

**ASSEMBLY BILL**

**No. 1740**

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**Introduced by Assembly Member V. Manuel Pérez**

February 17, 2012

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An act to amend Section 32228 of the Education Code, to amend Section 354.5 of the Elections Code, to amend Sections 11135, 12920, 12921, 12926, 12926.1, 12926.2, 12928, 12931, 12940, 12944, and 12951 of, and to add Section 12945.6 to, the Government Code, to amend Section 98.6 of the Labor Code, to amend Section 868.8 of the Penal Code, and to amend Section 4900 of the Welfare and Institutions Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1740, as introduced, V. Manuel Pérez. Employment discrimination: victims of domestic violence, sexual assault, or stalking.

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

This bill would include status as a victim of domestic violence, sexual assault, or stalking as an additional basis upon which the right to seek, obtain, and hold employment cannot be denied under FEHA. By expanding the bases upon which discrimination is prohibited under FEHA, this bill would also expand the bases upon which discrimination is prohibited under other antidiscrimination provisions that prohibit discrimination on the same bases as provided for in FEHA. Other antidiscrimination provisions include provisions that make willful

discrimination in a recruitment or apprenticeship program on those bases a misdemeanor. By adding unemployment status to the list of characteristics listed in FEHA, this bill would expand the bases upon which this crime applies, thereby imposing a state-mandated local program.

The bill would also provide for specific protections under FEHA applicable to victims of actual or threatened domestic violence, sexual assault, or stalking.

(2) 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 no reimbursement is required by this act for a specified reason.

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 32228 of the Education Code is amended  
2 to read:

3 32228. (a) It is the intent of the Legislature that public schools  
4 serving pupils in any of grades 8 to 12, inclusive, have access to  
5 supplemental resources to establish programs and strategies that  
6 promote school safety and emphasize violence prevention among  
7 children and youth in the public schools.

8 (b) It is also the intent of the Legislature that public schools  
9 have access to supplemental resources to combat bias on the basis  
10 of race, color, religion, ancestry, national origin, disability, gender,  
11 gender identity, gender expression, or sexual orientation, as defined  
12 in ~~subdivision (r)~~ of Section 12926 of the Government Code, and  
13 to prevent and respond to acts of hate violence and bias-related  
14 incidents. Sexual orientation shall not include pedophilia.

15 (c) It is further the intent of the Legislature that schoolsites  
16 receiving funds pursuant to this article accomplish all of the  
17 following goals:

18 (1) Teach pupils techniques for resolving conflicts without  
19 violence.

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

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

3 (4) Provide age-appropriate instruction in domestic violence  
4 prevention, dating violence prevention, and interpersonal violence  
5 prevention.

6 SEC. 2. Section 354.5 of the Elections Code is amended to  
7 read:

8 354.5. (a) "Signature" includes either of the following:

9 (1) A person's mark if the name of the person affixing the mark  
10 is written near the mark by a witness over 18 years of age  
11 designated by the person and the designee subscribes his or her  
12 own name as a witness thereto. For purposes of this paragraph, a  
13 signature stamp may be used as a mark, provided that the  
14 authorized user complies with the provisions of this paragraph.

15 (2) An impression made by the use of a signature stamp pursuant  
16 to the requirements specified in subdivision (c).

17 (b) A mark attested as provided in paragraph (1) of subdivision  
18 (a), or an impression made by a signature stamp as provided in  
19 paragraph (2) of subdivision (a), may serve as a signature for any  
20 purpose specified in this code, including a sworn statement.

21 (c) An authorized user of a signature stamp may use it to affix  
22 a signature to a document or writing any time that a signature is  
23 required by this code, provided that all of the following conditions,  
24 as applicable, are met:

25 (1) A signature stamp used to obtain a ballot or vote by mail  
26 ballot in any local, state, or federal election shall be used only by  
27 the authorized user of that signature stamp.

28 (2) A signature stamp shall be affixed by the authorized user in  
29 the presence of the Secretary of State, his or her designee, the local  
30 elections official, or his or her designee, to obtain a ballot, in any  
31 local, state, or federal election unless the authorized user of the  
32 signature stamp votes by vote by mail ballot. If the owner of a  
33 signature stamp votes by vote by mail ballot, he or she shall affix  
34 the signature stamp on the identification envelope in accordance  
35 with Section 3019.

36 (d) A signature affixed with a signature stamp by an authorized  
37 user in accordance with this section shall be treated in the same  
38 manner as a signature made in writing.

39 (e) A registered voter or any person who is eligible to vote, who  
40 qualifies as an authorized user pursuant to paragraph (1) of

1 subdivision (g), may use a signature stamp only after he or she  
2 first submits his or her affidavit of registration or a new affidavit  
3 of registration, whichever is applicable, in the presence of a county  
4 elections official, using the signature stamp to sign the affidavit.

5 (f) The Secretary of State shall report to the Legislature not later  
6 than January 1, 2009, regarding the use of signature stamps during  
7 the 2008 elections.

8 (g) The following definitions apply for purposes of this section:

9 (1) "Authorized user" means either of the following:

10 (A) A person with a disability who, by reason of that disability,  
11 is unable to write and who owns a signature stamp.

12 (B) A person using the signature stamp on behalf of the owner  
13 of the stamp with the owner's express consent and in the presence  
14 of the owner.

15 (2) "Disability" means a medical condition, mental disability,  
16 or physical disability, as those terms are defined in ~~subdivisions~~  
17 ~~(i), (j), and (l)~~ of Section 12926 of the Government Code.

18 (3) "Signature stamp" means a stamp that contains the  
19 impression of any of the following:

20 (A) The actual signature of a person with a disability.

21 (B) A mark or symbol that is adopted by the person with the  
22 disability.

23 (C) A signature of the name of a person with a disability that is  
24 made by another person and is adopted by the person with the  
25 disability.

26 SEC. 3. Section 11135 of the Government Code is amended  
27 to read:

28 11135. (a) No person in the State of California shall, on the  
29 basis of race, national origin, ethnic group identification, religion,  
30 age, sex, sexual orientation, color, genetic information, or  
31 disability, be unlawfully denied full and equal access to the benefits  
32 of, or be unlawfully subjected to discrimination under, any program  
33 or activity that is conducted, operated, or administered by the state  
34 or by any state agency, is funded directly by the state, or receives  
35 any financial assistance from the state. Notwithstanding Section  
36 11000, this section applies to the California State University.

37 (b) With respect to discrimination on the basis of disability,  
38 programs and activities subject to subdivision (a) shall meet the  
39 protections and prohibitions contained in Section 202 of the federal  
40 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132),

1 and the federal rules and regulations adopted in implementation  
2 thereof, except that if the laws of this state prescribe stronger  
3 protections and prohibitions, the programs and activities subject  
4 to subdivision (a) shall be subject to the stronger protections and  
5 prohibitions.

