

AMENDED IN ASSEMBLY APRIL 25, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1740**

---

---

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

February 17, 2012

---

---

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 Sections 230 and 230.1 of the Labor Code~~, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1740, as amended, V. Manuel Pérez. ~~Employment discrimination protections: 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.~~

*(1) Existing law provides protections to victims of domestic violence and sexual assault and prohibits employers from taking adverse employment action against victims of domestic violence and sexual assault who take time off from work to attend to issues arising as a result of the domestic violence or sexual assault, as long as the employee complies with certain conditions. Existing law provides that employers who violate these provisions are guilty of a misdemeanor.*

*This bill would extend these protections to victims of stalking. The bill would also prohibit an employer from discharging or in any manner discriminating or retaliating against an employee because of the employee's known status as a victim of domestic violence, sexual assault, or stalking, and require the employer to provide reasonable accommodations for such a victim. Because a violation of the bill's requirements under certain circumstances would be a crime, the bill would impose a state-mandated local program.*

(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~~

1 promote school safety and emphasize violence prevention among  
2 children and youth in the public schools.

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

10 (c) ~~It is further the intent of the Legislature that schoolsites~~  
11 ~~receiving funds pursuant to this article accomplish all of the~~  
12 ~~following goals:~~

13 (1) ~~Teach pupils techniques for resolving conflicts without~~  
14 ~~violence.~~

15 (2) ~~Train school staff and administrators to support and promote~~  
16 ~~conflict resolution and mediation techniques for resolving conflicts~~  
17 ~~between and among pupils.~~

18 (3) ~~Reduce incidents of violence at the schoolsite with an~~  
19 ~~emphasis on prevention and early detection.~~

20 (4) ~~Provide age-appropriate instruction in domestic violence~~  
21 ~~prevention, dating violence prevention, and interpersonal violence~~  
22 ~~prevention.~~

23 SEC. 2. ~~Section 354.5 of the Elections Code is amended to~~  
24 ~~read:~~

25 354.5. (a) "Signature" includes either of the following:

26 (1) ~~A person's mark if the name of the person affixing the mark~~  
27 ~~is written near the mark by a witness over 18 years of age~~  
28 ~~designated by the person and the designee subscribes his or her~~  
29 ~~own name as a witness thereto. For purposes of this paragraph, a~~  
30 ~~signature stamp may be used as a mark, provided that the~~  
31 ~~authorized user complies with the provisions of this paragraph.~~

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

34 (b) ~~A mark attested as provided in paragraph (1) of subdivision~~  
35 ~~(a), or an impression made by a signature stamp as provided in~~  
36 ~~paragraph (2) of subdivision (a), may serve as a signature for any~~  
37 ~~purpose specified in this code, including a sworn statement.~~

38 (c) ~~An authorized user of a signature stamp may use it to affix~~  
39 ~~a signature to a document or writing any time that a signature is~~

1 required by this code, provided that all of the following conditions,  
2 as applicable, are met:

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

6 (2) A signature stamp shall be affixed by the authorized user in  
7 the presence of the Secretary of State, his or her designee, the local  
8 elections official, or his or her designee, to obtain a ballot, in any  
9 local, state, or federal election unless the authorized user of the  
10 signature stamp votes by vote by mail ballot. If the owner of a  
11 signature stamp votes by vote by mail ballot, he or she shall affix  
12 the signature stamp on the identification envelope in accordance  
13 with Section 3019.

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

17 (e) A registered voter or any person who is eligible to vote, who  
18 qualifies as an authorized user pursuant to paragraph (1) of  
19 subdivision (g), may use a signature stamp only after he or she  
20 first submits his or her affidavit of registration or a new affidavit  
21 of registration, whichever is applicable, in the presence of a county  
22 elections official, using the signature stamp to sign the affidavit.

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

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

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

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

30 (B) A person using the signature stamp on behalf of the owner  
31 of the stamp with the owner's express consent and in the presence  
32 of the owner.

33 (2) "Disability" means a medical condition, mental disability,  
34 or physical disability, as those terms are defined in Section 12926  
35 of the Government Code.

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

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

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

1     (C) A signature of the name of a person with a disability that is  
2 made by another person and is adopted by the person with the  
3 disability.

4     SEC. 3. ~~Section 11135 of the Government Code is amended~~  
5 to read:

6     11135. ~~(a) No person in the State of California shall, on the~~  
7 ~~basis of race, national origin, ethnic group identification, religion,~~  
8 ~~age, sex, sexual orientation, color, genetic information, or~~  
9 ~~disability, be unlawfully denied full and equal access to the benefits~~  
10 ~~of, or be unlawfully subjected to discrimination under, any program~~  
11 ~~or activity that is conducted, operated, or administered by the state~~  
12 ~~or by any state agency, is funded directly by the state, or receives~~  
13 ~~any financial assistance from the state. Notwithstanding Section~~  
14 ~~11000, this section applies to the California State University.~~

15     ~~(b) With respect to discrimination on the basis of disability,~~  
16 ~~programs and activities subject to subdivision (a) shall meet the~~  
17 ~~protections and prohibitions contained in Section 202 of the federal~~  
18 ~~Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132),~~  
19 ~~and the federal rules and regulations adopted in implementation~~  
20 ~~thereof, except that if the laws of this state prescribe stronger~~  
21 ~~protections and prohibitions, the programs and activities subject~~  
22 ~~to subdivision (a) shall be subject to the stronger protections and~~  
23 ~~prohibitions.~~

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

26     ~~(2) The Legislature finds and declares that the amendments~~  
27 ~~made to this act are declarative of existing law. The Legislature~~  
28 ~~further finds and declares that in enacting Senate Bill 105 of the~~  
29 ~~2001–02 Regular Session (Chapter 1102 of the Statutes of 2002),~~  
30 ~~it was the intention of the Legislature to apply subdivision (d) to~~  
31 ~~the California State University in the same manner that~~  
32 ~~subdivisions (a), (b), and (c) already applied to the California State~~  
33 ~~University, notwithstanding Section 11000. In clarifying that the~~  
34 ~~California State University is subject to paragraph (2) of~~  
35 ~~subdivision (d), it is not the intention of the Legislature to increase~~  
36 ~~the cost of developing or procuring electronic and information~~  
37 ~~technology. The California State University shall, however, in~~  
38 ~~determining the cost of developing or procuring electronic or~~  
39 ~~information technology, consider whether technology that meets~~  
40 ~~the standards applicable pursuant to paragraph (2) of subdivision~~

