

AMENDED IN SENATE APRIL 26, 2016

SENATE BILL

No. 1442

Introduced by Senator Liu

February 19, 2016

An act to repeal Section 261 of the Education Code, and to amend Sections 11135, 11136, 11137, 11139, 12930, and 12935 of, to add Section 12957 to, to add Chapter 18 (commencing with Section 7400) and Chapter 18.1 (commencing with Section 7405) to Division 7 of Title 1 of, and to repeal Sections 11138, 11139.3, 11139.5, 11139.6, and 11139.7 of, the Government Code, relating to discrimination.

LEGISLATIVE COUNSEL'S DIGEST

SB 1442, as amended, Liu. Discrimination: regulations and enforcement.

Existing law prohibits discrimination in employment, housing, and eligibility for government programs and benefits based upon specified personal characteristics. Under existing law, the Department of Fair Employment and Housing within the Business, Consumer Services, and Housing Agency, is charged with enforcement of civil rights violations, including discrimination. Existing law authorizes the department, and other state agencies that administer programs or activities funded by the state or that receive financial assistance from the state and that enter into contracts for services to be provided to the public, as specified, to promulgate regulations to prohibit discrimination.

This bill would reorganize various statutes regarding discrimination. The bill would also remove the authority of those state agencies to promulgate regulations to prohibit discrimination and would require the investigation and enforcement of the above-described antidiscrimination provisions to be performed by the department.

Existing law authorizes the provision of housing for homeless youth, as defined, and occupies the field of regulation of housing for homeless youth. This bill would reorganize these provisions by making them part of the Fair Employment and Housing Act. The bill would also make conforming changes.

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 Section 261 of the Education Code is repealed.
 2 SEC. 2. Chapter 18 (commencing with Section 7400) is added
 3 to Division 7 of Title 1 of the Government Code, to read:

4
 5 CHAPTER 18. BIDDING AND OUTREACH PROGRAMS
 6

7 7400. (a) (1) The Legislature finds and declares that
 8 subdivision (a) of Section 31 of Article I of the California
 9 Constitution prohibits state and local government agencies from
 10 discriminating against or granting preferential treatment to any
 11 individual or group on the basis of race, sex, color, ethnicity, or
 12 national origin in the operation of public employment, public
 13 education, and public contracting. The Legislature finds that this
 14 prohibition does not prevent governmental agencies from engaging
 15 in inclusive public sector outreach and recruitment programs that,
 16 as a component of general recruitment, may include, but not be
 17 limited to, focused outreach and recruitment of minority groups
 18 and women if any group is underrepresented in entry level positions
 19 of a public sector employer.

20 (2) The Legislature also finds and declares that increasing the
 21 number of businesses that participate in the bidding process in
 22 public contracting results in more vigorous competition, and thus
 23 assists state and local agencies in obtaining the desired quality of
 24 work at a lower cost.

25 (3) It is the intent of this section that all governmental agencies
 26 shall engage in general recruitment and outreach programs to all
 27 individuals, including persons who are economically
 28 disadvantaged.

29 (b) For purposes of this section, underrepresentation shall be
 30 determined by comparing the minority group or the number of

1 women at the governmental agency with that group’s representation
2 in the current civilian labor force in the jurisdiction of the
3 governmental agency.

4 (c) State government employment shall use current state civilian
5 labor force data to implement this section.

6 (d) It is the intent of this section to allow public sector employers
7 to conduct outreach efforts with a goal of supplementing
8 word-of-mouth recruitment that should result in increasing diversity
9 of the public sector workforce.

10 (e) The type of recruitment activities allowed would include,
11 but not be limited to, placement of job announcements in the
12 following media instruments:

13 (1) General circulation newspapers, general circulation
14 publications, and general market radio and television stations,
15 including electronic media.

16 (2) Local and regional community newspapers.

17 (3) Newspapers, publications, and radio and television stations
18 that provide information in languages other than English and whose
19 primary audience is residents of minority and low-income
20 communities.

21 (4) Publications, including electronic media, that are distributed
22 to the general market and to newspapers, publications, and radio
23 and television stations whose primary audience is comprised of
24 minority groups or women.

25 (5) Recruitment booths at job fairs or conferences oriented to
26 both the general market and the economically disadvantaged as
27 well as those events drawing a significant participation by
28 minorities or women.

29 7401. (a) The Governor’s Task Force on Diversity and
30 Outreach, in its August 1, 2000, report, concluded that data on
31 minority business participation is not currently available, and that
32 lack of useful data on minority business participation in state
33 contracting is an overarching issue to be addressed.

34 (b) In contracting for and procuring goods, services, information
35 technology, construction, architecture, and engineering consulting,
36 and other consulting services, state and local departments and
37 agencies are authorized to engage in focused outreach activities
38 in addition to general outreach, for purposes of increasing
39 participation by California’s small business sector and increasing
40 diversity in the state’s contracting and procurement activities.