6 (c) (1) As used in this section, “disability” means any mental  
7 or physical disability, as defined in Section 12926.

8 (2) The Legislature finds and declares that the amendments  
9 made to this act are declarative of existing law. The Legislature  
10 further finds and declares that in enacting Senate Bill 105 of the  
11 2001–02 Regular Session (Chapter 1102 of the Statutes of 2002),  
12 it was the intention of the Legislature to apply subdivision (d) to  
13 the California State University in the same manner that  
14 subdivisions (a), (b), and (c) already applied to the California State  
15 University, notwithstanding Section 11000. In clarifying that the  
16 California State University is subject to paragraph (2) of  
17 subdivision (d), it is not the intention of the Legislature to increase  
18 the cost of developing or procuring electronic and information  
19 technology. The California State University shall, however, in  
20 determining the cost of developing or procuring electronic or  
21 information technology, consider whether technology that meets  
22 the standards applicable pursuant to paragraph (2) of subdivision  
23 (d) will reduce the long-term cost incurred by the California State  
24 University in providing access or accommodations to future users  
25 of this technology who are persons with disabilities, as required  
26 by existing law, including this section, Title II of the federal  
27 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101  
28 and following), and Section 504 of the Rehabilitation Act of 1973  
29 (29 U.S.C. Sec. 794).

30 (d) (1) The Legislature finds and declares that the ability to  
31 utilize electronic or information technology is often an essential  
32 function for successful employment in the current work world.

33 (2) In order to improve accessibility of existing technology, and  
34 therefore increase the successful employment of individuals with  
35 disabilities, particularly blind and visually impaired and deaf and  
36 hard-of-hearing persons, state governmental entities, in developing,  
37 procuring, maintaining, or using electronic or information  
38 technology, either indirectly or through the use of state funds by  
39 other entities, shall comply with the accessibility requirements of  
40 Section 508 of the federal Rehabilitation Act of 1973, as amended

1 (29 U.S.C. Sec. 794d), and regulations implementing that act as  
2 set forth in Part 1194 of Title 36 of the Federal Code of  
3 Regulations.

4 (3) Any entity that contracts with a state or local entity subject  
5 to this section for the provision of electronic or information  
6 technology or for the provision of related services shall agree to  
7 respond to, and resolve any complaint regarding accessibility of  
8 its products or services that is brought to the attention of the entity.

9 (e) As used in this section, “sex” and “sexual orientation” have  
10 the same meanings as those terms are defined in ~~subdivisions (q)~~  
11 ~~and (r)~~ of Section 12926.

12 (f) As used in this section, “race, national origin, ethnic group  
13 identification, religion, age, sex, sexual orientation, color, or  
14 disability” includes a perception that a person has any of those  
15 characteristics or that the person is associated with a person who  
16 has, or is perceived to have, any of those characteristics.

17 (g) As used in this section, “genetic information” has the same  
18 definition as in paragraph (2) of subdivision (e) of Section 51 of  
19 the Civil Code.

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

22 12920. (a) It is hereby declared as the public policy of this  
23 state that it is necessary to protect and safeguard the right and  
24 opportunity of all persons to seek, obtain, and hold employment  
25 without discrimination or abridgment on account of race, religious  
26 creed, color, national origin, ancestry, physical disability, mental  
27 disability, medical condition, genetic information, marital status,  
28 sex, gender, gender identity, gender expression, age, ~~or~~ sexual  
29 orientation, *or status as a victim of domestic violence, sexual*  
30 *assault, or stalking.*

31 (b) It is recognized that the practice of denying employment  
32 opportunity and discriminating in the terms of employment for  
33 ~~these~~ *the reasons described in subdivision (a)* foments domestic  
34 strife and unrest, deprives the state of the fullest utilization of its  
35 capacities for development and advancement, and substantially  
36 and adversely affects the interests of employees, employers, and  
37 the public in general.

38 (c) Further, the practice of discrimination because of race, color,  
39 religion, sex, gender, gender identity, gender expression, sexual  
40 orientation, marital status, national origin, ancestry, familial status,

1 source of income, disability, or genetic information in housing  
2 accommodations is declared to be against public policy.

3 (d) It is the purpose of this part to provide effective remedies  
4 that will eliminate these discriminatory practices.

5 (e) This part shall be deemed an exercise of the police power  
6 of the state for the protection of the welfare, health, and peace of  
7 the people of this state.

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

10 12921. (a) The opportunity to seek, obtain, and hold  
11 employment without discrimination because of race, religious  
12 creed, color, national origin, ancestry, physical disability, mental  
13 disability, medical condition, genetic information, marital status,  
14 sex, gender, gender identity, gender expression, age, ~~or~~ sexual  
15 orientation, *or status as a victim of domestic violence, sexual*  
16 *assault, or stalking* is hereby recognized as, and declared to be, a  
17 civil right.

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

25 SEC. 6. Section 12926 of the Government Code is amended  
26 to read:

27 12926. As used in this part in connection with unlawful  
28 practices, unless a different meaning clearly appears from the  
29 context:

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

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

39 (c) “*Domestic violence*” means a type of abuse set forth in  
40 *Section 6211 of the Family Code*.

1     ~~(e)~~  
 2     (d) “Employee” does not include any individual employed by  
 3 his or her parents, spouse, or child, or any individual employed  
 4 under a special license in a nonprofit sheltered workshop or  
 5 rehabilitation facility.

6     ~~(f)~~  
 7     (e) “Employer” includes any person regularly employing five  
 8 or more persons, or any person acting as an agent of an employer,  
 9 directly or indirectly, the state or any political or civil subdivision  
 10 of the state, and cities, except as follows:

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

13     ~~(g)~~  
 14     (f) “Employment agency” includes any person undertaking for  
 15 compensation to procure employees or opportunities to work.

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

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

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

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

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

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

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

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

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

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

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

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

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

3 ~~(g)~~

4 (h) (1) “Genetic information” means, with respect to any  
5 individual, information about any of the following:

6 (A) The individual’s genetic tests.

7 (B) The genetic tests of family members of the individual.

8 (C) The manifestation of a disease or disorder in family members  
9 of the individual.

10 (2) “Genetic information” includes any request for, or receipt  
11 of, genetic services, or participation in clinical research that  
12 includes genetic services, by an individual or any family member  
13 of the individual.

14 (3) “Genetic information” does not include information about  
15 the sex or age of any individual.

16 ~~(h)~~

17 (i) “Labor organization” includes any organization that exists  
18 and is constituted for the purpose, in whole or in part, of collective  
19 bargaining or of dealing with employers concerning grievances,  
20 terms or conditions of employment, or of other mutual aid or  
21 protection.

