisexuality.

15 SEC. 35. If the Commission on State Mandates determines
16 that this act contains costs mandated by the state, reimbursement
17 to local agencies and school districts for those costs shall be made
18 pursuant to Part 7 (commencing with Section 17500) of Division
19 4 of Title 2 of the Government Code.