

AMENDED IN ASSEMBLY APRIL 21, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 396

Introduced by Assembly Member Jones-Sawyer

February 19, 2015

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

LEGISLATIVE COUNSEL’S DIGEST

AB 396, as amended, Jones-Sawyer. ~~Housing—Rental housing discrimination: applications: criminal record: records.~~

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: make it unlawful for the owner of any rental housing accommodation to deny the rental or lease of a housing accommodation without first satisfying specified requirements relating to the application process. The bill would prohibit the owner of a rental housing accommodation from inquiring about,~~

or requiring an applicant for rental housing accommodation to disclose, a criminal record during the initial application assessment phase, as defined, unless otherwise required by state or federal law. The bill would permit an owner of a rental housing accommodation, after the initial application assessment phase, to request a criminal background check and consider an applicant's criminal record in deciding whether to rent or lease. The bill would require the owner of a rental housing accommodation who is considering denying an application to rent or lease after requesting a criminal background check or considering an applicant's criminal record, to promptly provide the applicant with a written statement listing the reasons for the possible denial before making a final decision. If, within 14 days of receipt of the written statement, the applicant provides the owner notice of evidence demonstrating the inaccuracy of the item or items within the applicant's criminal record or evidence of rehabilitation or other mitigating factors, as defined, the bill would require the owner to delay the denial for a reasonable period after receipt of the information and reconsider his or her decision. The bill would require, in these circumstances, that the owner provide written notification to the applicant of his or her final decision to deny the application. The bill would prohibit, in connection with a rental application, the owner of the rental housing accommodation from requiring disclosure of, or, if such information is received, denying a dwelling based in whole or in part on specified information or occurrence, including arrests that did not result in conviction, convictions that have been voided, and juvenile justice determinations, among others.

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 12955 of the Government Code is
- 2 amended to read:
- 3 12955. It shall be unlawful:
- 4 (a) For the owner of any housing accommodation to discriminate
- 5 against or harass any person because of the race, color, religion,
- 6 sex, gender, gender identity, gender expression, sexual orientation,
- 7 marital status, national origin, ancestry, familial status, source of
- 8 income, disability, or genetic information of that person.

1 (b) For the owner of any housing accommodation to make or
2 to cause to be made any written or oral inquiry concerning the
3 race, color, religion, sex, gender, gender identity, gender
4 expression, sexual orientation, marital status, national origin,
5 ancestry, familial status, disability, or genetic information of any
6 person seeking to purchase, rent, or lease any housing
7 accommodation.

8 (c) For any person to make, print, or publish, or cause to be
9 made, printed, or published any notice, statement, or advertisement,
10 with respect to the sale or rental of a housing accommodation that
11 indicates any preference, limitation, or discrimination based on
12 race, color, religion, sex, gender, gender identity, gender
13 expression, sexual orientation, marital status, national origin,
14 ancestry, familial status, source of income, disability, or genetic
15 information or an intention to make that preference, limitation, or
16 discrimination.

17 (d) For any person subject to the provisions of Section 51 of
18 the Civil Code, as that section applies to housing accommodations,
19 to discriminate against any person on the basis of sex, gender,
20 gender identity, gender expression, sexual orientation, color, race,
21 religion, ancestry, national origin, familial status, marital status,
22 disability, genetic information, source of income, or on any other
23 basis prohibited by that section. Selection preferences based on
24 age, imposed in connection with a federally approved housing
25 program, do not constitute age discrimination in housing.

26 (e) For any person, bank, mortgage company or other financial
27 institution that provides financial assistance for the purchase,
28 organization, or construction of any housing accommodation to
29 discriminate against any person or group of persons because of
30 the race, color, religion, sex, gender, gender identity, gender
31 expression, sexual orientation, marital status, national origin,
32 ancestry, familial status, source of income, disability, or genetic
33 information in the terms, conditions, or privileges relating to the
34 obtaining or use of that financial assistance.

35 (f) For any owner of housing accommodations to harass, evict,
36 or otherwise discriminate against any person in the sale or rental
37 of housing accommodations when the owner's dominant purpose
38 is retaliation against a person who has opposed practices unlawful
39 under this section, informed law enforcement agencies of practices
40 believed unlawful under this section, has testified or assisted in

1 any proceeding under this part, or has aided or encouraged a person
2 to exercise or enjoy the rights secured by this part. Nothing herein
3 is intended to cause or permit the delay of an unlawful detainer
4 action.

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

8 (h) For any person, for profit, to induce any person to sell or
9 rent any dwelling by representations regarding the entry or
10 prospective entry into the neighborhood of a person or persons of
11 a particular race, color, religion, sex, gender, gender identity,
12 gender expression, sexual orientation, marital status, ancestry,
13 disability, genetic information, source of income, familial status,
14 or national origin.

15 (i) For any person or other organization or entity whose business
16 involves real estate-related transactions to discriminate against
17 any person in making available a transaction, or in the terms and
18 conditions of a transaction, because of race, color, religion, sex,
19 gender, gender identity, gender expression, sexual orientation,
20 marital status, national origin, ancestry, source of income, familial
21 status, disability, or genetic information.