22 ~~(i)~~

23 (j) “Medical condition” means either of the following:

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

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

28 (A) Any scientifically or medically identifiable gene or  
29 chromosome, or combination or alteration thereof, that is known  
30 to be a cause of a disease or disorder in a person or his or her  
31 offspring, or that is determined to be associated with a statistically  
32 increased risk of development of a disease or disorder, and that is  
33 presently not associated with any symptoms of any disease or  
34 disorder.

35 (B) Inherited characteristics that may derive from the individual  
36 or family member, that are known to be a cause of a disease or  
37 disorder in a person or his or her offspring, or that are determined  
38 to be associated with a statistically increased risk of development  
39 of a disease or disorder, and that are presently not associated with  
40 any symptoms of any disease or disorder.

1     ~~(j)~~  
2     (k) “Mental disability” includes, but is not limited to, all of the  
3 following:

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

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

12     (B) A mental or psychological disorder or condition limits a  
13 major life activity if it makes the achievement of the major life  
14 activity difficult.

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

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

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

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

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

31     “Mental disability” does not include sexual behavior disorders,  
32 compulsive gambling, kleptomania, pyromania, or psychoactive  
33 substance use disorders resulting from the current unlawful use of  
34 controlled substances or other drugs.

35     ~~(k)~~  
36     (l) “On the bases enumerated in this part” means or refers to  
37 discrimination on the basis of one or more of the following: race,  
38 religious creed, color, national origin, ancestry, physical disability,  
39 mental disability, medical condition, genetic information, marital

1 status, sex, age, ~~or~~ sexual orientation, *or status as a victim of*  
2 *domestic violence, sexual assault, or stalking.*

3 (~~†~~)

4 (m) “Physical disability” includes, but is not limited to, all of  
5 the following:

6 (1) Having any physiological disease, disorder, condition,  
7 cosmetic disfigurement, or anatomical loss that does both of the  
8 following:

9 (A) Affects one or more of the following body systems:  
10 neurological, immunological, musculoskeletal, special sense  
11 organs, respiratory, including speech organs, cardiovascular,  
12 reproductive, digestive, genitourinary, hemic and lymphatic, skin,  
13 and endocrine.

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

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

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

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

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

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

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

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

38 (6) “Physical disability” does not include sexual behavior  
39 disorders, compulsive gambling, kleptomania, pyromania, or

1 psychoactive substance use disorders resulting from the current  
2 unlawful use of controlled substances or other drugs.

3 ~~(m)~~

4 (n) Notwithstanding subdivisions~~(j) (k)~~ and~~(l) (m)~~, if the  
5 definition of “disability” used in the federal Americans with  
6 Disabilities Act of 1990 (P.L. 101-336) would result in broader  
7 protection of the civil rights of individuals with a mental disability  
8 or physical disability, as defined in subdivision~~(j) (k)~~ or~~(l) (m)~~,  
9 or would include any medical condition not included within those  
10 definitions, then that broader protection or coverage shall be  
11 deemed incorporated by reference into, and shall prevail over  
12 conflicting provisions of, the definitions in subdivisions~~(j) (k)~~ and  
13 ~~(l) (m)~~.

14 ~~(n)~~

15 (o) “Race, religious creed, color, national origin, ancestry,  
16 physical disability, mental disability, medical condition, genetic  
17 information, marital status, sex, age, ~~or~~ sexual orientation, *or status*  
18 *as a victim of domestic violence, sexual assault, or stalking*”  
19 includes a perception that the person has any of those  
20 characteristics or that the person is associated with a person who  
21 has, or is perceived to have, any of those characteristics.

22 ~~(o)~~

23 (p) “Reasonable accommodation” may include ~~either~~ *any* of the  
24 following:

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

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

33 (3) *With regard to victims of domestic violence, sexual assault,*  
34 *or stalking, the implementation of safety measures, including a*  
35 *transfer, reassignment, modified schedule, changed work telephone,*  
36 *changed work station, installed lock, assistance in documenting*  
37 *domestic violence, sexual assault, or stalking that occurs in the*  
38 *workplace, an implemented safety procedure, or another*  
39 *adjustment to a job structure, workplace facility, or work*

1 *requirement in response to actual or threatened domestic violence,*  
2 *sexual assault, or stalking.*

3 ~~(p)~~

4 (q) “Religious creed,” “religion,” “religious observance,”  
5 “religious belief,” and “creed” include all aspects of religious  
6 belief, observance, and practice.

7 ~~(q)~~

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

15 (s) “Sexual assault” means a crime set forth in Section 261,  
16 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 267, 269, 273.4,  
17 285, 286, 288, 288a, 289, or 311.4 of the Penal Code.

18 ~~(s)~~

19 (t) “Sexual orientation” means heterosexuality, homosexuality,  
20 and bisexuality.

21 (u) “Stalking” means a crime set forth in Section 646.9 of the  
22 Penal Code and Section 1708.7 of the Civil Code.

23 ~~(s)~~

24 (v) “Supervisor” means any individual having the authority, in  
25 the interest of the employer, to hire, transfer, suspend, layoff, recall,  
26 promote, discharge, assign, reward, or discipline other employees,  
27 or the responsibility to direct them, or to adjust their grievances,  
28 or effectively to recommend that action, if, in connection with the  
29 foregoing, the exercise of that authority is not of a merely routine  
30 or clerical nature, but requires the use of independent judgment.

31 ~~(t)~~

32 (w) “Undue hardship” means an action requiring significant  
33 difficulty or expense, when considered in light of the following  
34 factors:

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

36 (2) The overall financial resources of the facilities involved in  
37 the provision of the reasonable accommodations, the number of  
38 persons employed at the facility, and the effect on expenses and  
39 resources or the impact otherwise of these accommodations upon  
40 the operation of the facility.

1 (3) The overall financial resources of the covered entity, the  
2 overall size of the business of a covered entity with respect to the  
3 number of employees, and the number, type, and location of its  
4 facilities.

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

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

9 SEC. 7. Section 12926.1 of the Government Code is amended  
10 to read:

11 12926.1. The Legislature finds and declares as follows:

12 (a) The law of this state in the area of disabilities provides  
13 protections independent from those in the federal Americans with  
14 Disabilities Act of 1990 (P.L. 101-336). Although the federal act  
15 provides a floor of protection, this state's law has always, even  
16 prior to passage of the federal act, afforded additional protections.

17 (b) The law of this state contains broad definitions of physical  
18 disability, mental disability, and medical condition. It is the intent  
19 of the Legislature that the definitions of physical disability and  
20 mental disability be construed so that applicants and employees  
21 are protected from discrimination due to an actual or perceived  
22 physical or mental impairment that is disabling, potentially  
23 disabling, or perceived as disabling or potentially disabling.