1 ~~(d) will reduce the long-term cost incurred by the California State~~  
2 ~~University in providing access or accommodations to future users~~  
3 ~~of this technology who are persons with disabilities, as required~~  
4 ~~by existing law, including this section, Title II of the federal~~  
5 ~~Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101~~  
6 ~~and following), and Section 504 of the Rehabilitation Act of 1973~~  
7 ~~(29 U.S.C. Sec. 794).~~

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

11 ~~(2) In order to improve accessibility of existing technology, and~~  
12 ~~therefore increase the successful employment of individuals with~~  
13 ~~disabilities, particularly blind and visually impaired and deaf and~~  
14 ~~hard-of-hearing persons, state governmental entities, in developing,~~  
15 ~~procuring, maintaining, or using electronic or information~~  
16 ~~technology, either indirectly or through the use of state funds by~~  
17 ~~other entities, shall comply with the accessibility requirements of~~  
18 ~~Section 508 of the federal Rehabilitation Act of 1973, as amended~~  
19 ~~(29 U.S.C. Sec. 794d), and regulations implementing that act as~~  
20 ~~set forth in Part 1194 of Title 36 of the Federal Code of~~  
21 ~~Regulations.~~

22 ~~(3) Any entity that contracts with a state or local entity subject~~  
23 ~~to this section for the provision of electronic or information~~  
24 ~~technology or for the provision of related services shall agree to~~  
25 ~~respond to, and resolve any complaint regarding accessibility of~~  
26 ~~its products or services that is brought to the attention of the entity.~~

27 ~~(e) As used in this section, “sex” and “sexual orientation” have~~  
28 ~~the same meanings as those terms are defined in Section 12926.~~

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

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

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

39 ~~12920. (a) It is hereby declared as the public policy of this~~  
40 ~~state that it is necessary to protect and safeguard the right and~~

1 opportunity of all persons to seek, obtain, and hold employment  
2 without discrimination or abridgment on account of race, religious  
3 creed, color, national origin, ancestry, physical disability, mental  
4 disability, medical condition, genetic information, marital status,  
5 sex, gender, gender identity, gender expression, age, sexual  
6 orientation, or status as a victim of domestic violence, sexual  
7 assault, or stalking.

8 (b) It is recognized that the practice of denying employment  
9 opportunity and discriminating in the terms of employment for the  
10 reasons described in subdivision (a) foments domestic strife and  
11 unrest, deprives the state of the fullest utilization of its capacities  
12 for development and advancement, and substantially and adversely  
13 affects the interests of employees, employers, and the public in  
14 general.

15 (c) Further, the practice of discrimination because of race, color,  
16 religion, sex, gender, gender identity, gender expression, sexual  
17 orientation, marital status, national origin, ancestry, familial status,  
18 source of income, disability, or genetic information in housing  
19 accommodations is declared to be against public policy.

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

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

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

27 12921. (a) The opportunity to seek, obtain, and hold  
28 employment without discrimination because of race, religious  
29 creed, color, national origin, ancestry, physical disability, mental  
30 disability, medical condition, genetic information, marital status,  
31 sex, gender, gender identity, gender expression, age, sexual  
32 orientation, or status as a victim of domestic violence, sexual  
33 assault, or stalking is hereby recognized as, and declared to be, a  
34 civil right.

35 (b) The opportunity to seek, obtain, and hold housing without  
36 discrimination because of race, color, religion, sex, gender, gender  
37 identity, gender expression, sexual orientation, marital status,  
38 national origin, ancestry, familial status, source of income,  
39 disability, genetic information, or any other basis prohibited by

1 Section 51 of the Civil Code is hereby recognized as, and declared  
2 to be, a civil right.

3 ~~SEC. 6. Section 12926 of the Government Code is amended~~  
4 ~~to read:~~

5 ~~12926. As used in this part in connection with unlawful~~  
6 ~~practices, unless a different meaning clearly appears from the~~  
7 ~~context:~~

8 ~~(a) “Affirmative relief” or “prospective relief” includes the~~  
9 ~~authority to order reinstatement of an employee, awards of backpay,~~  
10 ~~reimbursement of out-of-pocket expenses, hiring, transfers,~~  
11 ~~reassignments, grants of tenure, promotions, cease and desist~~  
12 ~~orders, posting of notices, training of personnel, testing, expunging~~  
13 ~~of records, reporting of records, and any other similar relief that~~  
14 ~~is intended to correct unlawful practices under this part.~~

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

17 ~~(c) “Domestic violence” means a type of abuse set forth in~~  
18 ~~Section 6211 of the Family Code.~~

19 ~~(d) “Employee” does not include any individual employed by~~  
20 ~~his or her parents, spouse, or child, or any individual employed~~  
21 ~~under a special license in a nonprofit sheltered workshop or~~  
22 ~~rehabilitation facility.~~

23 ~~(e) “Employer” includes any person regularly employing five~~  
24 ~~or more persons, or any person acting as an agent of an employer,~~  
25 ~~directly or indirectly, the state or any political or civil subdivision~~  
26 ~~of the state, and cities, except as follows:~~

27 ~~“Employer” does not include a religious association or~~  
28 ~~corporation not organized for private profit.~~

29 ~~(f) “Employment agency” includes any person undertaking for~~  
30 ~~compensation to procure employees or opportunities to work.~~

31 ~~(g) “Essential functions” means the fundamental job duties of~~  
32 ~~the employment position the individual with a disability holds or~~  
33 ~~desires. “Essential functions” does not include the marginal~~  
34 ~~functions of the position.~~

35 ~~(1) A job function may be considered essential for any of several~~  
36 ~~reasons, including, but not limited to, any one or more of the~~  
37 ~~following:~~

