

AMENDED IN ASSEMBLY APRIL 30, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1999

Introduced by Assembly Member Brownley

February 23, 2012

An act to amend Sections 51 and 54 of the Civil Code, 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, and 12940, ~~and 12955.2~~ of the Government Code, to amend Section 868.8 of the Penal Code, and to amend Section 4900 of the Welfare and Institutions Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1999, as amended, Brownley. Employment: ~~familial~~ *family caregiver* status protection.

Existing law, the California Fair Employment and Housing Act, 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, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation.

This bill would include ~~“familial~~ “*family caregiver* status” as an additional basis upon which the right to seek, obtain, and hold employment cannot be denied.

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

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

1 SECTION 1. Section 51 of the Civil Code is amended to read:

2 51. (a) This section shall be known, and may be cited, as the
3 Unruh Civil Rights Act.

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

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

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

26 (e) For purposes of this section:

27 (1) "Disability" means any mental or physical disability as
28 defined in Sections 12926 and 12926.1 of the Government Code.

29 (2) (A) "Genetic information" means, with respect to any
30 individual, information about any of the following:

31 (i) The individual's genetic tests.

32 (ii) The genetic tests of family members of the individual.

33 (iii) The manifestation of a disease or disorder in family
34 members of the individual.

35 (B) "Genetic information" includes any request for, or receipt
36 of, genetic services, or participation in clinical research that
37 includes genetic services, by an individual or any family member
38 of the individual.

1 (C) “Genetic information” does not include information about
2 the sex or age of any individual.

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

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

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

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

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

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

26 SEC. 2. Section 54 of the Civil Code is amended to read:

27 54. (a) Individuals with disabilities or medical conditions have
28 the same right as the general public to the full and free use of the
29 streets, highways, sidewalks, walkways, public buildings, medical
30 facilities, including hospitals, clinics, and physicians’ offices,
31 public facilities, and other public places.

32 (b) For purposes of this section:

33 (1) “Disability” means any mental or physical disability as
34 defined in Section 12926 of the Government Code.

35 (2) “Medical condition” has the same meaning as defined in
36 Section 12926 of the Government Code.

37 (c) A violation of the right of an individual under the Americans
38 with Disabilities Act of 1990 (Public Law 101-336) also constitutes
39 a violation of this section.

1 SEC. 3. Section 32228 of the Education Code is amended to
2 read:

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

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

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

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

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

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

25 (4) Provide age-appropriate instruction in domestic violence
26 prevention, dating violence prevention, and interpersonal violence
27 prevention.

28 SEC. 4. Section 354.5 of the Elections Code is amended to
29 read:

30 354.5. (a) "Signature" includes either of the following:

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

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

39 (b) A mark attested as provided in paragraph (1) of subdivision
40 (a), or an impression made by a signature stamp as provided in

1 paragraph (2) of subdivision (a), may serve as a signature for any
2 purpose specified in this code, including a sworn statement.

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

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

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

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

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

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

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

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

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

34 (B) A person using the signature stamp on behalf of the owner
35 of the stamp with the owner's express consent and in the presence
36 of the owner.

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

1 (3) “Signature stamp” means a stamp that contains the
2 impression of any of the following:

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

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

6 (C) A signature of the name of a person with a disability that is
7 made by another person and is adopted by the person with the
8 disability.

9 SEC. 5. Section 11135 of the Government Code is amended
10 to read:

11 11135. (a) No person in the State of California shall, on the
12 basis of race, national origin, ethnic group identification, religion,
13 age, sex, sexual orientation, color, genetic information, or
14 disability, be unlawfully denied full and equal access to the benefits
15 of, or be unlawfully subjected to discrimination under, any program
16 or activity that is conducted, operated, or administered by the state
17 or by any state agency, is funded directly by the state, or receives
18 any financial assistance from the state. Notwithstanding Section
19 11000, this section applies to the California State University.