24 (c) Physical and mental disabilities include, but are not limited  
25 to, chronic or episodic conditions such as HIV/AIDS, hepatitis,  
26 epilepsy, seizure disorder, diabetes, clinical depression, bipolar  
27 disorder, multiple sclerosis, and heart disease. In addition, the  
28 Legislature has determined that the definitions of "physical  
29 disability" and "mental disability" under the law of this state  
30 require a "limitation" upon a major life activity, but do not require,  
31 as does the federal Americans with Disabilities Act of 1990, a  
32 "substantial limitation." This distinction is intended to result in  
33 broader coverage under the law of this state than under that federal  
34 act. Under the law of this state, whether a condition limits a major  
35 life activity shall be determined without respect to any mitigating  
36 measures, unless the mitigating measure itself limits a major life  
37 activity, regardless of federal law under the Americans with  
38 Disabilities Act of 1990. Further, under the law of this state,  
39 "working" is a major life activity, regardless of whether the actual

1 or perceived working limitation implicates a particular employment  
2 or a class or broad range of employments.

3 (d) Notwithstanding any interpretation of law in *Cassista v.*  
4 *Community Foods* (1993) 5 Cal.4th 1050, the Legislature intends  
5 (1) for state law to be independent of the federal Americans with  
6 Disabilities Act of 1990, (2) to require a “limitation” rather than  
7 a “substantial limitation” of a major life activity, and (3) ~~by~~  
8 ~~enacting paragraph (4) of subdivision (j) and paragraph (4) of~~  
9 ~~subdivision (f) of Section 12926;~~ to provide protection when an  
10 individual is erroneously or mistakenly believed to have any  
11 physical or mental condition that limits a major life activity.

12 (e) The Legislature affirms the importance of the interactive  
13 process between the applicant or employee and the employer in  
14 determining a reasonable accommodation, as this requirement has  
15 been articulated by the Equal Employment Opportunity  
16 Commission in its interpretive guidance of the federal Americans  
17 with Disabilities Act of 1990.

18 SEC. 8. Section 12926.2 of the Government Code is amended  
19 to read:

20 12926.2. As used in this part in connection with unlawful  
21 practices, unless a different meaning clearly appears from the  
22 context:

23 (a) “Religious corporation” means any corporation formed  
24 under, or otherwise subject to, Part 4 (commencing with Section  
25 9110) or Part 6 (commencing with Section 10000) of Division 2  
26 of Title 1 of the Corporations Code, and also includes a corporation  
27 that is formed primarily or exclusively for religious purposes under  
28 the laws of any other state to administer the affairs of an organized  
29 religious group and that is not organized for private profit.

30 (b) “Religious duties” means duties of employment connected  
31 with carrying on the religious activities of a religious corporation  
32 or association.

33 (c) ~~Notwithstanding subdivision (d) of Section 12926 and except~~  
34 ~~as otherwise provided in subdivision (d) of this section,~~ “employer”  
35 includes a religious corporation or association with respect to  
36 persons employed by the religious association or corporation to  
37 perform duties, other than religious duties, at a health care facility  
38 operated by the religious association or corporation for the  
39 provision of health care that is not restricted to adherents of the  
40 religion that established the association or corporation.

1 (d) “Employer” does not include a religious corporation with  
2 respect to either the employment, including promotion, of an  
3 individual of a particular religion, or the application of the  
4 employer’s religious doctrines, tenets, or teachings, in any work  
5 connected with the provision of health care.

6 (e) Notwithstanding ~~subdivision (d)~~ of Section 12926,  
7 “employer” does not include a nonprofit public benefit corporation  
8 incorporated to provide health care on behalf of a religious  
9 organization under Part 2 (commencing with Section 5110) of  
10 Division 2 of Title 1 of the Corporations Code, with respect to  
11 employment, including promotion, of an individual of a particular  
12 religion in an executive or pastoral-care position connected with  
13 the provision of health care.

14 (f) (1) Notwithstanding any other provision of law, a nonprofit  
15 public benefit corporation formed by, or affiliated with, a particular  
16 religion and that operates an educational institution as its sole or  
17 primary activity, may restrict employment, including promotion,  
18 in any or all employment categories to individuals of a particular  
19 religion.

20 (2) Notwithstanding paragraph (1) or any other provision of  
21 law, employers that are nonprofit public benefit corporations  
22 specified in paragraph (1) shall be subject to the provisions of this  
23 part in all other respects, including, but not limited to, the  
24 prohibitions against discrimination made unlawful employment  
25 practices by this part.

26 SEC. 9. Section 12928 of the Government Code is amended  
27 to read:

28 12928. Notwithstanding any other provision of this part, there  
29 is a rebuttable presumption that “employer,” as defined ~~by~~  
30 ~~subdivision (d) of~~ in Section 12926, includes any person or entity  
31 identified as the employer on the employee’s Federal Form W-2  
32 (Wage and Tax Statement).

33 SEC. 10. Section 12931 of the Government Code is amended  
34 to read:

35 12931. (a) The department may also provide assistance to  
36 communities and persons therein in resolving disputes,  
37 disagreements, or difficulties relating to discriminatory practices  
38 based on race, religious creed, color, national origin, ancestry,  
39 physical disability, mental disability, medical condition, genetic  
40 information, marital status, sex, gender, gender identity, gender

1 expression, familial status, age, ~~or~~ sexual orientation, *or status as*  
2 *a victim of domestic violence, sexual assault, or stalking* that impair  
3 the rights of persons in those communities under the Constitution  
4 or laws of the United States or of this state. The services of the  
5 department may be made available in cases of these disputes,  
6 disagreements, or difficulties only when, in its judgment, peaceful  
7 relations among the citizens of the community involved are  
8 threatened thereby. The department's services are to be made  
9 available only upon the request of an appropriate state or local  
10 public body, or upon the request of any person directly affected  
11 by any such dispute, disagreement, or difficulty.

12 (b) The assistance of the department pursuant to this section  
13 shall be limited to endeavors at investigation, conference,  
14 conciliation, and persuasion.

15 SEC. 11. Section 12940 of the Government Code is amended  
16 to read:

17 12940. It is an unlawful employment practice, unless based  
18 upon a bona fide occupational qualification, or, except where based  
19 upon applicable security regulations established by the United  
20 States or the State of California:

21 (a) For an employer, because of the race, religious creed, color,  
22 national origin, ancestry, physical disability, mental disability,  
23 medical condition, genetic information, marital status, sex, gender,  
24 gender identity, gender expression, age, ~~or~~ sexual orientation, *or*  
25 *status as a victim of domestic violence, sexual assault, or stalking*  
26 of any person, to refuse to hire or employ the person or to refuse  
27 to select the person for a training program leading to employment,  
28 or to bar or to discharge the person from employment or from a  
29 training program leading to employment, or to discriminate against  
30 the person in compensation or in terms, conditions, or privileges  
31 of employment.