22 (j) To deny a person access to, or membership or participation
23 in, a multiple listing service, real estate brokerage organization,
24 or other service because of race, color, religion, sex, gender, gender
25 identity, gender expression, sexual orientation, marital status,
26 ancestry, disability, genetic information, familial status, source of
27 income, or national origin.

28 (k) To otherwise make unavailable or deny a dwelling based
29 on discrimination because of race, color, religion, sex, gender,
30 gender identity, gender expression, sexual orientation, familial
31 status, source of income, disability, genetic information, or national
32 origin.

33 (l) To discriminate through public or private land use practices,
34 decisions, and authorizations because of race, color, religion, sex,
35 gender, gender identity, gender expression, sexual orientation,
36 familial status, marital status, disability, genetic information,
37 national origin, source of income, or ancestry. Discrimination
38 includes, but is not limited to, restrictive covenants, zoning laws,
39 denials of use permits, and other actions authorized under the

1 Planning and Zoning Law (Title 7 (commencing with Section
2 65000)), that make housing opportunities unavailable.

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

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

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

18 (o) In instances where there is a government rent subsidy, to
19 use a financial or income standard in assessing eligibility for the
20 rental of housing that is not based on the portion of the rent to be
21 paid by the tenant.

22 (p) *For the owner of any rental housing accommodations to*
23 *deny the rental or lease of a housing accommodation without first*
24 *satisfying the requirements of Section 12955.05, unless otherwise*
25 *required by state or federal law.*

26 ~~(p)~~

27 (q) (1) For the purposes of this section, “source of income”
28 means lawful, verifiable income paid directly to a tenant or paid
29 to a representative of a tenant. For the purposes of this section, a
30 landlord is not considered a representative of a tenant.

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

34 SEC. 2. Section 12955.05 is added to the Government Code,
35 to read:

36 12955.05. (a) For purposes of this section:

37 (1) “Criminal record” means criminal offender information,
38 as defined in Section 13102 of the Penal Code or state summary
39 criminal history information as defined in Section 11105 of the
40 Penal Code.

(2) “Evidence of rehabilitation or other mitigating factors” means, but is not limited to, the following:

(A) A person’s satisfactory compliance with all terms and conditions of parole or probation, provided that the person’s inability to pay fines, fees, and restitution due to indigence shall not be considered noncompliance with terms and conditions of parole or probation.

(B) Employer recommendations, particularly a person’s postconviction employment.

(C) Educational attainment or vocational or professional training since conviction, including training received while incarcerated.

(D) Completion of or active participation in rehabilitative treatment, including alcohol or drug treatment.

(E) Letters of recommendation from community organizations, counselors, case managers, teachers, community leaders, parole officers, and probation officers who have observed the person since his or her conviction.

(F) A person’s familial relationship with a person who may be currently residing in the housing accommodation.

(G) The age of the person at the time of the conviction.

(H) Explanation of precedent coercive conditions, including physical, emotional, or sexual abuse, untreated substance abuse, or mental illness that contributed to the conviction.

(3) “Initial application assessment phase” means the period before a decision is made to rent or lease, which shall include the request for, and the provision of, an application to a person seeking a rental housing accommodation and including the time during which the assessment of rental history and credit history, the checking of sources of income, and the scheduling an applicant interview routinely.

(b) (1) It is an unlawful housing practice for the owner of a rental housing accommodation to inquire about, or to require an applicant for rental housing accommodation to disclose, a criminal record during the initial application assessment phase, unless otherwise required by state or federal law.

(2) Following the initial application assessment phase, an owner of a rental housing accommodation may request a criminal background check and consider an applicant’s criminal record in deciding whether to rent or lease. If the owner of a rental housing

1 accommodation is considering denying an application to rent or
2 lease after requesting a criminal background check or considering
3 an applicant's criminal record, he or she shall promptly provide
4 the applicant with a written statement listing the reasons for the
5 possible denial before making a final decision.

6 (3) If, within 14 days of receipt of the written statement
7 described in paragraph (2), the applicant provides the owner of
8 the rental housing accommodation notice orally or in writing of
9 evidence demonstrating the inaccuracy of the item or items within
10 the applicant's criminal record or evidence of rehabilitation or
11 other mitigating factors, the owner of the housing accommodation
12 shall delay the denial for a reasonable period after receipt of the
13 information and reconsider his or her decision in light of the
14 information. If, upon individualized assessment of the applicant's
15 criminal record and the evidence of rehabilitation and mitigating
16 factors, the applicant still has an unacceptable criminal record,
17 then the owner of the housing accommodation shall notify the
18 applicant of his or her final decision to deny the application in
19 writing.

20 (c) With regard to an application for rental housing
21 accommodations, the owner of the housing accommodation shall
22 not require disclosure of, or, if such information is received, deny
23 a dwelling based in whole or in part on the following:

24 (1) A previous arrest that did not result in a conviction.

