

**Assembly Bill No. 1450**

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Passed the Assembly August 30, 2012

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*Chief Clerk of the Assembly*

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Passed the Senate August 29, 2012

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2012, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to add Chapter 3.95 (commencing with Section 1045) to Part 3 of Division 2 of the Labor Code, and to add Section 10285.6 to the Public Contract Code, relating to employment.

## LEGISLATIVE COUNSEL'S DIGEST

AB 1450, Allen. Employment: discrimination: status as unemployed.

Existing law contains provisions that define unlawful discrimination and employment practices by employers and employment agencies.

This bill would make it unlawful, unless based on a bona fide occupational qualification or any other provision of law, for an employer, an employment agency, or a person who operates an Internet Web site for posting jobs in this state to publish an advertisement or announcement for any job that includes provisions pertaining to an individual's current employment or employment status, as specified.

This bill would subject an employer, an employment agency, or a person who operates an Internet Web site for posting jobs in this state who violates the above provisions to civil penalties that increase as the number of violations increase.

The State Contract Act governs contracting between state agencies and private contractors, and sets forth requirements for the procurement of materials, supplies, equipment, and services by state agencies.

This bill would provide that failure to comply with the requirements of the bill would constitute a breach of a contract entered into on or after January 1, 2013, and may be grounds for canceling, terminating, or suspending the contract, as specified, and debarring the contractor from eligibility for an award of future state agency contracts for a period not to exceed 3 years, as specified.

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

SECTION 1. Chapter 3.95 (commencing with Section 1045) is added to Part 3 of Division 2 of the Labor Code, to read:

CHAPTER 3.95. EMPLOYMENT DISCRIMINATION ON THE BASIS OF EMPLOYMENT STATUS

1045. For purposes of this chapter, the following definitions apply:

(a) “Contractor” means a person who is a party to a contract with a state governmental agency, including any department, division, subcontractor, or other unit that is responsible for performance under the contract. “Contractor” does not include a state governmental agency.

(b) “Employer” means the state or any political or civil subdivision of the state and any person, as defined in Section 18, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.

(c) “Employment agency” has the same meaning as defined in Section 1812.501 of the Civil Code.

(d) “Employment status” means an individual’s present unemployment, regardless of the length of time that the individual has been unemployed.

1046. (a) Unless based on a bona fide occupational qualification, an employer, an employment agency, or a person who operates an Internet Web site for posting jobs in this state shall not publish in print, on the Internet, or in any other medium an advertisement or announcement for any job that includes either of the following:

(1) A provision stating or indicating that an individual’s current employment is a requirement for a job.

(2) A provision stating or indicating that an employer will not consider an applicant for employment based on that individual’s employment status.

(b) This chapter does not prohibit an employer, an employment agency, or a person operating an Internet Web site for posting jobs in this state from doing either of the following:

(1) Publishing, in print, on the Internet, or in any other medium, an advertisement or announcement for any job that sets forth other lawful qualifications for a job, including, but not limited to, the holding of a current and valid professional or occupational license, certificate, registration, permit, or other credential, or a minimum level of education or training or professional, occupational, or field experience.

(2) Printing or circulating or causing to be printed or circulated a publication, advertisement, or solicitation for a job vacancy that contains any provision stating that only applicants who are currently employed by that employer will be considered.

(c) An employer, an employment agency, or a person operating an Internet Web site for posting jobs in this state who violates this section shall be subject to a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for the first violation, five thousand dollars (\$5,000) for the second violation, and ten thousand dollars (\$10,000) for each subsequent violation.

1047. (a) A contract entered into on or after January 1, 2013, between a state agency and a contractor who is an employer shall include an express or implied requirement that the contractor comply with the requirements of this chapter. Failure to comply with the requirements of this chapter, as determined by the Labor Commissioner, pursuant to subdivision (c) of Section 1046, shall constitute a breach of the contract and may be grounds for canceling, terminating, or suspending the contract, and debaring the contractor from eligibility for future state agency contracts.

(b) In accordance with regulations adopted by the Division of Labor Standards Enforcement, and upon determining that a contractor who is an employer has violated this chapter, the Labor Commissioner may, after consulting with the contracting state agency, do any or all of the following:

(1) Direct the state agency to cancel, terminate, or suspend the contract, or any segregable portion thereof.

(2) Debar the contractor from eligibility for an award of a future state agency contract for a period not to exceed three years.

1048. This chapter does not preclude an employer, an employment agency, or a person who operates an Internet Web site for posting jobs in this state from doing any of the following:

- (a) Obtaining information regarding an individual's employment, the dates of employment, or the reasons for the separation from employment.
- (b) Having knowledge of a person's employment status.
- (c) Considering an individual's employment history or the reasons underlying an individual's employment status.
- (d) Refusing to offer employment to a person because of the reasons underlying an individual's employment status.
- (e) Otherwise making employment decisions pertaining to that individual.

SEC. 2. Section 10285.6 is added to the Public Contract Code, to read:

10285.6. A contractor, as defined in Section 1045 of the Labor Code, who has been debarred by the Labor Commissioner pursuant to Section 1047 of the Labor Code for a period not to exceed three years shall be ineligible during that time for an award of a contract pursuant to this chapter.





Approved \_\_\_\_\_, 2012

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*Governor*