32 (1) This part does not prohibit an employer from refusing to  
33 hire or discharging an employee with a physical or mental  
34 disability, or subject an employer to any legal liability resulting  
35 from the refusal to employ or the discharge of an employee with  
36 a physical or mental disability, where the employee, because of  
37 his or her physical or mental disability, is unable to perform his  
38 or her essential duties even with reasonable accommodations, or  
39 cannot perform those duties in a manner that would not endanger

1 his or her health or safety or the health or safety of others even  
2 with reasonable accommodations.

3 (2) This part does not prohibit an employer from refusing to  
4 hire or discharging an employee who, because of the employee's  
5 medical condition, is unable to perform his or her essential duties  
6 even with reasonable accommodations, or cannot perform those  
7 duties in a manner that would not endanger the employee's health  
8 or safety or the health or safety of others even with reasonable  
9 accommodations. Nothing in this part shall subject an employer  
10 to any legal liability resulting from the refusal to employ or the  
11 discharge of an employee who, because of the employee's medical  
12 condition, is unable to perform his or her essential duties, or cannot  
13 perform those duties in a manner that would not endanger the  
14 employee's health or safety or the health or safety of others even  
15 with reasonable accommodations.

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

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

22 (B) Prohibit bona fide health plans from providing additional  
23 or greater benefits to employees with dependents than to those  
24 employees without or with fewer dependents.

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

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

37 (B) The provisions of this part relating to discrimination on the  
38 basis of age do not prohibit an employer from providing health  
39 benefits or health care reimbursement plans to retired persons that  
40 are altered, reduced, or eliminated when the person becomes

1 eligible for Medicare health benefits. This subparagraph applies  
2 to all retiree health benefit plans and contractual provisions or  
3 practices concerning retiree health benefits and health care  
4 reimbursement plans in effect on or after January 1, 2011.

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

22 (c) For any person to discriminate against any person in the  
23 selection or training of that person in any apprenticeship training  
24 program or any other training program leading to employment  
25 because of the race, religious creed, color, national origin, ancestry,  
26 physical disability, mental disability, medical condition, genetic  
27 information, marital status, sex, gender, gender identity, gender  
28 expression, age, ~~or~~ sexual orientation, *or status as a victim of*  
29 *domestic violence, sexual assault, or stalking* of the person  
30 discriminated against.

31 (d) For any employer or employment agency to print or circulate  
32 or cause to be printed or circulated any publication, or to make  
33 any non-job-related inquiry of an employee or applicant, either  
34 verbal or through use of an application form, that expresses,  
35 directly or indirectly, any limitation, specification, or discrimination  
36 as to race, religious creed, color, national origin, ancestry, physical  
37 disability, mental disability, medical condition, genetic information,  
38 marital status, sex, gender, gender identity, gender expression,  
39 age, ~~or~~ sexual orientation, *or status as a victim of domestic*  
40 *violence, sexual assault, or stalking*, or any intent to make any

1 such limitation, specification, or discrimination. This part does not  
2 prohibit an employer or employment agency from inquiring into  
3 the age of an applicant, or from specifying age limitations, where  
4 the law compels or provides for that action.

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

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

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

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

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

39 (g) For any employer, labor organization, or employment agency  
40 to harass, discharge, expel, or otherwise discriminate against any

1 person because the person has made a report pursuant to Section  
2 11161.8 of the Penal Code that prohibits retaliation against hospital  
3 employees who report suspected patient abuse by health facilities  
4 or community care facilities.

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

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

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

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

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

9 (4) (A) For purposes of this subdivision only, “employer” means  
10 any person regularly employing one or more persons or regularly  
11 receiving the services of one or more persons providing services  
12 pursuant to a contract, or any person acting as an agent of an  
13 employer, directly or indirectly, the state, or any political or civil  
14 subdivision of the state, and cities. The definition of “employer”  
15 in ~~subdivision (d)~~ of Section 12926 applies to all provisions of this  
16 section other than this subdivision.

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

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

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

27 (A) The person has the right to control the performance of the  
28 contract for services and discretion as to the manner of  
29 performance.

30 (B) The person is customarily engaged in an independently  
31 established business.

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

36 (k) For an employer, labor organization, employment agency,  
37 apprenticeship training program, or any training program leading  
38 to employment, to fail to take all reasonable steps necessary to  
39 prevent discrimination and harassment from occurring.

1 (l) For an employer or other entity covered by this part to refuse  
2 to hire or employ a person or to refuse to select a person for a  
3 training program leading to employment or to bar or to discharge  
4 a person from employment or from a training program leading to  
5 employment, or to discriminate against a person in compensation  
6 or in terms, conditions, or privileges of employment because of a  
7 conflict between the person's religious belief or observance and  
8 any employment requirement, unless the employer or other entity  
9 covered by this part demonstrates that it has explored any available  
10 reasonable alternative means of accommodating the religious belief  
11 or observance, including the possibilities of excusing the person  
12 from those duties that conflict with his or her religious belief or  
13 observance or permitting those duties to be performed at another  
14 time or by another person, but is unable to reasonably  
15 accommodate the religious belief or observance without undue  
16 hardship on the conduct of the business of the employer or other  
17 entity covered by this part. Religious belief or observance, as used  
18 in this section, includes, but is not limited to, observance of a  
19 Sabbath or other religious holy day or days, and reasonable time  
20 necessary for travel prior and subsequent to a religious observance.

21 (m) For an employer or other entity covered by this part to fail  
22 to make reasonable accommodation for the known physical or  
23 mental disability of an applicant or employee. Nothing in this  
24 subdivision or in paragraph (1) or (2) of subdivision (a) shall be  
25 construed to require an accommodation that is demonstrated by  
26 the employer or other covered entity to produce undue hardship  
27 to its operation.

28 (n) For an employer or other entity covered by this part to fail  
29 to engage in a timely, good faith, interactive process with the  
30 employee or applicant to determine effective reasonable  
31 accommodations, if any, in response to a request for reasonable  
32 accommodation by an employee or applicant with a known physical  
33 or mental disability or known medical condition.

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

37 (p) *For an employer, labor organization, employment agency,*  
38 *apprenticeship training program, or any program leading to*  
39 *employment, or any other person or entity covered by this part, to*  
40 *discriminate against a victim of threatened or actual domestic*

1 violence, sexual assault, or stalking because the workplace or a  
 2 work-related setting is disrupted or threatened by the action of a  
 3 person whom the person discriminated against states has  
 4 committed or threatened to commit domestic violence, sexual  
 5 assault, or stalking against the individual or the individual's family  
 6 or other household member.