38 ~~(A) The function may be essential because the reason the~~  
39 ~~position exists is to perform that function.~~

1 ~~(B) The function may be essential because of the limited number~~  
2 ~~of employees available among whom the performance of that job~~  
3 ~~function can be distributed.~~

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

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

9 ~~(A) The employer's judgment as to which functions are essential.~~

10 ~~(B) Written job descriptions prepared before advertising or~~  
11 ~~interviewing applicants for the job.~~

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

13 ~~(D) The consequences of not requiring the incumbent to perform~~  
14 ~~the function.~~

15 ~~(E) The terms of a collective bargaining agreement.~~

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

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

18 ~~(h) (1) "Genetic information" means, with respect to any~~  
19 ~~individual, information about any of the following:~~

20 ~~(A) The individual's genetic tests.~~

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

22 ~~(C) The manifestation of a disease or disorder in family members~~  
23 ~~of the individual.~~

24 ~~(2) "Genetic information" includes any request for, or receipt~~  
25 ~~of, genetic services, or participation in clinical research that~~  
26 ~~includes genetic services, by an individual or any family member~~  
27 ~~of the individual.~~

28 ~~(3) "Genetic information" does not include information about~~  
29 ~~the sex or age of any individual.~~

30 ~~(i) "Labor organization" includes any organization that exists~~  
31 ~~and is constituted for the purpose, in whole or in part, of collective~~  
32 ~~bargaining or of dealing with employers concerning grievances,~~  
33 ~~terms or conditions of employment, or of other mutual aid or~~  
34 ~~protection.~~

35 ~~(j) "Medical condition" means either of the following:~~

36 ~~(1) Any health impairment related to or associated with a~~  
37 ~~diagnosis of cancer or a record or history of cancer.~~

38 ~~(2) Genetic characteristics. For purposes of this section, "genetic~~  
39 ~~characteristics" means either of the following:~~

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

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

14 ~~(k) “Mental disability” includes, but is not limited to, all of the~~  
15 ~~following:~~

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

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

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

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

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

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

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

38 ~~(5) Being regarded or treated by the employer or other entity~~  
39 ~~covered by this part as having, or having had, a mental or~~  
40 ~~psychological disorder or condition that has no present disabling~~

1 effect, but that may become a mental disability as described in  
2 paragraph (1) or (2):

3 “Mental disability” does not include sexual behavior disorders,  
4 compulsive gambling, kleptomania, pyromania, or psychoactive  
5 substance use disorders resulting from the current unlawful use of  
6 controlled substances or other drugs:

7 (l) “On the bases enumerated in this part” means or refers to  
8 discrimination on the basis of one or more of the following: race,  
9 religious creed, color, national origin, ancestry, physical disability,  
10 mental disability, medical condition, genetic information, marital  
11 status, sex, age, sexual orientation, or status as a victim of domestic  
12 violence, sexual assault, or stalking.

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

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

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

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

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

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

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

33 (2) Any other health impairment not described in paragraph (1)  
34 that requires special education or related services:

35 (3) Having a record or history of a disease, disorder, condition,  
36 cosmetic disfigurement, anatomical loss, or health impairment  
37 described in paragraph (1) or (2), which is known to the employer  
38 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 ~~(n) Notwithstanding subdivisions (k) and (m), if the definition~~  
14 ~~of “disability” used in the federal Americans with Disabilities Act~~  
15 ~~of 1990 (P.L. 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 (k) or (m), 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 (k) and (m).~~

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

29 ~~(p) “Reasonable accommodation” may include any of the~~  
30 ~~following:~~

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

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

39 ~~(3) With regard to victims of domestic violence, sexual assault,~~  
40 ~~or stalking, the implementation of safety measures, including a~~

1 transfer, reassignment, modified schedule, changed work telephone,  
2 changed work station, installed lock, assistance in documenting  
3 domestic violence, sexual assault, or stalking that occurs in the  
4 workplace, an implemented safety procedure, or another adjustment  
5 to a job structure, workplace facility, or work requirement in  
6 response to actual or threatened domestic violence, sexual assault,  
7 or stalking.

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

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

18 (s) ~~“Sexual assault” means a crime set forth in Section 261,~~  
19 ~~261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 267, 269, 273.4,~~  
20 ~~285, 286, 288, 288a, 289, or 311.4 of the Penal Code.~~

21 (t) ~~“Sexual orientation” means heterosexuality, homosexuality,~~  
22 ~~and bisexuality.~~

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

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

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) Section  
8 12926 to provide protection when an individual is erroneously or  
9 mistakenly believed to have any physical or mental condition that  
10 limits a major life activity.

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

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

19 12926.2. As used in this part in connection with unlawful  
20 practices, unless a different meaning clearly appears from the  
21 context:

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

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

32 (c) Notwithstanding Section 12926 and except as otherwise  
33 provided in subdivision (d) of this section, “employer” includes a  
34 religious corporation or association with respect to persons  
35 employed by the religious association or corporation to perform  
36 duties, other than religious duties, at a health care facility operated  
37 by the religious association or corporation for the provision of  
38 health care that is not restricted to adherents of the religion that  
39 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 Section 12926, “employer” does not include  
7 a nonprofit public benefit corporation incorporated to provide  
8 health care on behalf of a religious organization under Part 2  
9 (commencing with Section 5110) of Division 2 of Title 1 of the  
10 Corporations Code, with respect to employment, including  
11 promotion, of an individual of a particular religion in an executive  
12 or pastoral care position connected with the provision of health  
13 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 in Section  
30 12926, includes any person or entity identified as the employer on  
31 the employee’s Federal Form W-2 (Wage and Tax Statement).

