

AMENDED IN ASSEMBLY APRIL 30, 2015

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 rental housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 396, as amended, Jones-Sawyer. Rental housing discrimination: applications: criminal 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.

This bill would 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, *and the possible denial is based on the 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.
9 (b) For the owner of any housing accommodation to make or
10 to cause to be made any written or oral inquiry concerning the
11 race, color, religion, sex, gender, gender identity, gender
12 expression, sexual orientation, marital status, national origin,
13 ancestry, familial status, disability, or genetic information of any

1 person seeking to purchase, rent, or lease any housing
2 accommodation.

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

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

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

30 (f) For any owner of housing accommodations to harass, evict,
31 or otherwise discriminate against any person in the sale or rental
32 of housing accommodations when the owner's dominant purpose
33 is retaliation against a person who has opposed practices unlawful
34 under this section, informed law enforcement agencies of practices
35 believed unlawful under this section, has testified or assisted in
36 any proceeding under this part, or has aided or encouraged a person
37 to exercise or enjoy the rights secured by this part. Nothing herein
38 is intended to cause or permit the delay of an unlawful detainer
39 action.

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

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

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

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

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

29 (l) To discriminate through public or private land use practices,
30 decisions, and authorizations because of race, color, religion, sex,
31 gender, gender identity, gender expression, sexual orientation,
32 familial status, marital status, disability, genetic information,
33 national origin, source of income, or ancestry. Discrimination
34 includes, but is not limited to, restrictive covenants, zoning laws,
35 denials of use permits, and other actions authorized under the
36 Planning and Zoning Law (Title 7 (commencing with Section
37 65000)), that make housing opportunities unavailable.

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

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

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

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

17 (p) For the owner of any rental housing accommodations to
18 deny the rental or lease of a housing accommodation without first
19 satisfying the requirements of Section 12955.05, unless otherwise
20 required by state or federal law.

21 (q) (1) For the purposes of this section, “source of income”
22 means lawful, verifiable income paid directly to a tenant or paid
23 to a representative of a tenant. For the purposes of this section, a
24 landlord is not considered a representative of a tenant.

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

28 SEC. 2. Section 12955.05 is added to the Government Code,
29 to read:

30 12955.05. (a) For purposes of this section:

31 (1) “Criminal record” means criminal offender information, as
32 defined in Section 13102 of the Penal Code or state summary
33 criminal history information as defined in Section 11105 of the
34 Penal Code.

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

37 (A) A person’s satisfactory compliance with all terms and
38 conditions of parole or probation, provided that the person’s
39 inability to pay fines, fees, and restitution due to indigence shall

1 not be considered noncompliance with terms and conditions of
2 parole or probation.

3 (B) Employer recommendations, particularly a person's
4 postconviction employment.

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

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

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

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

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

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

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

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

31 (2) Following the initial application assessment phase, an owner
32 of a rental housing accommodation may request a criminal
33 background check and consider an applicant's criminal record in
34 deciding whether to rent or lease. If the owner of a rental housing
35 accommodation is considering denying an application to rent or
36 lease after requesting a criminal background check or considering
37 an applicant's criminal record, *and the possible denial is based on*
38 *the applicant's criminal record*, he or she shall promptly provide
39 the applicant with a written statement listing the reasons for the
40 possible denial before making a final decision.

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

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

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

20 (2) Participation in, or completion of, a diversion or a deferral
21 of judgment program.

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

26 (4) A determination or adjudication in the juvenile justice system
27 or information regarding a matter considered in or processed
28 through the juvenile justice system.

29 (5) Information pertaining to an offense other than a felony or
30 misdemeanor.