7 SEC. 12. Section 12944 of the Government Code is amended  
 8 to read:

9 12944. (a) (1) It shall be unlawful for a licensing board to  
 10 require any examination or establish any other qualification for  
 11 licensing that has an adverse impact on any class by virtue of its  
 12 race, creed, color, national origin or ancestry, sex, gender, gender  
 13 identity, gender expression, age, medical condition, genetic  
 14 information, physical disability, mental disability, ~~or~~ sexual  
 15 orientation, or status as a victim of domestic violence, sexual  
 16 assault, or stalking, unless the practice can be demonstrated to be  
 17 job related.

18 (2) Where the commission, after hearing, determines that an  
 19 examination is unlawful under this subdivision, the licensing board  
 20 may continue to use and rely on the examination until such time  
 21 as judicial review by the superior court of the determination is  
 22 exhausted.

23 (3) If an examination or other qualification for licensing is  
 24 determined to be unlawful under this section, that determination  
 25 shall not void, limit, repeal, or otherwise affect any right, privilege,  
 26 status, or responsibility previously conferred upon any person by  
 27 the examination or by a license issued in reliance on the  
 28 examination or qualification.

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

32 (c) It shall be unlawful for any licensing board, unless  
 33 specifically acting in accordance with federal equal employment  
 34 opportunity guidelines or regulations approved by the commission,  
 35 to print or circulate or cause to be printed or circulated any  
 36 publication, or to make any non-job-related inquiry, either verbal  
 37 or through use of an application form, which expresses, directly  
 38 or indirectly, any limitation, specification, or discrimination as to  
 39 race, religious creed, color, national origin, ancestry, physical  
 40 disability, mental disability, medical condition, genetic information,

1 sex, gender, gender identity, gender expression, age, ~~or~~ sexual  
2 orientation, *or status as a victim of domestic violence, sexual*  
3 *assault, or stalking* or any intent to make any such limitation,  
4 specification, or discrimination. Nothing in this subdivision shall  
5 prohibit any licensing board from making, in connection with  
6 prospective licensure or certification, an inquiry as to, or a request  
7 for information regarding, the physical fitness of applicants if that  
8 inquiry or request for information is directly related and pertinent  
9 to the license or the licensed position *for which* the applicant is  
10 applying ~~for~~. Nothing in this subdivision shall prohibit any  
11 licensing board, in connection with prospective examinations,  
12 licensure, or certification, from inviting individuals with physical  
13 or mental disabilities to request reasonable accommodations or  
14 from making inquiries related to reasonable accommodations.

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

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

21 (f) As used in this section, “licensing board” means any state  
22 board, agency, or authority in the State and Consumer Services  
23 Agency that has the authority to grant licenses or certificates which  
24 are prerequisites to employment eligibility or professional status.

25 SEC. 13. Section 12945.6 is added to the Government Code,  
26 to read:

27 12945.6. (a) In addition to the protections in Section 12940,  
28 it shall be an unlawful employment practice to do any of the  
29 following, unless based on a bona fide occupational qualification:

30 (1) For an employer to refuse to provide reasonable  
31 accommodations for an employee who is a victim of actual or  
32 threatened domestic violence, sexual assault, or stalking.  
33 Reasonable accommodations shall be made in a timely fashion.  
34 An exigent circumstance or danger facing the employee or the  
35 employee’s family or other household member shall be considered  
36 in determining whether the accommodation is reasonable.

37 (2) For an employer to fail to engage in a timely, good faith  
38 interactive process with the individual to determine effective  
39 reasonable accommodations, if any, in response to a request for  
40 reasonable accommodations made by an employee who is a victim

1 of actual or threatened domestic violence, sexual assault, or  
2 stalking.

3 (3) For an employer to retaliate against a victim of actual or  
4 threatened domestic violence, sexual assault, or stalking for  
5 requesting a reasonable accommodation, regardless of whether the  
6 request was granted.

7 (4) For an employer to retaliate against an employee for  
8 providing documentation for the purpose of certifying the need  
9 for accommodations as described in subdivision (b), or the need  
10 for leave under subdivision (c) of Section 230 or Section 230.1 of  
11 the Labor Code.

12 (5) This subdivision does not require the employer to undertake  
13 an action that constitutes an undue hardship on the employer's  
14 business operations.

15 (b) (1) Upon an employer's request, an employee who requests  
16 a reasonable accommodation pursuant to this section shall provide  
17 the employer a signed written statement from the employee or  
18 other individual acting on the employee's behalf certifying that  
19 the accommodation is for a purpose authorized under this section.  
20 The employer may also, but need not, request that the employee  
21 provide either a police or court record related to the domestic  
22 violence, sexual assault, or stalking, or provide a signed written  
23 statement that the employee is a victim of threatened or actual  
24 domestic violence, sexual assault, or stalking, if that statement is  
25 from an employee or agent of a victim services organization, an  
26 attorney, or a licensed medical professional or other licensed  
27 professional, from whom the employee has sought assistance with  
28 respect to the domestic violence, sexual assault, or stalking.

29 (2) Any verbal or written statement or police or court record  
30 provided to an employer identifying an employee as a victim of  
31 domestic violence, sexual assault, or stalking, including  
32 documentation provided to the employer pursuant to this section,  
33 shall be maintained as confidential by the employer and shall not  
34 be further disclosed by the employer except as required by federal  
35 or state law or as necessary to protect the employee's safety in the  
36 workplace. The employee shall be given notice before any  
37 authorized disclosure.

38 SEC. 14. Section 12951 of the Government Code is amended  
39 to read:

1 12951. (a) It is an unlawful employment practice for an  
2 employer, as defined in ~~subdivision (d)~~ of Section 12926, to adopt  
3 or enforce a policy that limits or prohibits the use of any language  
4 in any workplace, unless both of the following conditions exist:

5 (1) The language restriction is justified by a business necessity.

6 (2) The employer has notified its employees of the circumstances  
7 and the time when the language restriction is required to be  
8 observed and of the consequences for violating the language  
9 restriction.

10 (b) For the purposes of this section, “business necessity” means  
11 an overriding legitimate business purpose such that the language  
12 restriction is necessary to the safe and efficient operation of the  
13 business, that the language restriction effectively fulfills the  
14 business purpose it is supposed to serve, and there is no alternative  
15 practice to the language restriction that would accomplish the  
16 business purpose equally well with a lesser discriminatory impact.