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

34 12931.— (a) The department may also provide assistance to  
35 communities and persons therein in resolving disputes,  
36 disagreements, or difficulties relating to discriminatory practices  
37 based on race, religious creed, color, national origin, ancestry,  
38 physical disability, mental disability, medical condition, genetic  
39 information, marital status, sex, gender, gender identity, gender  
40 expression, familial status, age, sexual orientation, or status as a

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

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

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

16 12940. It is an unlawful employment practice, unless based  
17 upon a bona fide occupational qualification, or, except where based  
18 upon applicable security regulations established by the United  
19 States or the State of California:

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

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

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

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

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

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

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

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

35     ~~(B) The provisions of this part relating to discrimination on the~~  
36 ~~basis of age do not prohibit an employer from providing health~~  
37 ~~benefits or health care reimbursement plans to retired persons that~~  
38 ~~are altered, reduced, or eliminated when the person becomes~~  
39 ~~eligible for Medicare health benefits. This subparagraph applies~~  
40 ~~to all retiree health benefit plans and contractual provisions or~~

1 ~~practices concerning retiree health benefits and health care~~  
2 ~~reimbursement plans in effect on or after January 1, 2011.~~

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

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

29 ~~(d) For any employer or employment agency to print or circulate~~  
30 ~~or cause to be printed or circulated any publication, or to make~~  
31 ~~any non-job-related inquiry of an employee or applicant, either~~  
32 ~~verbal or through use of an application form, that expresses,~~  
33 ~~directly or indirectly, any limitation, specification, or discrimination~~  
34 ~~as to race, religious creed, color, national origin, ancestry, physical~~  
35 ~~disability, mental disability, medical condition, genetic information,~~  
36 ~~marital status, sex, gender, gender identity, gender expression,~~  
37 ~~age, sexual orientation, or status as a victim of domestic violence,~~  
38 ~~sexual assault, or stalking, or any intent to make any such~~  
39 ~~limitation, specification, or discrimination. This part does not~~  
40 ~~prohibit an employer or employment agency from inquiring into~~

1 the age of an applicant, or from specifying age limitations, where  
2 the law compels or provides for that action.

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

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

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

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

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

37 ~~(g) For any employer, labor organization, or employment agency~~  
38 ~~to harass, discharge, expel, or otherwise discriminate against any~~  
39 ~~person because the person has made a report pursuant to Section~~  
40 ~~11161.8 of the Penal Code that prohibits retaliation against hospital~~

1 employees who report suspected patient abuse by health facilities  
2 or community care facilities.

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

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

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

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

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

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

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

18    ~~(C) For purposes of this subdivision, “harassment” because of~~  
 19    ~~sex includes sexual harassment, gender harassment, and harassment~~  
 20    ~~based on pregnancy, childbirth, or related medical conditions.~~

21    ~~(5) For purposes of this subdivision, “a person providing services~~  
 22    ~~pursuant to a contract” means a person who meets all of the~~  
 23    ~~following criteria:~~

24    ~~(A) The person has the right to control the performance of the~~  
 25    ~~contract for services and discretion as to the manner of~~  
 26    ~~performance.~~

27    ~~(B) The person is customarily engaged in an independently~~  
 28    ~~established business.~~

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

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

37    ~~(l) For an employer or other entity covered by this part to refuse~~  
 38    ~~to hire or employ a person or to refuse to select a person for a~~  
 39    ~~training program leading to employment or to bar or to discharge~~  
 40    ~~a person from employment or from a training program leading to~~

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

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

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

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

33 (p) For an employer, labor organization, employment agency,  
34 apprenticeship training program, or any program leading to  
35 employment, or any other person or entity covered by this part, to  
36 discriminate against a victim of threatened or actual domestic  
37 violence, sexual assault, or stalking because the workplace or a  
38 work-related setting is disrupted or threatened by the action of a  
39 person whom the person discriminated against states has committed  
40 or threatened to commit domestic violence, sexual assault, or

1 stalking against the individual or the individual's family or other  
2 household member.

3 SEC. 12. Section 12944 of the Government Code is amended  
4 to read:

5 12944. (a) (1) It shall be unlawful for a licensing board to  
6 require any examination or establish any other qualification for  
7 licensing that has an adverse impact on any class by virtue of its  
8 race, creed, color, national origin or ancestry, sex, gender, gender  
9 identity, gender expression, age, medical condition, genetic  
10 information, physical disability, mental disability, sexual  
11 orientation, or status as a victim of domestic violence, sexual  
12 assault, or stalking, unless the practice can be demonstrated to be  
13 job related.

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

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

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

28 (c) It shall be unlawful for any licensing board, unless  
29 specifically acting in accordance with federal equal employment  
30 opportunity guidelines or regulations approved by the commission,  
31 to print or circulate or cause to be printed or circulated any  
32 publication, or to make any non-job-related inquiry, either verbal  
33 or through use of an application form, which expresses, directly  
34 or indirectly, any limitation, specification, or discrimination as to  
35 race, religious creed, color, national origin, ancestry, physical  
36 disability, mental disability, medical condition, genetic information,  
37 sex, gender, gender identity, gender expression, age, sexual  
38 orientation, or status as a victim of domestic violence, sexual  
39 assault, or stalking or any intent to make any such limitation,  
40 specification, or discrimination. Nothing in this subdivision shall

1 ~~prohibit any licensing board from making, in connection with~~  
2 ~~prospective licensure or certification, an inquiry as to, or a request~~  
3 ~~for information regarding, the physical fitness of applicants if that~~  
4 ~~inquiry or request for information is directly related and pertinent~~  
5 ~~to the license or the licensed position for which the applicant is~~  
6 ~~applying. Nothing in this subdivision shall prohibit any licensing~~  
7 ~~board, in connection with prospective examinations, licensure, or~~  
8 ~~certification, from inviting individuals with physical or mental~~  
9 ~~disabilities to request reasonable accommodations or from making~~  
10 ~~inquiries related to reasonable accommodations.~~

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

14 ~~(e) It is unlawful for any licensing board to fail to keep records~~  
15 ~~of applications for licensing or certification for a period of two~~  
16 ~~years following the date of receipt of the applications.~~

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

21 ~~SEC. 13. Section 12945.6 is added to the Government Code,~~  
22 ~~to read:~~

23 ~~12945.6. (a) In addition to the protections in Section 12940,~~  
24 ~~it shall be an unlawful employment practice to do any of the~~  
25 ~~following, unless based on a bona fide occupational qualification:~~

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

33 ~~(2) For an employer to fail to engage in a timely, good faith~~  
34 ~~interactive process with the individual to determine effective~~  
35 ~~reasonable accommodations, if any, in response to a request for~~  
36 ~~reasonable accommodations made by an employee who is a victim~~  
37 ~~of actual or threatened domestic violence, sexual assault, or~~  
38 ~~stalking.~~

39 ~~(3) For an employer to retaliate against a victim of actual or~~  
40 ~~threatened domestic violence, sexual assault, or stalking for~~

1 requesting a reasonable accommodation, regardless of whether the  
2 request was granted.