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

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

31 (2) The Legislature finds and declares that the amendments
32 made to this act are declarative of existing law. The Legislature
33 further finds and declares that in enacting Senate Bill 105 of the
34 2001–02 Regular Session (Chapter 1102 of the Statutes of 2002),
35 it was the intention of the Legislature to apply subdivision (d) to
36 the California State University in the same manner that
37 subdivisions (a), (b), and (c) already applied to the California State
38 University, notwithstanding Section 11000. In clarifying that the
39 California State University is subject to paragraph (2) of
40 subdivision (d), it is not the intention of the Legislature to increase

1 the cost of developing or procuring electronic and information
2 technology. The California State University shall, however, in
3 determining the cost of developing or procuring electronic or
4 information technology, consider whether technology that meets
5 the standards applicable pursuant to paragraph (2) of subdivision
6 (d) will reduce the long-term cost incurred by the California State
7 University in providing access or accommodations to future users
8 of this technology who are persons with disabilities, as required
9 by existing law, including this section, Title II of the federal
10 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101
11 and following), and Section 504 of the Rehabilitation Act of 1973
12 (29 U.S.C. Sec. 794).

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

16 (2) In order to improve accessibility of existing technology, and
17 therefore increase the successful employment of individuals with
18 disabilities, particularly blind and visually impaired and deaf and
19 hard-of-hearing persons, state governmental entities, in developing,
20 procuring, maintaining, or using electronic or information
21 technology, either indirectly or through the use of state funds by
22 other entities, shall comply with the accessibility requirements of
23 Section 508 of the federal Rehabilitation Act of 1973, as amended
24 (29 U.S.C. Sec. 794d), and regulations implementing that act as
25 set forth in Part 1194 of Title 36 of the Federal Code of
26 Regulations.

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

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

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

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

4 SEC. 6. Section 12920 of the Government Code is amended
5 to read:

6 12920. It is hereby declared as the public policy of this state
7 that it is necessary to protect and safeguard the right and
8 opportunity of all persons to seek, obtain, and hold employment
9 without discrimination or abridgment on account of race, religious
10 creed, color, national origin, ancestry, physical disability, mental
11 disability, medical condition, genetic information, marital status,
12 ~~familial~~ *family caregiver* status, sex, gender, gender identity, gender
13 expression, age, or sexual orientation.

14 It is recognized that the practice of denying employment
15 opportunity and discriminating in the terms of employment for
16 these reasons foments domestic strife and unrest, deprives the state
17 of the fullest utilization of its capacities for development and
18 advancement, and substantially and adversely affects the interests
19 of employees, employers, and the public in general.

20 Further, the practice of discrimination because of race, color,
21 religion, sex, gender, gender identity, gender expression, sexual
22 orientation, marital status, national origin, ancestry, familial status,
23 source of income, disability, or genetic information in housing
24 accommodations is declared to be against public policy.

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

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

30 SEC. 7. Section 12921 of the Government Code is amended
31 to read:

32 12921. (a) The opportunity to seek, obtain, and hold
33 employment without discrimination because of race, religious
34 creed, color, national origin, ancestry, physical disability, mental
35 disability, medical condition, genetic information, marital status,
36 ~~familial~~ *family caregiver* status, sex, gender, gender identity, gender
37 expression, age, or sexual orientation is hereby recognized as and
38 declared to be a civil right.

39 (b) The opportunity to seek, obtain, and hold housing without
40 discrimination because of race, color, religion, sex, gender, gender

1 identity, gender expression, sexual orientation, marital status,
2 national origin, ancestry, familial status, source of income,
3 disability, genetic information, or any other basis prohibited by
4 Section 51 of the Civil Code is hereby recognized as and declared
5 to be a civil right.

6 SEC. 8. Section 12926 of the Government Code is amended
7 to read:

8 12926. As used in this part in connection with unlawful
9 practices, unless a different meaning clearly appears from the
10 context:

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

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

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

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

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

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

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

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

39 (A) The function may be essential because the reason the
40 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 (g) ~~(1) In connection with unlawful employment practices,~~
19 ~~“familial “Family caregiver status” includes being means~~ an
20 individual who is, who will be, or who is perceived to be, a family
21 caregiver provides medical or supervisory care to a family member.
22 For purposes of this ~~paragraph~~ subdivision, “family member”
23 means any of the following:

24 ~~(A)~~

25 (1) A child as defined in Section 3302 of the Unemployment
26 Insurance Code.