25 (2) Participation in, or completion of, a diversion or a deferral
26 of judgment program.

27 (3) A conviction that has been judicially dismissed, expunged,
28 voided, invalidated, or otherwise rendered inoperative, including,
29 but not limited to, as is provided under Section 1203.4, 1203.4a,
30 or 1203.41 of the Penal Code.

31 (4) A determination or adjudication in the juvenile justice system
32 or information regarding a matter considered in or processed
33 through the juvenile justice system.

34 (5) Information pertaining to an offense other than a felony or
35 misdemeanor.

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

38 ~~12955. It shall be unlawful:~~

39 ~~(a) For the owner of any housing accommodation to discriminate~~
40 ~~against or harass any person because of the race, color, religion,~~

1 sex, gender, gender identity, gender expression, sexual orientation,
2 marital status, national origin, ancestry, familial status, source of
3 income, disability, genetic information, or criminal record of that
4 person unless otherwise required by federal law.

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

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

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

32 (e) For any person, bank, mortgage company or other financial
33 institution that provides financial assistance for the purchase,
34 organization, or construction of any housing accommodation to
35 discriminate against any person or group of persons because of
36 the race, color, religion, sex, gender, gender identity, gender
37 expression, sexual orientation, marital status, national origin,
38 ancestry, familial status, source of income, disability, genetic
39 information, or criminal record in the terms, conditions, or

1 privileges relating to the obtaining or use of that financial assistance
2 unless otherwise required by federal law.

3 (f) ~~For any owner of housing accommodations to harass, evict,~~
4 ~~or otherwise discriminate against any person in the sale or rental~~
5 ~~of housing accommodations when the owner's dominant purpose~~
6 ~~is retaliation against a person who has opposed practices unlawful~~
7 ~~under this section, informed law enforcement agencies of practices~~
8 ~~believed unlawful under this section, has testified or assisted in~~
9 ~~any proceeding under this part, or has aided or encouraged a person~~
10 ~~to exercise or enjoy the rights secured by this part. Nothing herein~~
11 ~~is intended to cause or permit the delay of an unlawful detainer~~
12 ~~action.~~

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

16 (h) ~~For any person, for profit, to induce any person to sell or~~
17 ~~rent any dwelling by representations regarding the entry or~~
18 ~~prospective entry into the neighborhood of a person or persons of~~
19 ~~a particular race, color, religion, sex, gender, gender identity,~~
20 ~~gender expression, sexual orientation, marital status, ancestry,~~
21 ~~disability, genetic information, source of income, familial status,~~
22 ~~national origin, or criminal record unless otherwise required by~~
23 ~~federal law.~~

24 (i) ~~For any person or other organization or entity whose business~~
25 ~~involves real estate-related transactions to discriminate against~~
26 ~~any person in making available a transaction, or in the terms and~~
27 ~~conditions of a transaction, because of race, color, religion, sex,~~
28 ~~gender, gender identity, gender expression, sexual orientation,~~
29 ~~marital status, national origin, ancestry, source of income, familial~~
30 ~~status, disability, genetic information, or criminal record unless~~
31 ~~otherwise required by federal law.~~

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

39 (k) ~~To otherwise make unavailable or deny a dwelling based~~
40 ~~on discrimination because of race, color, religion, sex, gender,~~

1 ~~gender identity, gender expression, sexual orientation, familial~~
2 ~~status, source of income, disability, genetic information, national~~
3 ~~origin, or criminal record unless otherwise required by federal law.~~

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

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

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

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

29 ~~(o) In instances where there is a government rent subsidy, to~~
30 ~~use a financial or income standard in assessing eligibility for the~~
31 ~~rental of housing that is not based on the portion of the rent to be~~
32 ~~paid by the tenant.~~

33 ~~It shall not constitute discrimination based on source of income~~
34 ~~to make a written or oral inquiry concerning the level or source of~~
35 ~~income.~~

36 ~~It is not unlawful under this section for an employer to ask an~~
37 ~~employee or applicant for housing about an arrest for which the~~
38 ~~employee or applicant is out on bail or on his or her own~~
39 ~~recognizance pending trial.~~

1 ~~SEC. 2. Section 12955.05 is added to the Government Code,~~
2 ~~to read:~~

3 ~~12955.05. For the purposes of Section 12955:~~

4 ~~(a) “Criminal record” includes a record regarding a criminal~~
5 ~~conviction, an arrest that did not result in a conviction, and a~~
6 ~~detention that did not result in conviction, including one regarding~~
7 ~~a referral to, and participation in, any pretrial or posttrial diversion~~
8 ~~program or regarding a conviction that has been judicially~~
9 ~~dismissed or ordered sealed pursuant to law, including, but not~~
10 ~~limited to, Section 1203.4, 1203.4a, 1203.45, or 1210.1 of the~~
11 ~~Penal Code.~~

12 ~~(b) “Source of income” means lawful, verifiable income paid~~
13 ~~directly to a tenant or paid to a representative of a tenant. A~~
14 ~~landlord is not considered a representative of a tenant.~~