3 ~~(4) For an employer to retaliate against an employee for~~  
4 ~~providing documentation for the purpose of certifying the need~~  
5 ~~for accommodations as described in subdivision (b), or the need~~  
6 ~~for leave under subdivision (e) of Section 230 or Section 230.1 of~~  
7 ~~the Labor Code.~~

8 ~~(5) This subdivision does not require the employer to undertake~~  
9 ~~an action that constitutes an undue hardship on the employer's~~  
10 ~~business operations.~~

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

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

34 ~~SEC. 14. Section 12951 of the Government Code is amended~~  
35 ~~to read:~~

36 ~~12951. (a) It is an unlawful employment practice for an~~  
37 ~~employer, as defined in Section 12926, to adopt or enforce a policy~~  
38 ~~that limits or prohibits the use of any language in any workplace,~~  
39 ~~unless both of the following conditions exist:~~

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

1 ~~(2) The employer has notified its employees of the circumstances~~  
2 ~~and the time when the language restriction is required to be~~  
3 ~~observed and of the consequences for violating the language~~  
4 ~~restriction.~~

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

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

13 ~~98.6. (a) No person shall discharge an employee or in any~~  
14 ~~manner discriminate against any employee or applicant for~~  
15 ~~employment because the employee or applicant engaged in any~~  
16 ~~conduct delineated in this chapter, including the conduct described~~  
17 ~~in subdivision (k) of Section 96, and Chapter 5 (commencing with~~  
18 ~~Section 1101) of Part 3 of Division 2, or because the employee or~~  
19 ~~applicant for employment has filed a bona fide complaint or claim~~  
20 ~~or instituted or caused to be instituted any proceeding under or~~  
21 ~~relating to his or her rights, which are under the jurisdiction of the~~  
22 ~~Labor Commissioner, or because the employee has initiated any~~  
23 ~~action or notice pursuant to Section 2699, or has testified or is~~  
24 ~~about to testify in any such proceeding or because of the exercise~~  
25 ~~by the employee or applicant for employment on behalf of himself,~~  
26 ~~herself, or others of any rights afforded him or her.~~

27 ~~(b) Any employee who is discharged, threatened with discharge,~~  
28 ~~demoted, suspended, or in any other manner discriminated against~~  
29 ~~in the terms and conditions of his or her employment because the~~  
30 ~~employee engaged in any conduct delineated in this chapter,~~  
31 ~~including the conduct described in subdivision (k) of Section 96,~~  
32 ~~and Chapter 5 (commencing with Section 1101) of Part 3 of~~  
33 ~~Division 2, or because the employee has made a bona fide~~  
34 ~~complaint or claim to the division pursuant to this part, or because~~  
35 ~~the employee has initiated any action or notice pursuant to Section~~  
36 ~~2699 shall be entitled to reinstatement and reimbursement for lost~~  
37 ~~wages and work benefits caused by those acts of the employer.~~  
38 ~~Any employer who willfully refuses to hire, promote, or otherwise~~  
39 ~~restore an employee or former employee who has been determined~~  
40 ~~to be eligible for rehiring or promotion by a grievance procedure,~~

1 arbitration, or hearing authorized by law, is guilty of a  
2 misdemeanor.

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

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

25 (A) An employer against any conduct that is actually in direct  
26 conflict with the essential enterprise-related interests of the  
27 employer and where breach of that contract would actually  
28 constitute a material and substantial disruption of the employer's  
29 operation.

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

33 (d) The provisions of this section creating new actions or  
34 remedies that are effective on January 1, 2002, to employees or  
35 applicants for employment do not apply to any state or local law  
36 enforcement agency, any religious association or corporation  
37 specified in subdivision (e) of Section 12926 of the Government  
38 Code, except as provided in Section 12926.2 of the Government  
39 Code, or any person described in Section 1070 of the Evidence  
40 Code.

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

2 ~~868.8. Notwithstanding any other provision of law, in any~~  
3 ~~criminal proceeding in which the defendant is charged with a~~  
4 ~~violation of Section 243.4, 261, 273a, 273d, 285, 286, 288, 288a,~~  
5 ~~288.5, or 289, subdivision (1) of Section 314, Section 647.6, or~~  
6 ~~former Section 647a, or any crime that constitutes domestic~~  
7 ~~violence defined in Section 13700, committed with or upon a~~  
8 ~~person with a disability or a minor under 11 years of age, the court~~  
9 ~~shall take special precautions to provide for the comfort and support~~  
10 ~~of the person with a disability or minor and to protect him or her~~  
11 ~~from coercion, intimidation, or undue influence as a witness,~~  
12 ~~including, but not limited to, any of the following:~~

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

19 ~~(b) Notwithstanding Section 68110 of the Government Code,~~  
20 ~~in his or her discretion, the judge may remove his or her robe if~~  
21 ~~the judge believes that this formal attire intimidates the person~~  
22 ~~with a disability or the minor.~~

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

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

31 ~~(e) For the purposes of this section, the term "disability" is~~  
32 ~~defined in Section 12926 of the Government Code.~~

33 SEC. 17. ~~Section 4900 of the Welfare and Institutions Code is~~  
34 ~~amended to read:~~

35 ~~4900. (a) The definitions contained in this section shall govern~~  
36 ~~the construction of this division, unless the context requires~~  
37 ~~otherwise. These definitions shall not be construed to alter or~~  
38 ~~impact the definitions or other provisions of the Elder Abuse and~~  
39 ~~Dependent Adult Civil Protection Act (Chapter 11 (commencing~~

1 with Section 15600)), or Chapter 13 (commencing with Section  
2 15750), of Part 3 of Division 9.