27 ~~(B)~~

28 (2) A parent as defined in Section 3302 of the Unemployment
29 Insurance Code.

30 ~~(C)~~

31 (3) A spouse, which means the partner of a lawful marriage.

32 ~~(D)~~

33 (4) A domestic partner as defined in Section 297 of the Family
34 Code.

35 ~~(E)~~

36 (5) A parent-in-law, which means the parent of a spouse or
37 domestic partner.

38 ~~(F)~~

39 (6) A sibling as defined in ~~paragraph~~ subdivision (c) of Section
40 362.1 of the Welfare and Institutions Code.

1 (G)

2 (7) A grandparent.

3 (H)

4 (8) A grandchild.

5 ~~(2) In connection with unlawful housing practices, “familial~~
6 ~~status” has the same meaning as defined in Section 12955.2.~~

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

9 (A) The individual’s genetic tests.

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

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

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

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

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

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

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

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

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

36 (B) Inherited characteristics that may derive from the individual
37 or family member, that are known to be a cause of a disease or
38 disorder in a person or his or her offspring, or that are determined
39 to be associated with a statistically increased risk of development

1 of a disease or disorder, and that are presently not associated with
2 any symptoms of any disease or disorder.

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

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

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

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

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

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

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

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

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

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

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

1 status,—~~familial~~ *family caregiver* status, sex, age, or sexual
2 orientation.

3 (~~t~~)

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

6 (~~m~~)

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (o) “Race, religious creed, color, national origin, ancestry,
13 physical disability, mental disability, medical condition, genetic
14 information, marital status, ~~familial~~ *family caregiver* status, sex,
15 age, or sexual orientation” includes a perception that the person
16 has any of those characteristics or that the person is associated
17 with a person who has, or is perceived to have, any of those
18 characteristics.

19 (p) “Reasonable accommodation” may include either of the
20 following:

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

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

29 (q) “Religious creed,” “religion,” “religious observance,”
30 “religious belief,” and “creed” include all aspects of religious
31 belief, observance, and practice.

32 (r) “Sex” includes, but is not limited to, pregnancy, childbirth,
33 or medical conditions related to pregnancy or childbirth. “Sex”
34 also includes, but is not limited to, a person’s gender. “Gender”
35 means sex, and includes a person’s gender identity and gender
36 expression. “Gender expression” means a person’s gender-related
37 appearance and behavior whether or not stereotypically associated
38 with the person’s assigned sex at birth.

39 (s) “Sexual orientation” means heterosexuality, homosexuality,
40 and bisexuality.

1 (t) “Supervisor” means any individual having the authority, in
2 the interest of the employer, to hire, transfer, suspend, lay off,
3 recall, promote, discharge, assign, reward, or discipline other
4 employees, or the responsibility to direct them, or to adjust their
5 grievances, or effectively to recommend that action, if, in
6 connection with the foregoing, the exercise of that authority is not
7 of a merely routine or clerical nature, but requires the use of
8 independent judgment.

9 (u) “Undue hardship” means an action requiring significant
10 difficulty or expense, when considered in light of the following
11 factors:

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

13 (2) The overall financial resources of the facilities involved in
14 the provision of the reasonable accommodations, the number of
15 persons employed at the facility, and the effect on expenses and
16 resources or the impact otherwise of these accommodations upon
17 the operation of the facility.

18 (3) The overall financial resources of the covered entity, the
19 overall size of the business of a covered entity with respect to the
20 number of employees, and the number, type, and location of its
21 facilities.

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

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

26 SEC. 9. Section 12926.1 of the Government Code is amended
27 to read:

28 12926.1. The Legislature finds and declares as follows:

29 (a) The law of this state in the area of disabilities provides
30 protections independent from those in the federal Americans with
31 Disabilities Act of 1990 (P.L. 101-336). Although the federal act
32 provides a floor of protection, this state’s law has always, even
33 prior to passage of the federal act, afforded additional protections.

