

AMENDED IN SENATE AUGUST 15, 2016
AMENDED IN SENATE JUNE 20, 2016
AMENDED IN ASSEMBLY MAY 31, 2016
AMENDED IN ASSEMBLY APRIL 26, 2016
AMENDED IN ASSEMBLY APRIL 11, 2016
AMENDED IN ASSEMBLY MARCH 28, 2016
AMENDED IN ASSEMBLY MARCH 17, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2844

Introduced by Assembly Member Bloom

(Principal coauthors: Assembly Members Levine, Medina, and Nazarian)

(Principal coauthors: Senators Allen, Block, Glazer, Hertzberg, Jackson, and Wolk)

(Coauthors: Assembly Members Campos, Dababneh, and Olsen)

February 19, 2016

An act to add Section 2010 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2844, as amended, Bloom. Public contracts: discrimination.

Existing law governs the procurement process for contracts of specified public entities. *Existing law, the Unruh Civil Rights Act, states that all persons within this state are free and equal and, no matter what their sex, race, color, religion, ancestry, national origin, disability,*

medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status, are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishments. 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, abridgment, or harassment 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, sexual orientation, or military and veteran status.

This bill would require a person that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, a state agency with respect to any contract in the amount of \$100,000 or more to certify, under penalty of perjury, at the time the bid or proposal is submitted or the contract is renewed that they ~~have complied~~ *are in compliance* with the Unruh Civil Rights Act and the California Fair Employment and Housing Act, and that any policy that they have adopted against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, is not used as a pretext for discrimination in violation of the Unruh Civil Rights Act or the California Fair Employment and Housing Act. By requiring a person to certify under penalty of perjury, this bill would expand the definition of a crime, thereby imposing a state-mandated local program. ~~The bill would authorize the Attorney General to receive and investigate complaints regarding violations of, and to bring suit to enforce, these provisions.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:

1 (a) California is a leader in protecting civil rights and preventing
2 discrimination.

3 (b) California’s robust nondiscrimination laws include
4 protections on the basis of religion, race, national origin, sex, sexual
5 orientation, gender identity, gender expression, and disability,
6 among other characteristics.

7 (c) California’s strong public policy against *unlawful*
8 discrimination is reflected in numerous statutes. The California
9 Fair Employment and Housing Act (Chapter 7 (commencing with
10 Section 12960) of Part 2.8 of Division 3 of Title 2 of the
11 Government Code) and the Unruh Civil Rights Act (Section 51 of
12 the Civil Code) prohibit *unlawful* discrimination in employment,
13 housing, public accommodation, and services provided by business
14 establishments on the basis of certain personal characteristics, such
15 as sex, race, color, religion, ancestry, national origin, age,
16 disability, medical condition, genetic information, marital status,
17 or sexual orientation. Section 11135 of the Government Code
18 specifically prohibits *unlawful* discrimination on the basis of many
19 of these same characteristics in the conduct, operation, or
20 administration of any program or activity that is by the state or by
21 any state agency, funded directly by the state, or receives any
22 financial assistance from the state.

23 (d) California’s Public Contract Code similarly affirms these
24 nondiscrimination policies and prohibits a state agency from
25 entering into certain contracts with any contractor unless the
26 contractor complies with all appropriate state laws concerning
27 wages, workplace safety, rights to association and assembly, and
28 nondiscrimination standards as well as appropriate federal laws.

29 (e) Both freedom of speech and religion are cornerstones of law
30 and public policy in the United States, and the Legislature strongly
31 supports and affirms these important freedoms.

32 (f) The exercise of one’s First Amendment rights is not a
33 justification for engaging in acts of *unlawful* discrimination.

34 (g) California must take action to avoid supporting or financing
35 *unlawful* discrimination against protected classes.

36 (h) It is the policy of the State of California to promote fairness
37 and equality and to combat *unlawful* discrimination and if
38 California hopes to remain a national leader on behalf of these
39 communities, action must be taken to recognize that discriminatory

1 laws and policies are unacceptable for California’s partners in
2 business.

3 (i) California has significant influence in the marketplace. The
4 state at times operates not as a market regulator, but as a market
5 participant, and in this latter role it may determine that companies
6 engaging in discriminatory actions in the conduct and operation
7 of their business adversely affects the state’s procurement activities
8 and places the state in a position of supporting activities that could
9 be seen as a violation of the nondiscrimination policies of the State
10 of California.

11 (j) It is the intent of the Legislature to ensure that taxpayer funds
12 are not used to do business with or otherwise support any state or
13 private entity that engages in discriminatory actions against
14 individuals under the pretext of exercising First Amendment rights.
15 This includes, but is not limited to, discriminatory actions taken
16 against individuals of the Jewish faith under the pretext of a
17 constitutionally protected boycott or protest of the State of Israel.

18 (k) It is the intent of the Legislature to ensure that taxpayer
19 funds are not used to do business with or support discriminatory
20 actions against any individuals.

21 SEC. 2. Section 2010 is added to the Public Contract Code, to
22 read:

23 2010. ~~(a)~~—A person that submits a bid or proposal to, or
24 otherwise proposes to enter into or renew a contract with, a state
25 agency with respect to any contract in the amount of one hundred
26 thousand dollars (\$100,000) or more shall certify, under penalty
27 of perjury, at the time the bid or proposal is submitted or the
28 contract is renewed, all of the following:

29 ~~(1)~~

30 (a) That they ~~have complied~~ *are in compliance* with the Unruh
31 Civil Rights Act (Section 51 of the Civil Code).

32 ~~(2)~~

33 (b) That they ~~have complied~~ *are in compliance* with the
34 California Fair Employment and Housing Act (Chapter 7
35 (commencing with Section 12960) of Part 2.8 of Division 3 of
36 Title 2 of the Government Code).

37 ~~(3)~~

38 (c) That any policy that they have against any sovereign nation
39 or peoples recognized by the government of the United States,
40 including, but not limited to, the nation and people of Israel, is not

1 used as a pretext for discrimination in violation of the Unruh Civil
2 Rights Act (Section 51 of the Civil Code) or the California Fair
3 Employment and Housing Act (Chapter 7 (commencing with
4 Section 12960) of Part 2.8 of Division 3 of Title 2 of the
5 Government Code).

6 ~~(b) The Attorney General may receive and investigate~~
7 ~~complaints regarding violations of, and may bring suit to enforce~~
8 ~~the provisions of, subdivision (a).~~

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

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