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

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

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

27 (e) “Facility” or “program” means a public or private facility  
28 or program providing services, support, care, or treatment to  
29 persons with disabilities, even if only on an as-needed basis or  
30 under contractual arrangement. “Facility” or “program” includes,  
31 but is not limited to, a hospital, a long-term health care facility, a  
32 community living arrangement for people with disabilities,  
33 including a group home, a board and care home, an individual  
34 residence or apartment of a person with a disability where services  
35 are provided, a day program, a juvenile detention facility, a  
36 homeless shelter, a jail, or a prison, including all general areas, as  
37 well as special, mental health, or forensic units. The term includes  
38 any facility licensed under Division 2 (commencing with Section  
39 1200) of the Health and Safety Code and any facility that is  
40 unlicensed but is not exempt from licensure as provided in

1 subdivision (a) of Section 1503.5 of the Health and Safety Code.  
2 The term also includes a public or private school or other institution  
3 or program providing education, training, habilitation, therapeutic,  
4 or residential services to persons with disabilities.

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

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

32 (h) “Probable cause” to believe that an individual has been  
33 subject to abuse or neglect, or is at significant risk of being  
34 subjected to abuse or neglect, exists when the protection and  
35 advocacy agency determines that it is objectively reasonable for  
36 a person to entertain that belief. The individual making a probable  
37 cause determination may base the decision on reasonable inferences  
38 drawn from his or her experience or training regarding similar  
39 incidents, conditions, or problems that are usually associated with  
40 abuse or neglect. Information supporting a probable cause

1 determination may result from monitoring or other activities,  
2 including, but not limited to, media reports and newspaper articles.  
3 (i) “Protection and advocacy agency” means the private  
4 nonprofit corporation designated by the Governor in this state  
5 pursuant to federal law for the protection and advocacy of the  
6 rights of persons with disabilities, including the following:  
7 (1) People with developmental disabilities, as authorized under  
8 the federal Developmental Disabilities Assistance and Bill of  
9 Rights Act of 2000, contained in Chapter 144 (commencing with  
10 Section 15001) of Title 42 of the United States Code.  
11 (2) People with mental illness, as authorized under the federal  
12 Protection and Advocacy for Mentally Ill Individuals Amendments  
13 Act of 1991, contained in Chapter 114 (commencing with Section  
14 10801) of Title 42 of the United States Code.  
15 (3) People with disabilities within the meaning of the federal  
16 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101  
17 et seq.) as defined in Section 12102(2) of Title 42 of the United  
18 States Code, who do not have a developmental disability as defined  
19 in Section 15002(8) of Title 42 of the United States Code, people  
20 with a mental illness as defined in Section 10802(4) of Title 42 of  
21 the United States Code, and who are receiving services under the  
22 federal Protection and Advocacy of Individual Rights Act as  
23 defined in Section 794e of Title 29 of the United States Code, or  
24 people with a disability within the meaning of the California Fair  
25 Employment and Housing Act (Part 2.8 (commencing with Section  
26 12900) of Division 3 of Title 2 of the Government Code), as  
27 defined in Section 12926 of the Government Code.  
28 (j) “Reasonable unaccompanied access” means access that  
29 permits the protection and advocacy agency, without undue  
30 interference, to monitor, inspect, and observe conditions in facilities  
31 and programs, to meet and communicate with residents and service  
32 recipients privately and confidentially on a regular basis, formally  
33 or informally, by telephone, mail, electronic mail, and in person,  
34 and to review records privately and confidentially, in a manner  
35 that minimizes interference with the activities of the program or  
36 service, that respects residents’ privacy interests and honors a  
37 resident’s request to terminate an interview, and that does not  
38 jeopardize the physical health or safety of facility or program staff,  
39 residents, service recipients, or protection and advocacy agency  
40 staff.

1     SECTION 1. Section 230 of the Labor Code is amended to  
2 read:

3     230. (a) An employer ~~may~~ shall not discharge or in any manner  
4 discriminate against an employee for taking time off to serve as  
5 required by law on an inquest jury or trial jury, if the employee,  
6 prior to taking the time off, gives reasonable notice to the employer  
7 that he or she is required to serve.

8     (b) An employer ~~may~~ shall not discharge or in any manner  
9 discriminate or retaliate against an employee, including, but not  
10 limited to, an employee who is a victim of a crime, for taking time  
11 off to appear in court to comply with a subpoena or other court  
12 order as a witness in any judicial proceeding.

13     (c) An employer ~~may~~ shall not discharge or in any manner  
14 discriminate or retaliate against an employee who is a victim of  
15 domestic violence ~~or a victim of~~, sexual assault, *or stalking* for  
16 taking time off from work to obtain or attempt to obtain any relief,  
17 including, but not limited to, a temporary restraining order,  
18 restraining order, or other injunctive relief, to help ensure the  
19 health, safety, or welfare of the victim or his or her child.

20     (d) (1) As a condition of taking time off for a purpose set forth  
21 in subdivision (c), the employee shall give the employer reasonable  
22 advance notice of the employee's intention to take time off, unless  
23 the advance notice is not feasible.

24     (2) When an unscheduled absence occurs, the employer shall  
25 not take any action against the employee if the employee, within  
26 a reasonable time after the absence, provides a certification to the  
27 employer. Certification shall be sufficient in the form of any of  
28 the following:

29     (A) A police report indicating that the employee was a victim  
30 of domestic violence ~~or~~, sexual assault, *or stalking*.

31     (B) A court order protecting or separating the employee from  
32 the perpetrator of an act of domestic violence ~~or~~, sexual assault,  
33 *or stalking*, or other evidence from the court or prosecuting attorney  
34 that the employee has appeared in court.

35     (C) Documentation from a medical professional, domestic  
36 violence advocate or advocate for victims of sexual assault, health  
37 care provider, or counselor that the employee was undergoing  
38 treatment for physical or mental injuries or abuse resulting in  
39 victimization from an act of domestic violence ~~or~~, sexual assault,  
40 *or stalking*.