17 SEC. 15. Section 98.6 of the Labor Code is amended to read:

18 98.6. (a) No person shall discharge an employee or in any  
19 manner discriminate against any employee or applicant for  
20 employment because the employee or applicant engaged in any  
21 conduct delineated in this chapter, including the conduct described  
22 in subdivision (k) of Section 96, and Chapter 5 (commencing with  
23 Section 1101) of Part 3 of Division 2, or because the employee or  
24 applicant for employment has filed a bona fide complaint or claim  
25 or instituted or caused to be instituted any proceeding under or  
26 relating to his or her rights, which are under the jurisdiction of the  
27 Labor Commissioner, or because the employee has initiated any  
28 action or notice pursuant to Section 2699, or has testified or is  
29 about to testify in any such proceeding or because of the exercise  
30 by the employee or applicant for employment on behalf of himself,  
31 herself, or others of any rights afforded him or her.

32 (b) Any employee who is discharged, threatened with discharge,  
33 demoted, suspended, or in any other manner discriminated against  
34 in the terms and conditions of his or her employment because the  
35 employee engaged in any conduct delineated in this chapter,  
36 including the conduct described in subdivision (k) of Section 96,  
37 and Chapter 5 (commencing with Section 1101) of Part 3 of  
38 Division 2, or because the employee has made a bona fide  
39 complaint or claim to the division pursuant to this part, or because  
40 the employee has initiated any action or notice pursuant to Section

1 2699 shall be entitled to reinstatement and reimbursement for lost  
 2 wages and work benefits caused by those acts of the employer.  
 3 Any employer who willfully refuses to hire, promote, or otherwise  
 4 restore an employee or former employee who has been determined  
 5 to be eligible for rehiring or promotion by a grievance procedure,  
 6 arbitration, or hearing authorized by law, is guilty of a  
 7 misdemeanor.

8 (c) (1) Any applicant for employment who is refused  
 9 employment, who is not selected for a training program leading  
 10 to employment, or who in any other manner is discriminated  
 11 against in the terms and conditions of any offer of employment  
 12 because the applicant engaged in any conduct delineated in this  
 13 chapter, including the conduct described in subdivision (k) of  
 14 Section 96, and Chapter 5 (commencing with Section 1101) of  
 15 Part 3 of Division 2, or because the applicant has made a bona fide  
 16 complaint or claim to the division pursuant to this part, or because  
 17 the employee has initiated any action or notice pursuant to Section  
 18 2699 shall be entitled to employment and reimbursement for lost  
 19 wages and work benefits caused by the acts of the prospective  
 20 employer.

21 (2) This subdivision shall not be construed to invalidate any  
 22 collective bargaining agreement that requires an applicant for a  
 23 position that is subject to the collective bargaining agreement to  
 24 sign a contract that protects either or both of the following as  
 25 specified in subparagraphs (A) and (B), nor shall this subdivision  
 26 be construed to invalidate any employer requirement of an  
 27 applicant for a position that is not subject to a collective bargaining  
 28 agreement to sign an employment contract that protects either or  
 29 both of the following:

30 (A) An employer against any conduct that is actually in direct  
 31 conflict with the essential enterprise-related interests of the  
 32 employer and where breach of that contract would actually  
 33 constitute a material and substantial disruption of the employer's  
 34 operation.

35 (B) A firefighter against any disease that is presumed to arise  
 36 in the course and scope of employment, by limiting his or her  
 37 consumption of tobacco products on and off the job.

38 (d) The provisions of this section creating new actions or  
 39 remedies that are effective on January 1, 2002, to employees or  
 40 applicants for employment do not apply to any state or local law

1 enforcement agency, any religious association or corporation  
2 specified in subdivision ~~(d)~~ (e) of Section 12926 of the Government  
3 Code, except as provided in Section 12926.2 of the Government  
4 Code, or any person described in Section 1070 of the Evidence  
5 Code.

6 SEC. 16. Section 868.8 of the Penal Code is amended to read:

7 868.8. Notwithstanding any other provision of law, in any  
8 criminal proceeding in which the defendant is charged with a  
9 violation of Section 243.4, 261, 273a, 273d, 285, 286, 288, 288a,  
10 288.5, or 289, subdivision (1) of Section 314, Section 647.6, or  
11 former Section 647a, or any crime that constitutes domestic  
12 violence defined in Section 13700, committed with or upon a  
13 person with a disability or a minor under 11 years of age, the court  
14 shall take special precautions to provide for the comfort and support  
15 of the person with a disability or minor and to protect him or her  
16 from coercion, intimidation, or undue influence as a witness,  
17 including, but not limited to, any of the following:

18 (a) In the court's discretion, the witness may be allowed  
19 reasonable periods of relief from examination and  
20 cross-examination during which he or she may retire from the  
21 courtroom. The judge may also allow other witnesses in the  
22 proceeding to be examined when the person with a disability or  
23 child witness retires from the courtroom.

24 (b) Notwithstanding Section 68110 of the Government Code,  
25 in his or her discretion, the judge may remove his or her robe if  
26 the judge believes that this formal attire intimidates the person  
27 with a disability or the minor.

28 (c) In the court's discretion the judge, parties, witnesses, support  
29 persons, and court personnel may be relocated within the courtroom  
30 to facilitate a more comfortable and personal environment for the  
31 person with a disability or child witness.

32 (d) In the court's discretion, the taking of the testimony of the  
33 person with a disability or the minor may be limited to normal  
34 school hours if there is no good cause to take the testimony of the  
35 person with a disability or the minor during other hours.

36 (e) For the purposes of this section, the term "disability" is  
37 defined in ~~subdivision (j)~~ of Section 12926 of the Government  
38 Code.

39 SEC. 17. Section 4900 of the Welfare and Institutions Code is  
40 amended to read:

1 4900. (a) The definitions contained in this section shall govern  
2 the construction of this division, unless the context requires  
3 otherwise. These definitions shall not be construed to alter or  
4 impact the definitions or other provisions of the Elder Abuse and  
5 Dependent Adult Civil Protection Act (Chapter 11 (commencing  
6 with Section 15600)), or Chapter 13 (commencing with Section  
7 15750), of Part 3 of Division 9.

8 (b) “Abuse” means an act, or failure to act, that would constitute  
9 abuse as that term is defined in federal regulations pertaining to  
10 the authority of protection and advocacy agencies, including  
11 Section 51.2 of Title 42 of the Code of Federal Regulations or  
12 Section 1386.19 of Title 45 of the Code of Federal Regulations.  
13 “Abuse” also means an act, or failure to act, that would constitute  
14 abuse as that term is defined in Section 15610.07 of this code or  
15 Section 11165.6 of the Penal Code.