34 (b) The law of this state contains broad definitions of physical
35 disability, mental disability, and medical condition. It is the intent
36 of the Legislature that the definitions of physical disability and
37 mental disability be construed so that applicants and employees
38 are protected from discrimination due to an actual or perceived
39 physical or mental impairment that is disabling, potentially
40 disabling, or perceived as disabling or potentially disabling.

1 (c) Physical and mental disabilities include, but are not limited
2 to, chronic or episodic conditions such as HIV/AIDS, hepatitis,
3 epilepsy, seizure disorder, diabetes, clinical depression, bipolar
4 disorder, multiple sclerosis, and heart disease. In addition, the
5 Legislature has determined that the definitions of “physical
6 disability” and “mental disability” under the law of this state
7 require a “limitation” upon a major life activity, but do not require,
8 as does the federal Americans with Disabilities Act of 1990, a
9 “substantial limitation.” This distinction is intended to result in
10 broader coverage under the law of this state than under that federal
11 act. Under the law of this state, whether a condition limits a major
12 life activity shall be determined without respect to any mitigating
13 measures, unless the mitigating measure itself limits a major life
14 activity, regardless of federal law under the Americans with
15 Disabilities Act of 1990. Further, under the law of this state,
16 “working” is a major life activity, regardless of whether the actual
17 or perceived working limitation implicates a particular employment
18 or a class or broad range of employments.

19 (d) Notwithstanding any interpretation of law in *Cassista v.*
20 *Community Foods* (1993) 5 Cal.4th 1050, the Legislature intends
21 (1) for state law to be independent of the federal Americans with
22 Disabilities Act of 1990, (2) to require a “limitation” rather than
23 a “substantial limitation” of a major life activity, and (3) by
24 enacting paragraph (4) of subdivision (k) and paragraph (4) of
25 subdivision (m) of Section 12926, to provide protection when an
26 individual is erroneously or mistakenly believed to have any
27 physical or mental condition that limits a major life activity.

28 (e) The Legislature affirms the importance of the interactive
29 process between the applicant or employee and the employer in
30 determining a reasonable accommodation, as this requirement has
31 been articulated by the Equal Employment Opportunity
32 Commission in its interpretive guidance of the federal Americans
33 with Disabilities Act of 1990.

34 SEC. 10. Section 12940 of the Government Code is amended
35 to read:

36 12940. It is an unlawful employment practice, unless based
37 upon a bona fide occupational qualification, or, except where based
38 upon applicable security regulations established by the United
39 States or the State of California:

1 (a) For an employer, because of the race, religious creed, color,
2 national origin, ancestry, physical disability, mental disability,
3 medical condition, genetic information, marital status, ~~familial~~
4 *family caregiver* status, sex, gender, gender identity, gender
5 expression, age, or sexual orientation of any person, to refuse to
6 hire or employ the person or to refuse to select the person for a
7 training program leading to employment, or to bar or to discharge
8 the person from employment or from a training program leading
9 to employment, or to discriminate against the person in
10 compensation or in terms, conditions, or privileges of employment.

11 (1) This part does not prohibit an employer from refusing to
12 hire or discharging an employee with a physical or mental
13 disability, or subject an employer to any legal liability resulting
14 from the refusal to employ or the discharge of an employee with
15 a physical or mental disability, where the employee, because of
16 his or her physical or mental disability, is unable to perform his
17 or her essential duties even with reasonable accommodations, or
18 cannot perform those duties in a manner that would not endanger
19 his or her health or safety or the health or safety of others even
20 with reasonable accommodations.

21 (2) This part does not prohibit an employer from refusing to
22 hire or discharging an employee who, because of the employee's
23 medical condition, is unable to perform his or her essential duties
24 even with reasonable accommodations, or cannot perform those
25 duties in a manner that would not endanger the employee's health
26 or safety or the health or safety of others even with reasonable
27 accommodations. Nothing in this part shall subject an employer
28 to any legal liability resulting from the refusal to employ or the
29 discharge of an employee who, because of the employee's medical
30 condition, is unable to perform his or her essential duties, or cannot
31 perform those duties in a manner that would not endanger the
32 employee's health or safety or the health or safety of others even
33 with reasonable accommodations.