1 (3) To the extent allowed by law *and consistent with*  
2 *subparagraph (D) of paragraph (7) of subdivision (f)*, the employer  
3 shall maintain the confidentiality of any employee requesting leave  
4 under subdivision (c).

5 (e) *An employer shall not discharge or in any manner*  
6 *discriminate or retaliate against an employee because of the*  
7 *employee's known status as a victim of domestic violence, sexual*  
8 *assault, or stalking.*

9 (f) (1) *An employer shall provide reasonable accommodations*  
10 *for a victim of domestic violence, sexual assault, or stalking who*  
11 *requests an accommodation for the safety of the victim while at*  
12 *work.*

13 (2) *For purposes of this subdivision, reasonable*  
14 *accommodations may include the implementation of safety*  
15 *measures, including a transfer, reassignment, modified schedule,*  
16 *changed work telephone, changed work station, installed lock,*  
17 *assistance in documenting domestic violence, sexual assault, or*  
18 *stalking that occurs in the workplace, an implemented safety*  
19 *procedure, or another adjustment to a job structure, workplace*  
20 *facility, or work requirement in response to domestic violence,*  
21 *sexual assault, or stalking, or referral to a victim assistance*  
22 *organization.*

23 (3) *An employer is not required to provide a reasonable*  
24 *accommodation to an employee who has not disclosed his or her*  
25 *status as a victim of domestic violence, sexual assault, or stalking.*

26 (4) *The employer shall make reasonable accommodations in a*  
27 *timely fashion.*

28 (5) *In determining whether the accommodation is reasonable,*  
29 *the employer shall consider an exigent circumstance or danger*  
30 *facing the employee.*

31 (6) *This subdivision does not require the employer to undertake*  
32 *an action that constitutes an undue hardship on the employer's*  
33 *business operations, as defined by Section 12926 of the*  
34 *Government Code.*

35 (7) (A) *Upon the request of an employer, an employee*  
36 *requesting a reasonable accommodation pursuant to this*  
37 *subdivision shall provide the employer a written statement signed*  
38 *by the employee or an individual acting on the employee's behalf,*  
39 *certifying that the accommodation is for a purpose authorized*  
40 *under this subdivision.*

1 (B) *The employer may also request certification from an*  
2 *employee requesting an accommodation pursuant to this*  
3 *subdivision demonstrating the employee's status as a victim of*  
4 *domestic violence, sexual assault, or stalking. Certification shall*  
5 *be sufficient in the form of any of the categories described in*  
6 *paragraph (2) of subdivision (d).*

7 (C) *An employer who requests certification pursuant to*  
8 *subparagraph (B) may request recertification of an employee's*  
9 *status as a victim of domestic violence, sexual assault, or stalking*  
10 *every six months after the date of the previous certification.*

11 (D) *Any verbal or written statement, police or court record, or*  
12 *other documentation provided to an employer identifying an*  
13 *employee as a victim of domestic violence, sexual assault, or*  
14 *stalking shall be maintained as confidential by the employer and*  
15 *shall not be disclosed by the employer except as required by federal*  
16 *or state law or as necessary to protect the employee's safety in the*  
17 *workplace. The employee shall be given notice before any*  
18 *authorized disclosure.*

19 (8) *An employer shall not retaliate against a victim of domestic*  
20 *violence, sexual assault, or stalking for requesting a reasonable*  
21 *accommodation, regardless of whether the request was granted.*

22 (e)

23 (g) (1) ~~Any~~ *An employee who is discharged, threatened with*  
24 *discharge, demoted, suspended, or in any other manner*  
25 *discriminated or retaliated against in the terms and conditions of*  
26 *employment by his or her employer because the employee has*  
27 *taken time off for a purpose set forth in subdivision (a); or (b); or*  
28 ~~(e)~~ *shall be entitled to reinstatement and reimbursement for lost*  
29 *wages and work benefits caused by the acts of the employer. Any*

30 (2) *An employee who is discharged, threatened with discharge,*  
31 *demoted, suspended, or in any other manner discriminated or*  
32 *retaliated against in the terms and conditions of employment by*  
33 *his or her employer for reasons prohibited in subdivision (c) or*  
34 *(e), or because he or she has requested or received a reasonable*  
35 *accommodation as set forth in subdivision (f), is entitled to*  
36 *reinstatement and reimbursement for lost wages and work benefits*  
37 *caused by the acts of the employer, as well as appropriate equitable*  
38 *relief. If the employee prevails in an action pursuant to this*  
39 *paragraph, the court may award reasonable attorney's fees and*  
40 *costs.*

1 (3) An employer who willfully refuses to rehire, promote, or  
2 otherwise restore an employee or former employee who has been  
3 determined to be eligible for rehiring or promotion by a grievance  
4 procedure or hearing authorized by law is guilty of a misdemeanor.

5 ~~(f)~~

6 (h) (1) ~~Any~~An employee who is discharged, threatened with  
7 discharge, demoted, suspended, or in any other manner  
8 discriminated or retaliated against in the terms and conditions of  
9 employment by his or her employer because the employee has  
10 exercised his or her rights as set forth in subdivision (a), (b), or  
11 (c) may file a complaint with the Division of Labor Standards  
12 Enforcement of the Department of Industrial Relations pursuant  
13 to Section 98.7.

14 (2) Notwithstanding any time limitation in Section 98.7, an  
15 employee ~~file~~ *may file* a complaint with the division based upon  
16 a violation of subdivision (c) ~~shall have~~ *within* one year from the  
17 date of occurrence of the violation ~~to file his or her complaint.~~

18 ~~(g)~~

19 (i) An employee may use vacation, personal leave, or  
20 compensatory time off that is otherwise available to the employee  
21 under the applicable terms of employment, unless otherwise  
22 provided by a collective bargaining agreement, for time taken off  
23 for a purpose specified in subdivision (a), (b), or (c). The  
24 entitlement of any employee under this section shall not be  
25 diminished by any collective bargaining agreement term or  
26 condition.

27 ~~(h)~~

28 (j) For purposes of this section:

29 (1) “Domestic violence” means any of the types of abuse set  
30 forth in Section 6211 of the Family Code, as amended.