1 (c) Outreach activities may include, but are not limited to, the
2 following:

3 (1) Invitations to bid distributed by state and local departments
4 and agencies to state and local small business and trade associations
5 and chambers of commerce, including ethnic chambers of
6 commerce, and other business and professional associations,
7 including professional minority, women, and disabled
8 veteran-owned-business *businesses* and professional groups and
9 associations, as appropriate.

10 (2) Publication of advertising concerning state and local
11 contracting and procurement opportunities in trade papers and
12 other publications focusing on small business enterprises, including
13 publications and newspapers in languages other than English and
14 those whose primary readership is minority, women, or disabled
15 veteran-owned businesses.

16 (3) Outreach by small business advocates in each state or local
17 government department or agency to state and local small business
18 and trade associations and chambers of commerce, including ethnic
19 chambers of commerce, and other business and professional
20 associations, including professional minority, women, and disabled
21 veteran-owned-business *businesses* and professional groups and
22 associations, as appropriate.

23 SEC. 3. Chapter 18.1 (commencing with Section 7405) is added
24 to Division 7 of Title 1 of the Government Code, to read:

25
26 CHAPTER 18.1. ELECTRONIC AND INFORMATION TECHNOLOGY
27

28 7405. The Legislature finds and declares that the ability to
29 utilize electronic or information technology is often an essential
30 function for successful employment in the current work world.

31 (a) In order to improve accessibility of existing technology, and
32 therefore increase the successful employment of individuals with
33 disabilities, particularly blind and visually impaired and deaf and
34 hard-of-hearing persons, state governmental entities, in developing,
35 procuring, maintaining, or using electronic or information
36 technology, either indirectly or through the use of state funds by
37 other entities, shall comply with the accessibility requirements of
38 Section 508 of the federal Rehabilitation Act of 1973, as amended
39 (29 U.S.C. Sec. 794d), and regulations implementing that act as

1 set forth in Part 1194 of Title 36 of the Federal Code of
2 Regulations.

3 (b) Any entity that contracts with a state or local entity subject
4 to Section 11135 for the provision of electronic or information
5 technology or for the provision of related services shall agree to
6 respond to, and resolve any complaint regarding accessibility of,
7 its products or services that is brought to the attention of the entity.

8 SEC. 4. Section 11135 of the Government Code is amended
9 to read:

10 11135. (a) No person in the State of California shall, on the
11 basis of sex, race, color, religion, ancestry, national origin, age,
12 ~~disability~~, *mental disability*, *physical disability*, medical condition,
13 genetic information, marital status, or sexual orientation, be
14 unlawfully denied full and equal access to the benefits of, or be
15 unlawfully subjected to discrimination under, any program or
16 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) The protected bases referenced in this section have the same
30 meanings as those terms are defined in Section 12926.

31 (d) The protected bases used in this section include a perception
32 that a person has any of those characteristics or that the person is
33 associated with a person who has, or is perceived to have, any of
34 those characteristics.

35 SEC. 5. Section 11136 of the Government Code is amended
36 to read:

37 11136. Whenever a state agency that administers a program
38 or activity that is funded directly by the state or receives any
39 financial assistance from the ~~state~~, *state* has reasonable cause to
40 believe that a contractor, grantee, or local agency has violated the

1 provisions of Section 11135, Part 2.8 (commencing with Section
2 12900) of this code, Section 51, 51.5, 51.7, 54, 54.1, or 54.2 of
3 the Civil Code, or any regulation adopted to implement these
4 sections; *sections or* Article 1 (commencing with Section 12960)
5 of Chapter 7 of this ~~code~~: *code*, the head of the state agency, or
6 his or her designee, shall notify the contractor, grantee, or local
7 agency of such violation and shall submit a complaint detailing
8 the alleged violations to the Department of Fair Employment and
9 Housing for investigation and determination pursuant to Article 1
10 (commencing with Section ~~12460~~) 12960) of Chapter 7 of this
11 code.

12 SEC. 6. Section 11137 of the Government Code is amended
13 to read:

14 11137. If it is determined that a contractor, grantee, or local
15 agency has violated the provisions of this article, pursuant to the
16 process described in Section 11136, the state agency that
17 administers the program or activity involved shall take action to
18 curtail state funding in whole or in part to such contractor, grantee,
19 or local agency.

20 SEC. 7. Section 11138 of the Government Code is repealed.

21 SEC. 8. Section 11139 of the Government Code is amended
22 to read:

23 11139. The prohibitions and sanctions imposed by this article
24 are in addition to any other prohibitions and sanctions imposed by
25 law.