34 (3) Nothing in this part relating to discrimination on account of
35 marital status or ~~familial~~ *family caregiver* status shall do either of
36 the following:

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

1 (B) Prohibit bona fide health plans from providing additional
2 or greater benefits to employees with dependents than to those
3 employees without or with fewer dependents.

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

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

16 (B) The provisions of this part relating to discrimination on the
17 basis of age do not prohibit an employer from providing health
18 benefits or health care reimbursement plans to retired persons that
19 are altered, reduced, or eliminated when the person becomes
20 eligible for Medicare health benefits. This subparagraph applies
21 to all retiree health benefit plans and contractual provisions or
22 practices concerning retiree health benefits and health care
23 reimbursement plans in effect on or after January 1, 2011.

24 (b) For a labor organization, because of the race, religious creed,
25 color, national origin, ancestry, physical disability, mental
26 disability, medical condition, genetic information, marital status,
27 ~~familial~~ *family caregiver* status, sex, gender, gender identity, gender
28 expression, age, or sexual orientation of any person, to exclude,
29 expel, or restrict from its membership the person, or to provide
30 only second-class or segregated membership or to discriminate
31 against any person because of the race, religious creed, color,
32 national origin, ancestry, physical disability, mental disability,
33 medical condition, genetic information, marital status, ~~familial~~
34 *family caregiver* status, sex, gender, gender identity, gender
35 expression, age, or sexual orientation of the person in the election
36 of officers of the labor organization or in the selection of the labor
37 organization's staff or to discriminate in any way against any of
38 its members or against any employer or against any person
39 employed by an employer.

1 (c) For any person to discriminate against any person in the
2 selection or training of that person in any apprenticeship training
3 program or any other training program leading to employment
4 because of the race, religious creed, color, national origin, ancestry,
5 physical disability, mental disability, medical condition, genetic
6 information, marital status, ~~familial~~ *family caregiver* status, sex,
7 gender, gender identity, gender expression, age, or sexual
8 orientation of the person discriminated against.

9 (d) For any employer or employment agency to print or circulate
10 or cause to be printed or circulated any publication, or to make
11 any nonjob-related inquiry of an employee or applicant, either
12 verbal or through use of an application form, that expresses,
13 directly or indirectly, any limitation, specification, or discrimination
14 as to race, religious creed, color, national origin, ancestry, physical
15 disability, mental disability, medical condition, genetic information,
16 marital status, ~~familial~~ *family caregiver* status, sex, gender, gender
17 identity, gender expression, age, or sexual orientation, or any intent
18 to make any such limitation, specification, or discrimination. This
19 part does not prohibit an employer or employment agency from
20 inquiring into the age of an applicant, or from specifying age
21 limitations, where the law compels or provides for that action.

22 (e) (1) Except as provided in paragraph (2) or (3), for any
23 employer or employment agency to require any medical or
24 psychological examination of an applicant, to make any medical
25 or psychological inquiry of an applicant, to make any inquiry
26 whether an applicant has a mental disability or physical disability
27 or medical condition, or to make any inquiry regarding the nature
28 or severity of a physical disability, mental disability, or medical
29 condition.

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

34 (3) Notwithstanding paragraph (1), an employer or employment
35 agency may require a medical or psychological examination or
36 make a medical or psychological inquiry of a job applicant after
37 an employment offer has been made but prior to the
38 commencement of employment duties, provided that the
39 examination or inquiry is job related and consistent with business

1 necessity and that all entering employees in the same job
2 classification are subject to the same examination or inquiry.

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

10 (2) Notwithstanding paragraph (1), an employer or employment
11 agency may require any examinations or inquiries that it can show
12 to be job related and consistent with business necessity. An
13 employer or employment agency may conduct voluntary medical
14 examinations, including voluntary medical histories, which are
15 part of an employee health program available to employees at that
16 worksite.

17 (g) For any employer, labor organization, or employment agency
18 to harass, discharge, expel, or otherwise discriminate against any
19 person because the person has made a report pursuant to Section
20 11161.8 of the Penal Code that prohibits retaliation against hospital
21 employees who report suspected patient abuse by health facilities
22 or community care facilities.

