

**ASSEMBLY BILL**

**No. 396**

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**Introduced by Assembly Member Jones-Sawyer**

February 19, 2015

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An act to amend Section 12955 of, and to add Section 12955.05 to, the Government Code, relating to housing discrimination.

LEGISLATIVE COUNSEL'S DIGEST

AB 396, as introduced, Jones-Sawyer. Housing discrimination: criminal record.

Existing law generally prohibits housing discrimination with respect to the personal characteristics of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information. Existing law includes within this prohibition, in addition to the sale or rental of housing accommodation, related activities such as housing finance and real estate transaction services.

This bill would include a criminal record as a basis upon which housing discrimination is prohibited. The bill would specify that the prohibition is qualified by a requirement to the contrary in federal law. The bill would provide that criminal record includes a record regarding arrests and detentions that did not result in a conviction, as specified. The bill make technical, correctional changes.

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

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

SECTION 1. Section 12955 of the Government Code is amended to read:

12955. It shall be unlawful:

(a) For the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, ~~or~~ genetic information, *or criminal record* of that person *unless otherwise required by federal law*.

(b) For the owner of any housing accommodation to make or to cause to be made any written or oral inquiry concerning the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, disability, ~~or~~ genetic information, *or criminal record* of any person seeking to purchase, rent, or lease any housing accommodation *unless otherwise required by federal law*.

(c) For any person to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a housing accommodation that indicates any preference, limitation, or discrimination based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, ~~or~~ genetic information, *or criminal record* or an intention to make that preference, limitation, or discrimination *unless otherwise required by federal law*.

(d) For any person subject to the provisions of Section 51 of the Civil Code, as that section applies to housing accommodations, to discriminate against any person on the basis of sex, gender, gender identity, gender expression, sexual orientation, color, race, religion, ancestry, national origin, familial status, marital status, disability, genetic information, source of income, *criminal record*, or on any other basis prohibited by that section. Selection preferences based on age, imposed in connection with a federally approved housing program, do not constitute age discrimination in housing *unless otherwise required by federal law*.

1 (e) For any person, bank, mortgage company or other financial  
2 institution that provides financial assistance for the purchase,  
3 organization, or construction of any housing accommodation to  
4 discriminate against any person or group of persons because of  
5 the race, color, religion, sex, gender, gender identity, gender  
6 expression, sexual orientation, marital status, national origin,  
7 ancestry, familial status, source of income, disability,~~or~~ genetic  
8 information, *or criminal record* in the terms, conditions, or  
9 privileges relating to the obtaining or use of that financial assistance  
10 *unless otherwise required by federal law.*

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

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

24 (h) For any person, for profit, to induce any person to sell or  
25 rent any dwelling by representations regarding the entry or  
26 prospective entry into the neighborhood of a person or persons of  
27 a particular race, color, religion, sex, gender, gender identity,  
28 gender expression, sexual orientation, marital status, ancestry,  
29 disability, genetic information, source of income, familial status,  
30 ~~or~~ national origin, *or criminal record unless otherwise required*  
31 *by federal law.*

32 (i) For any person or other organization or entity whose business  
33 involves real estate-related transactions to discriminate against  
34 any person in making available a transaction, or in the terms and  
35 conditions of a transaction, because of race, color, religion, sex,  
36 gender, gender identity, gender expression, sexual orientation,  
37 marital status, national origin, ancestry, source of income, familial  
38 status, disability,~~or~~ genetic information, *or criminal record unless*  
39 *otherwise required by federal law.*

(j) To deny a person access to, or membership or participation in, a multiple listing service, real estate brokerage organization, or other service because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, ancestry, disability, genetic information, familial status, source of income, ~~or~~ national origin, *or criminal record unless otherwise required by federal law.*

(k) To otherwise make unavailable or deny a dwelling based on discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, source of income, disability, genetic information, ~~or~~ national origin, *or criminal record unless otherwise required by federal law.*

(l) To discriminate through public or private land use practices, decisions, and authorizations because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income, ~~or~~ ancestry, *or criminal record unless otherwise required by federal law.* Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law (Title 7 (commencing with Section 65000)), that make housing opportunities unavailable.

Discrimination under this subdivision also includes the existence of a restrictive covenant, regardless of whether accompanied by a statement that the restrictive covenant is repealed or void.

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

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

(o) In instances where there is a government rent subsidy, to use a financial or income standard in assessing eligibility for the

1 rental of housing that is not based on the portion of the rent to be  
2 paid by the tenant.

3 ~~(p) (1) For the purposes of this section, “source of income”~~  
4 ~~means lawful, verifiable income paid directly to a tenant or paid~~  
5 ~~to a representative of a tenant. For the purposes of this section, a~~  
6 ~~landlord is not considered a representative of a tenant.~~

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

10 *It shall not constitute discrimination based on source of income*  
11 *to make a written or oral inquiry concerning the level or source*  
12 *of income.*

13 *It is not unlawful under this section for an employer to ask an*  
14 *employee or applicant for housing about an arrest for which the*  
15 *employee or applicant is out on bail or on his or her own*  
16 *recognizance pending trial.*

17 SEC. 2. Section 12955.05 is added to the Government Code,  
18 to read:

19 12955.05. For the purposes of Section 12955:

20 (a) “Criminal record” includes a record regarding a criminal  
21 conviction, an arrest that did not result in a conviction, and a  
22 detention that did not result in conviction, including one regarding  
23 a referral to, and participation in, any pretrial or posttrial diversion  
24 program or regarding a conviction that has been judicially  
25 dismissed or ordered sealed pursuant to law, including, but not  
26 limited to, Section 1203.4, 1203.4a, 1203.45, or 1210.1 of the  
27 Penal Code.

28 (b) “Source of income” means lawful, verifiable income paid  
29 directly to a tenant or paid to a representative of a tenant. A  
30 landlord is not considered a representative of a tenant.