26 This article shall not be interpreted in a manner that would
27 frustrate its purpose.

28 This article shall not be interpreted in a manner that would
29 undermine lawful programs which benefit members of the protected
30 bases described in Section 11135.

31 This article and regulations adopted pursuant to this article may
32 be enforced by a civil action for equitable relief, which shall be
33 independent of any other rights and remedies.

34 SEC. 9. Section 11139.3 of the Government Code is repealed.

35 SEC. 10. Section 11139.5 of the Government Code is repealed.

36 SEC. 11. Section 11139.6 of the Government Code is repealed.

37 SEC. 12. Section 11139.7 of the Government Code is repealed.

38 SEC. 13. Section 12930 of the Government Code is amended
39 to read:

1 12930. The department shall have the following functions,
2 powers, and duties:

3 (a) To establish and maintain a principal office and any other
4 offices within the state as are necessary to carry out the purposes
5 of this part.

6 (b) To meet and function at any place within the state.

7 (c) To appoint attorneys, investigators, conciliators, mediators,
8 and other employees as it may deem necessary, fix their
9 compensation within the limitations provided by law, and prescribe
10 their duties.

11 (d) To obtain upon request and utilize the services of all
12 governmental departments and agencies and, in addition, with
13 respect to housing discrimination, of conciliation councils.

14 (e) To adopt, promulgate, amend, and rescind suitable procedural
15 rules and regulations to carry out the investigation, prosecution,
16 and dispute resolution functions and duties of the department
17 pursuant to this part.

18 (f) (1) To receive, investigate, conciliate, mediate, and prosecute
19 complaints alleging practices made unlawful pursuant to Chapter
20 6 (commencing with Section 12940).

21 (2) To receive, investigate, conciliate, mediate, and prosecute
22 complaints alleging a violation of Section 51, 51.5, 51.7, 54, 54.1,
23 or 54.2 of the Civil Code. The remedies and procedures of this
24 part shall be independent of any other remedy or procedure that
25 might apply.

26 (3) To receive, investigate, conciliate, mediate, and prosecute
27 complaints alleging practices made unlawful pursuant to Article
28 9.5 (commencing with Section 11135) of Chapter 1 of Part 1,
29 except for complaints relating to educational equity brought under
30 Chapter 2 (commencing with Section 200) of Part 1 of Division 1
31 of Title 1 of the Education Code and investigated pursuant to the
32 procedures set forth in Subchapter 5.1 of Title 5 of the California
33 Code of Regulations, and not otherwise within the jurisdiction of
34 the department.

35 (A) Nothing in this part prevents the director or his or her
36 authorized representative, in his or her discretion, from making,
37 signing, and filing a complaint pursuant to Section 12960 or 12961
38 alleging practices made unlawful under Section 11135.

39 (B) Remedies available to the department in conciliating,
40 mediating, and prosecuting complaints alleging these practices are

1 the same as those available to the department in conciliating,
2 mediating, and prosecuting complaints alleging violations of Article
3 1 (commencing with Section 12940) of Chapter 6.

4 (g) In connection with any matter under investigation or in
5 question before the department pursuant to a complaint filed under
6 Section 12960, 12961, or 12980:

7 (1) To issue subpoenas to require the attendance and testimony
8 of witnesses and the production of books, records, documents, and
9 physical materials.

10 (2) To administer oaths, examine witnesses under oath and take
11 evidence, and take depositions and affidavits.

12 (3) To issue written interrogatories.

13 (4) To request the production for inspection and copying of
14 books, records, documents, and physical materials.

15 (5) To petition the superior courts to compel the appearance
16 and testimony of witnesses, the production of books, records,
17 documents, and physical materials, and the answering of
18 interrogatories.

19 (h) To bring civil actions pursuant to Section 12965 or 12981
20 and to prosecute those civil actions before state and federal trial
21 courts.

22 (i) To issue those publications and those results of investigations
23 and research as in its judgment will tend to promote good will and
24 minimize or eliminate discrimination in employment on the bases
25 enumerated in this part and discrimination in housing because of
26 race, religious creed, color, sex, gender, gender identity, gender
27 expression, marital status, national origin, ancestry, familial status,
28 disability, genetic information, or sexual orientation.

29 (j) To investigate, approve, certify, decertify, monitor, and
30 enforce nondiscrimination programs proposed by a contractor to
31 be engaged in pursuant to Section 12990.

32 (k) To render annually to the Governor and to the Legislature
33 a written report of its activities and of its recommendations.

34 (l) To conduct mediations at any time after a complaint is filed
35 pursuant to Section 12960, 12961, or 12980. The department may
36 end mediation at any time.