23 (h) For any employer, labor organization, employment agency,
24 or person to discharge, expel, or otherwise discriminate against
25 any person because the person has opposed any practices forbidden
26 under this part or because the person has filed a complaint, testified,
27 or assisted in any proceeding under this part.

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

31 (j) (1) For an employer, labor organization, employment agency,
32 apprenticeship training program or any training program leading
33 to employment, or any other person, because of race, religious
34 creed, color, national origin, ancestry, physical disability, mental
35 disability, medical condition, genetic information, marital status,
36 ~~familial~~ *family caregiver* status, sex, gender, gender identity, gender
37 expression, age, or sexual orientation, to harass an employee, an
38 applicant, or a person providing services pursuant to a contract.
39 Harassment of an employee, an applicant, or a person providing
40 services pursuant to a contract by an employee, other than an agent

1 or supervisor, shall be unlawful if the entity, or its agents or
2 supervisors, knows or should have known of this conduct and fails
3 to take immediate and appropriate corrective action. An employer
4 may also be responsible for the acts of nonemployees, with respect
5 to sexual harassment of employees, applicants, or persons providing
6 services pursuant to a contract in the workplace, where the
7 employer, or its agents or supervisors, knows or should have known
8 of the conduct and fails to take immediate and appropriate
9 corrective action. In reviewing cases involving the acts of
10 nonemployees, the extent of the employer's control and any other
11 legal responsibility which the employer may have with respect to
12 the conduct of those nonemployees shall be considered. An entity
13 shall take all reasonable steps to prevent harassment from
14 occurring. Loss of tangible job benefits shall not be necessary in
15 order to establish harassment.

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

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

24 (4) (A) For purposes of this subdivision only, "employer" means
25 any person regularly employing one or more persons or regularly
26 receiving the services of one or more persons providing services
27 pursuant to a contract, or any person acting as an agent of an
28 employer, directly or indirectly, the state, or any political or civil
29 subdivision of the state, and cities. The definition of "employer"
30 in subdivision (d) of Section 12926 applies to all provisions of this
31 section other than this subdivision.

32 (B) Notwithstanding subparagraph (A), for purposes of this
33 subdivision, "employer" does not include a religious association
34 or corporation not organized for private profit, except as provided
35 in Section 12926.2.

36 (C) For purposes of this subdivision, "harassment" because of
37 sex includes sexual harassment, gender harassment, and harassment
38 based on pregnancy, childbirth, or related medical conditions.

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

4 (A) The person has the right to control the performance of the
5 contract for services and discretion as to the manner of
6 performance.

7 (B) The person is customarily engaged in an independently
8 established business.

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

13 (k) For an employer, labor organization, employment agency,
14 apprenticeship training program, or any training program leading
15 to employment, to fail to take all reasonable steps necessary to
16 prevent discrimination and harassment from occurring.

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

37 (m) For an employer or other entity covered by this part to fail
38 to make reasonable accommodation for the known physical or
39 mental disability of an applicant or employee. Nothing in this
40 subdivision or in paragraph (1) or (2) of subdivision (a) shall be

1 construed to require an accommodation that is demonstrated by
2 the employer or other covered entity to produce undue hardship
3 to its operation.

4 (n) For an employer or other entity covered by this part to fail
5 to engage in a timely, good faith, interactive process with the
6 employee or applicant to determine effective reasonable
7 accommodations, if any, in response to a request for reasonable
8 accommodation by an employee or applicant with a known physical
9 or mental disability or known medical condition.

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

13 ~~SEC. 11. Section 12955.2 of the Government Code is amended~~
14 ~~to read:~~

15 ~~12955.2. For purposes of this part in connection with unlawful~~
16 ~~housing practices, “familial status” means one or more individuals~~
17 ~~under 18 years of age who reside with a parent, another person~~
18 ~~with care and legal custody of that individual, a person who has~~
19 ~~been given care and custody of that individual by a state or local~~
20 ~~governmental agency that is responsible for the welfare of children,~~
21 ~~or the designee of that parent or other person with legal custody~~
22 ~~of any individual under 18 years of age by written consent of the~~
23 ~~parent or designated custodian. The protections afforded by this~~
24 ~~part against discrimination on the basis of familial status also apply~~
25 ~~to any individual who is pregnant, who is in the process of securing~~
26 ~~legal custody of any individual under 18 years of age, or who is~~
27 ~~in the process of being given care and custody of any individual~~
28 ~~under 18 years of age by a state or local governmental agency~~
29 ~~responsible for the welfare of children.~~