16 (c) “Complaint” has the same meaning as “complaint” as defined  
17 in federal statutes and regulations pertaining to the authority of  
18 protection and advocacy agencies, including Section 10802(1) of  
19 Title 42 of the United States Code, Section 51.2 of Title 42 of the  
20 Code of Federal Regulations, or Section 1386.19 of Title 45 of the  
21 Code of Federal Regulations.

22 (d) “Disability” means a developmental disability, as defined  
23 in Section 15002(8) of Title 42 of the United States Code, a mental  
24 illness, as defined in Section 10802(4) of Title 42 of the United  
25 States Code, a disability within the meaning of the federal  
26 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101  
27 et seq.), as defined in Section 12102(2) of Title 42 of the United  
28 States Code, or a disability within the meaning of the California  
29 Fair Employment and Housing Act (Part 2.8 (commencing with  
30 Section 12900) of Division 3 of Title 2 of the Government Code),  
31 as defined in ~~subdivision (j) or (l)~~ of Section 12926 of the  
32 Government Code.

33 (e) “Facility” or “program” means a public or private facility  
34 or program providing services, support, care, or treatment to  
35 persons with disabilities, even if only on an as-needed basis or  
36 under contractual arrangement. “Facility” or “program” includes,  
37 but is not limited to, a hospital, a long-term health care facility, a  
38 community living arrangement for people with disabilities,  
39 including a group home, a board and care home, an individual  
40 residence or apartment of a person with a disability where services

1 are provided, a day program, a juvenile detention facility, a  
2 homeless shelter, a jail, or a prison, including all general areas, as  
3 well as special, mental health, or forensic units. The term includes  
4 any facility licensed under Division 2 (commencing with Section  
5 1200) of the Health and Safety Code and any facility that is  
6 unlicensed but is not exempt from licensure as provided in  
7 subdivision (a) of Section 1503.5 of the Health and Safety Code.  
8 The term also includes a public or private school or other institution  
9 or program providing education, training, habilitation, therapeutic,  
10 or residential services to persons with disabilities.

11 (f) “Legal guardian,” “conservator,” or “legal representative”  
12 means a person appointed by a state court or agency empowered  
13 under state law to appoint and review the legal guardian,  
14 conservator, or legal representative, as appropriate. With respect  
15 to an individual described under paragraph (2) of subdivision (i),  
16 this person is one who has the legal authority to consent to health  
17 or mental health care or treatment on behalf of the individual. With  
18 respect to an individual described under paragraphs (1) or (3) of  
19 subdivision (i), this person is one who has the legal authority to  
20 make all decisions on behalf of the individual. These terms include  
21 the parent of a minor who has legal custody of the minor. These  
22 terms do not include a person acting solely as a representative  
23 payee, a person acting solely to handle financial matters, an  
24 attorney or other person acting on behalf of an individual with a  
25 disability solely in individual legal matters, or an official or his or  
26 her designee who is responsible for the provision of treatment or  
27 services to an individual with a disability.

28 (g) “Neglect” means a negligent act, or omission to act, that  
29 would constitute neglect as that term is defined in federal statutes  
30 and regulations pertaining to the authority of protection and  
31 advocacy agencies, including Section 10802(5) of Title 42 of the  
32 United States Code, Section 51.2 of Title 42 of the Code of Federal  
33 Regulations, or Section 1386.19 of Title 45 of the Code of Federal  
34 Regulations. “Neglect” also means a negligent act, or omission to  
35 act, that would constitute neglect as that term is defined in  
36 subdivision (b) of Section 15610.07 of this code or Section 11165.2  
37 of the Penal Code.

38 (h) “Probable cause” to believe that an individual has been  
39 subject to abuse or neglect, or is at significant risk of being  
40 subjected to abuse or neglect, exists when the protection and

1 advocacy agency determines that it is objectively reasonable for  
2 a person to entertain that belief. The individual making a probable  
3 cause determination may base the decision on reasonable inferences  
4 drawn from his or her experience or training regarding similar  
5 incidents, conditions, or problems that are usually associated with  
6 abuse or neglect. Information supporting a probable cause  
7 determination may result from monitoring or other activities,  
8 including, but not limited to, media reports and newspaper articles.

9 (i) “Protection and advocacy agency” means the private  
10 nonprofit corporation designated by the Governor in this state  
11 pursuant to federal law for the protection and advocacy of the  
12 rights of persons with disabilities, including the following:

13 (1) People with developmental disabilities, as authorized under  
14 the federal Developmental Disabilities Assistance and Bill of  
15 Rights Act of 2000, contained in Chapter 144 (commencing with  
16 Section 15001) of Title 42 of the United States Code.

17 (2) People with mental illness, as authorized under the federal  
18 Protection and Advocacy for Mentally Ill Individuals Amendments  
19 Act of 1991, contained in Chapter 114 (commencing with Section  
20 10801) of Title 42 of the United States Code.

21 (3) People with disabilities within the meaning of the federal  
22 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101  
23 et seq.) as defined in Section 12102(2) of Title 42 of the United  
24 States Code, who do not have a developmental disability as defined  
25 in Section 15002(8) of Title 42 of the United States Code, people  
26 with a mental illness as defined in Section 10802(4) of Title 42 of  
27 the United States Code, and who are receiving services under the  
28 federal Protection and Advocacy of Individual Rights Act as  
29 defined in Section 794e of Title 29 of the United States Code, or  
30 people with a disability within the meaning of the California Fair  
31 Employment and Housing Act (Part 2.8 (commencing with Section  
32 12900) of Division 3 of Title 2 of the Government Code), as  
33 defined in ~~subdivision (j) or (l)~~ of Section 12926 of the Government  
34 Code.

35 (j) “Reasonable unaccompanied access” means access that  
36 permits the protection and advocacy agency, without undue  
37 interference, to monitor, inspect, and observe conditions in facilities  
38 and programs, to meet and communicate with residents and service  
39 recipients privately and confidentially on a regular basis, formally  
40 or informally, by telephone, mail, electronic mail, and in person,

1 and to review records privately and confidentially, in a manner  
2 that minimizes interference with the activities of the program or  
3 service, that respects residents' privacy interests and honors a  
4 resident's request to terminate an interview, and that does not  
5 jeopardize the physical health or safety of facility or program staff,  
6 residents, service recipients, or protection and advocacy agency  
7 staff.

8 SEC. 18. No reimbursement is required by this act pursuant to  
9 Section 6 of Article XIII B of the California Constitution because  
10 the only costs that may be incurred by a local agency or school  
11 district will be incurred because this act creates a new crime or  
12 infraction, eliminates a crime or infraction, or changes the penalty  
13 for a crime or infraction, within the meaning of Section 17556 of  
14 the Government Code, or changes the definition of a crime within  
15 the meaning of Section 6 of Article XIII B of the California  
16 Constitution.

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