37 (m) The following shall apply with respect to any accusation
38 pending before the former Fair Employment and Housing
39 Commission on or after January 1, 2013:

1 (1) If an accusation issued under former Section 12965 includes
2 a prayer either for damages for emotional injuries as a component
3 of actual damages, or for administrative fines, or both, or if an
4 accusation is amended for the purpose of adding a prayer either
5 for damages for emotional injuries as a component of actual
6 damages, or for administrative fines, or both, with the consent of
7 the party accused of engaging in unlawful practices, the department
8 may withdraw an accusation and bring a civil action in superior
9 court.

10 (2) If an accusation was issued under former Section 12981,
11 with the consent of the aggrieved party filing the complaint an
12 aggrieved person on whose behalf a complaint is filed, or the party
13 accused of engaging in unlawful practices, the department may
14 withdraw the accusation and bring a civil action in superior court.

15 (3) Where removal to court is not feasible, the department shall
16 retain the services of the Office of Administrative Hearings to
17 adjudicate the administrative action pursuant to Sections 11370.3
18 and 11502.

19 (n) On any Section 1094.5 Code of Civil Procedure challenge
20 to a decision of the former Fair Employment and Housing
21 Commission pending on or after January 1, 2013, the director or
22 his or her designee shall consult with the Attorney General
23 regarding the defense of that writ petition.

24 SEC. 14. Section 12935 of the Government Code is amended
25 to read:

26 12935. The council shall have the following functions, powers,
27 and duties:

28 (a) To adopt, promulgate, amend, and rescind suitable rules,
29 regulations, and standards that do either of the following:

30 (1) Interpret, implement, and apply all provisions of this part,
31 Article 9.5 (commencing with Section 11135) of Chapter 1 of Part
32 1 of this code, and Sections 51, 51.5, 51.7, 54, 54.1, and 54.2 of
33 the Civil Code.

34 (2) Carry out all other functions and duties of the council
35 pursuant to this part.

36 (b) To meet at any place within the state and function in any
37 office of the department.

38 (c) To create or provide technical assistance to any advisory
39 agencies and conciliation councils, local or otherwise, as in its
40 judgment will aid in effectuating the purposes of this part, and to

1 empower them to study the problems of discrimination in all or
2 specific fields of human relationships or in particular instances of
3 employment discrimination on the bases enumerated in this part
4 or in specific instances of housing discrimination on the bases
5 enumerated in this part and to foster, through community effort or
6 otherwise, good will, cooperation, and conciliation among the
7 groups and elements of the population of the state and to make
8 recommendations to the Fair Employment and Housing Council
9 for the development of policies and procedures in general except
10 for procedural rules and regulations that carry out the investigation,
11 prosecution, and dispute resolution functions and duties of the
12 department. These advisory agencies and conciliation councils
13 shall be composed of representative citizens, serving without pay.

14 (d) To hold hearings, issue publications, results of inquiries and
15 research, and reports to the Governor and the Legislature that, in
16 its judgment, will tend to aid in the effectuating the purpose of this
17 part, promote good will, cooperation and conciliation, and
18 minimize or eliminate unlawful discrimination, or advance civil
19 rights in the State of California.

20 SEC. 15. Section 12957 is added to the Government Code, to
21 read:

22 12957. (a) It is the policy of this state and the purpose of this
23 section to facilitate and support the development and operation of
24 housing for homeless youth.

25 (b) The provision of housing for homeless youth is hereby
26 authorized and shall not be considered unlawful age discrimination,
27 notwithstanding any other provision of law, including, but not
28 limited to, Sections 51, 51.2, and 51.10 of the Civil Code, Sections
29 11135, 12920, and 12955 of this code, Chapter 11.5 (commencing
30 with Section 50800) of Part 2 of Division 31 of the Health and
31 Safety Code, and local housing or age discrimination ordinances.

32 (c) This section shall not be construed to permit discrimination
33 against families with children.

34 (d) This section shall occupy the field of regulation of housing
35 for homeless youth by any local public entity, including, but not
36 limited to, a city, county, and city and county.

37 (e) For purposes of this section, the following definitions shall
38 apply:

39 (1) "At risk of becoming homeless" means facing eviction or
40 termination of one's current housing situation.

- 1 (2) “Homeless youth” means either of the following:
2 (A) A person who is not older than 24 years of age, and meets
3 one of the following conditions:
4 (i) Is homeless or at risk of becoming homeless.
5 (ii) Is no longer eligible for foster care on the basis of age.
6 (iii) Has run away from home.
7 (B) A person who is younger than 18 years of age, who is
8 emancipated pursuant to Part 6 (commencing with Section 7000)
9 of Division 11 of the Family Code, and who is homeless or at risk
10 of becoming homeless.
11 (3) “Housing for homeless youth” means emergency,
12 transitional, or permanent housing tied to supportive services that
13 assist homeless youth in stabilizing their lives and developing the
14 skills and resources they need to make a successful transition to
15 independent, self-sufficient adulthood.