30 ~~SEC. 12.~~

31 ~~SEC. 11.~~ Section 868.8 of the Penal Code is amended to read:

32 868.8. Notwithstanding any other provision of law, in any
33 criminal proceeding in which the defendant is charged with a
34 violation of Section 243.4, 261, 273a, 273d, 285, 286, 288, 288a,
35 288.5, or 289, subdivision (1) of Section 314, Section 647.6, or
36 former Section 647a, or any crime that constitutes domestic
37 violence defined in Section 13700, committed with or upon a
38 person with a disability or a minor under 11 years of age, the court
39 shall take special precautions to provide for the comfort and support
40 of the person with a disability or minor and to protect him or her

1 from coercion, intimidation, or undue influence as a witness,
2 including, but not limited to, any of the following:

3 (a) In the court's discretion, the witness may be allowed
4 reasonable periods of relief from examination and
5 cross-examination during which he or she may retire from the
6 courtroom. The judge may also allow other witnesses in the
7 proceeding to be examined when the person with a disability or
8 child witness retires from the courtroom.

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

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

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

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

23 ~~SEC. 13.~~

24 *SEC. 12.* Section 4900 of the Welfare and Institutions Code is
25 amended to read:

26 4900. (a) The definitions contained in this section shall govern
27 the construction of this division, unless the context requires
28 otherwise. These definitions shall not be construed to alter or
29 impact the definitions or other provisions of the Elder Abuse and
30 Dependent Adult Civil Protection Act (Chapter 11 (commencing
31 with Section 15600)), or Chapter 13 (commencing with Section
32 15750), of Part 3 of Division 9.

33 (b) "Abuse" means an act, or failure to act, that would constitute
34 abuse as that term is defined in federal regulations pertaining to
35 the authority of protection and advocacy agencies, including
36 Section 51.2 of Title 42 of the Code of Federal Regulations or
37 Section 1386.19 of Title 45 of the Code of Federal Regulations.
38 "Abuse" also means an act, or failure to act, that would constitute
39 abuse as that term is defined in Section 15610.07 of this code or
40 Section 11165.6 of the Penal Code.

1 (c) “Complaint” has the same meaning as “complaint” as defined
2 in federal statutes and regulations pertaining to the authority of
3 protection and advocacy agencies, including Section 10802(1) of
4 Title 42 of the United States Code, Section 51.2 of Title 42 of the
5 Code of Federal Regulations, or Section 1386.19 of Title 45 of the
6 Code of Federal Regulations.

7 (d) “Disability” means a developmental disability, as defined
8 in Section 15002(8) of Title 42 of the United States Code, a mental
9 illness, as defined in Section 10802(4) of Title 42 of the United
10 States Code, a disability within the meaning of the federal
11 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101
12 et seq.), as defined in Section 12102(2) of Title 42 of the United
13 States Code, or a disability within the meaning of the California
14 Fair Employment and Housing Act (Part 2.8 (commencing with
15 Section 12900) of Division 3 of Title 2 of the Government Code),
16 as defined in Section 12926 of the Government Code.

17 (e) “Facility” or “program” means a public or private facility
18 or program providing services, support, care, or treatment to
19 persons with disabilities, even if only on an as-needed basis or
20 under contractual arrangement. “Facility” or “program” includes,
21 but is not limited to, a hospital, a long-term health care facility, a
22 community living arrangement for people with disabilities,
23 including a group home, a board and care home, an individual
24 residence or apartment of a person with a disability where services
25 are provided, a day program, a juvenile detention facility, a
26 homeless shelter, a jail, or a prison, including all general areas, as
27 well as special, mental health, or forensic units. The term includes
28 any facility licensed under Division 2 (commencing with Section
29 1200) of the Health and Safety Code and any facility that is
30 unlicensed but is not exempt from licensure as provided in
31 subdivision (a) of Section 1503.5 of the Health and Safety Code.
32 The term also includes a public or private school or other institution
33 or program providing education, training, habilitation, therapeutic,
34 or residential services to persons with disabilities.