31 (2) “Sexual assault” means any of the crimes set forth in Section  
32 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269,  
33 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code,  
34 as amended.

35 (3) “Stalking” means a crime set forth in Section 646.9 of the  
36 Penal Code or Section 1708.7 of the Civil Code.

37 SEC. 2. Section 230.1 of the Labor Code is amended to read:

38 230.1. (a) In addition to the requirements and prohibitions  
39 imposed on employees pursuant to Section 230, an employer with  
40 25 or more employees ~~may~~ *shall* not discharge or in any manner

1 discriminate or retaliate against an employee who is a victim of  
2 domestic violence ~~or a victim of~~, sexual assault, *or stalking* for  
3 taking time off from work to attend to any of the following:

4 (1) To seek medical attention for injuries caused by domestic  
5 violence ~~or~~, sexual assault, *or stalking*.

6 (2) To obtain services from a domestic violence shelter,  
7 program, or rape crisis center as a result of domestic violence ~~or~~,  
8 sexual assault, *or stalking*.

9 (3) To obtain psychological counseling related to an experience  
10 of domestic violence ~~or~~, sexual assault, *or stalking*.

11 (4) To participate in safety planning and take other actions to  
12 increase safety from future domestic violence ~~or~~, sexual assault,  
13 *or stalking*, including temporary or permanent relocation.

14 (b) (1) As a condition of taking time off for a purpose set forth  
15 in subdivision (a), the employee shall give the employer reasonable  
16 advance notice of the employee's intention to take time off, unless  
17 the advance notice is not feasible.

18 (2) When an unscheduled absence occurs, the employer ~~may~~  
19 *shall* not take any action against the employee if the employee,  
20 within a reasonable time after the absence, provides a certification  
21 to the employer. Certification shall be sufficient in the form of any  
22 of the ~~following~~: *categories described in paragraph (2) of*  
23 *subdivision (d) of Section 230.*

24 ~~(A) A police report indicating that the employee was a victim~~  
25 ~~of domestic violence or sexual assault.~~

26 ~~(B) A court order protecting or separating the employee from~~  
27 ~~the perpetrator of an act of domestic violence or sexual assault, or~~  
28 ~~other evidence from the court or prosecuting attorney that the~~  
29 ~~employee appeared in court.~~

30 ~~(C) Documentation from a medical professional, domestic~~  
31 ~~violence advocate or advocate for victims of sexual assault, health~~  
32 ~~care provider, or counselor that the employee was undergoing~~  
33 ~~treatment for physical or mental injuries or abuse resulting in~~  
34 ~~victimization from an act of domestic violence or sexual assault.~~

35 (3) To the extent allowed by law *and consistent with*  
36 *subparagraph (D) of paragraph (7) of subdivision (f) of Section*  
37 *230*, employers shall maintain the confidentiality of any employee  
38 requesting leave under subdivision (a).

39 (c) ~~Any~~ *An* employee who is discharged, threatened with  
40 discharge, demoted, suspended, or in any other manner

1 discriminated or retaliated against in the terms and conditions of  
 2 employment by his or her employer because the employee has  
 3 taken time off for a purpose set forth in subdivision (a) is entitled  
 4 to reinstatement and reimbursement for lost wages and work  
 5 benefits caused by the acts of the employer, *as well as appropriate*  
 6 *equitable relief.* ~~Any~~ An employer who willfully refuses to rehire,  
 7 promote, or otherwise restore an employee or former employee  
 8 who has been determined to be eligible for rehiring or promotion  
 9 by a grievance procedure or hearing authorized by law is guilty of  
 10 a misdemeanor.

11 (d) (1) ~~Any~~ An employee who is discharged, threatened with  
 12 discharge, demoted, suspended, or in any other manner  
 13 discriminated or retaliated against in the terms and conditions of  
 14 employment by his or her employer because the employee has  
 15 exercised his or her rights as set forth in subdivision (a) may file  
 16 a complaint with the Division of Labor Standards Enforcement of  
 17 the Department of Industrial Relations pursuant to Section 98.7.

18 (2) Notwithstanding any time limitation in Section 98.7, an  
 19 employee ~~file~~ *may file* a complaint with the division based upon  
 20 a violation of subdivision (a) ~~has~~ *within* one year from the date of  
 21 occurrence of the violation ~~to file his or her complaint.~~

22 (e) *If an employee prevails in an action pursuant to this section,*  
 23 *the court may award reasonable attorney's fees and costs.*

24 ~~(e)~~

25 (f) An employee may use vacation, personal leave, or  
 26 compensatory time off that is otherwise available to the employee  
 27 under the applicable terms of employment, unless otherwise  
 28 provided by a collective bargaining agreement, for time taken off  
 29 for a purpose specified in subdivision (a). The entitlement of any  
 30 employee under this section ~~may~~ *shall* not be diminished by any  
 31 collective bargaining agreement term or condition.

32 ~~(f)~~

33 (g) This section does not create a right for an employee to take  
 34 unpaid leave that exceeds the unpaid leave time allowed under, or  
 35 is in addition to the unpaid leave time permitted by, the federal  
 36 Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et  
 37 seq.).

38 ~~(g)~~

39 (h) For purposes of this section:

1 (1) “Domestic violence” means any of the types of abuse set  
2 forth in Section 6211 of the Family Code, as amended.

3 (2) “Sexual assault” means any of the crimes set forth in Section  
4 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269,  
5 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code,  
6 as amended.

7 (3) “*Stalking*” means a crime set forth in Section 646.9 of the  
8 Penal Code or Section 1708.7 of the Civil Code.

9 ~~SEC. 18.~~

10 SEC. 3. No reimbursement is required by this act pursuant to  
11 Section 6 of Article XIII B of the California Constitution because  
12 the only costs that may be incurred by a local agency or school  
13 district will be incurred because this act creates a new crime or  
14 infraction, eliminates a crime or infraction, or changes the penalty  
15 for a crime or infraction, within the meaning of Section 17556 of  
16 the Government Code, or changes the definition of a crime within  
17 the meaning of Section 6 of Article XIII B of the California  
18 Constitution.