35 (f) “Legal guardian,” “conservator,” or “legal representative”
36 means a person appointed by a state court or agency empowered
37 under state law to appoint and review the legal guardian,
38 conservator, or legal representative, as appropriate. With respect
39 to an individual described under paragraph (2) of subdivision (i),
40 this person is one who has the legal authority to consent to health

1 or mental health care or treatment on behalf of the individual. With
 2 respect to an individual described under ~~paragraphs~~ *paragraph* (1)
 3 or (3) of subdivision (i), this person is one who has the legal
 4 authority to make all decisions on behalf of the individual. These
 5 terms include the parent of a minor who has legal custody of the
 6 minor. These terms do not include a person acting solely as a
 7 representative payee, a person acting solely to handle financial
 8 matters, an attorney or other person acting on behalf of an
 9 individual with a disability solely in individual legal matters, or
 10 an official or his or her designee who is responsible for the
 11 provision of treatment or services to an individual with a disability.

12 (g) “Neglect” means a negligent act, or omission to act, that
 13 would constitute neglect as that term is defined in federal statutes
 14 and regulations pertaining to the authority of protection and
 15 advocacy agencies, including Section 10802(5) of Title 42 of the
 16 United States Code, Section 51.2 of Title 42 of the Code of Federal
 17 Regulations, or Section 1386.19 of Title 45 of the Code of Federal
 18 Regulations. “Neglect” also means a negligent act, or omission to
 19 act, that would constitute neglect as that term is defined in
 20 subdivision (b) of Section 15610.07 of this code or Section 11165.2
 21 of the Penal Code.

22 (h) “Probable cause” to believe that an individual has been
 23 subject to abuse or neglect, or is at significant risk of being
 24 subjected to abuse or neglect, exists when the protection and
 25 advocacy agency determines that it is objectively reasonable for
 26 a person to entertain that belief. The individual making a probable
 27 cause determination may base the decision on reasonable inferences
 28 drawn from his or her experience or training regarding similar
 29 incidents, conditions, or problems that are usually associated with
 30 abuse or neglect. Information supporting a probable cause
 31 determination may result from monitoring or other activities,
 32 including, but not limited to, media reports and newspaper articles.

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

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

1 (2) People with mental illness, as authorized under the federal
2 Protection and Advocacy for Mentally Ill Individuals Amendments
3 Act of 1991, contained in Chapter 114 (commencing with Section
4 10801) of Title 42 of the United States Code.

5 (3) People with disabilities within the meaning of the federal
6 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101
7 et seq.) as defined in Section 12102(2) of Title 42 of the United
8 States Code, who do not have a developmental disability as defined
9 in Section 15002(8) of Title 42 of the United States Code, people
10 with a mental illness as defined in Section 10802(4) of Title 42 of
11 the United States Code, and who are receiving services under the
12 federal Protection and Advocacy of Individual Rights Act as
13 defined in Section 794e of Title 29 of the United States Code, or
14 people with a disability within the meaning of the California Fair
15 Employment and Housing Act (Part 2.8 (commencing with Section
16 12900) of Division 3 of Title 2 of the Government Code), as
17 defined in Section 12926 of the Government Code.

18 (j) “Reasonable unaccompanied access” means access that
19 permits the protection and advocacy agency, without undue
20 interference, to monitor, inspect, and observe conditions in facilities
21 and programs, to meet and communicate with residents and service
22 recipients privately and confidentially on a regular basis, formally
23 or informally, by telephone, mail, electronic mail, and in person,
24 and to review records privately and confidentially, in a manner
25 that minimizes interference with the activities of the program or
26 service, that respects residents’ privacy interests and honors a
27 resident’s request to terminate an interview, and that does not
28 jeopardize the physical health or safety of facility or program staff,
29 residents, service recipients, or protection and advocacy agency
30 staff.

O