

AMENDED IN ASSEMBLY JUNE 21, 2016

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, Agency is charged with enforcement of civil rights violations, including discrimination. Existing law authorizes the ~~department~~, *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. *The bill would require that specified regulations implementing these provisions be transferred to the portion of the California Code of Regulations that is under the authority of 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~~

This bill would reorganize these provisions by making them part of the California 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 Section 261 of the Education Code is repealed.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.

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

5 (b) For purposes of this section, underrepresentation shall be
6 determined by comparing the minority group or the number of
7 women at the governmental agency with that group's representation
8 in the current civilian labor force in the jurisdiction of the
9 governmental agency.

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

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

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

19 (1) General circulation newspapers, general circulation
20 publications, and general market radio and television stations,
21 including electronic media.

22 (2) Local and regional community newspapers.

23 (3) Newspapers, publications, and radio and television stations
24 that provide information in languages other than English and whose
25 primary audience is residents of minority and low-income
26 communities.

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

31 (5) Recruitment booths at job fairs or conferences oriented to
32 both the general market and the economically disadvantaged as
33 well as those events drawing a significant participation by
34 minorities or women.

35 7401. (a) The Governor's Task Force on Diversity and
36 Outreach, in its August 1, 2000, report, concluded that data on
37 minority business participation is not currently available, and that
38 lack of useful data on minority business participation in state
39 contracting is an overarching issue to be addressed.

1 (b) In contracting for and procuring goods, services, information
 2 technology, construction, architecture, and engineering consulting,
 3 and other consulting services, state and local departments and
 4 agencies are authorized to engage in focused outreach activities
 5 in addition to general outreach, for purposes of increasing
 6 participation by California’s small business sector and increasing
 7 diversity in the state’s contracting and procurement activities.

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

10 (1) Invitations to bid distributed by state and local departments
 11 and agencies to state and local small business and trade associations
 12 and chambers of commerce, including ethnic chambers of
 13 commerce, and other business and professional associations,
 14 including professional minority, women, and disabled
 15 veteran-owned businesses and professional groups and associations,
 16 as appropriate.

17 (2) Publication of advertising concerning state and local
 18 contracting and procurement opportunities in trade papers and
 19 other publications focusing on small business enterprises, including
 20 publications and newspapers in languages other than English and
 21 those whose primary readership is minority, women, or disabled
 22 veteran-owned businesses.

23 (3) Outreach by small business advocates in each state or local
 24 government department or agency to state and local small business
 25 and trade associations and chambers of commerce, including ethnic
 26 chambers of commerce, and other business and professional
 27 associations, including professional minority, women, and disabled
 28 veteran-owned businesses and professional groups and associations,
 29 as appropriate.

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

32
 33 CHAPTER 18.1. ELECTRONIC AND INFORMATION TECHNOLOGY
 34

35 7405. The Legislature finds and declares that the ability to
 36 utilize electronic or information technology is often an essential
 37 function for successful employment in the current work world.

38 (a) In order to improve accessibility of existing technology, and
 39 therefore increase the successful employment of individuals with
 40 disabilities, particularly blind and visually impaired and deaf and

1 hard-of-hearing persons, state governmental entities, in developing,
2 procuring, maintaining, or using electronic or information
3 technology, either indirectly or through the use of state funds by
4 other entities, shall comply with the accessibility requirements of
5 Section 508 of the federal Rehabilitation Act of 1973, as amended
6 (29 U.S.C. Sec. 794d), and regulations implementing that act as
7 set forth in Part 1194 of Title 36 of the Federal Code of
8 Regulations.

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

14 SEC. 4. Section 11135 of the Government Code is amended
15 to read:

16 11135. (a) No person in the State of California shall, on the
17 basis of sex, race, color, religion, ancestry, national origin, age,
18 mental disability, physical disability, medical condition, genetic
19 information, marital status, or sexual orientation, be unlawfully
20 denied full and equal access to the benefits of, or be unlawfully
21 subjected to discrimination under, any program or activity that is
22 conducted, operated, or administered by the state or by any state
23 agency, is funded directly by the state, or receives any financial
24 assistance from the state. Notwithstanding Section 11000, this
25 section applies to the California State University.

26 (b) With respect to discrimination on the basis of disability,
27 programs and activities subject to subdivision (a) shall meet the
28 protections and prohibitions contained in Section 202 of the federal
29 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132),
30 and the federal rules and regulations adopted in implementation
31 thereof, except that if the laws of this state prescribe stronger
32 protections and prohibitions, the programs and activities subject
33 to subdivision (a) shall be subject to the stronger protections and
34 prohibitions.

35 (c) The protected bases referenced in this section have the same
36 meanings as those terms are defined in Section 12926.

37 (d) The protected bases used in this section include a perception
38 that a person has any of those characteristics or that the person is
39 associated with a person who has, or is perceived to have, any of
40 those characteristics.

1 SEC. 5. Section 11136 of the Government Code is amended
2 to read:

3 11136. Whenever a state agency that administers a program
4 or activity that is funded directly by the state or receives any
5 financial assistance from the state has reasonable cause to believe
6 that a contractor, grantee, or local agency has violated the
7 provisions of Section 11135, Part 2.8 (commencing with Section
8 12900) of this code, Section 51, 51.5, 51.7, 54, 54.1, or 54.2 of
9 the Civil Code, or any regulation adopted to implement these
10 sections or Article 1 (commencing with Section 12960) of Chapter
11 7 of this code, the head of the state agency, or his or her designee,
12 shall notify the contractor, grantee, or local agency of such
13 violation and shall submit a complaint detailing the alleged
14 violations to the Department of Fair Employment and Housing for
15 investigation and determination pursuant to Article 1 (commencing
16 with Section 12960) of Chapter 7 of this code.

17 SEC. 6. Section 11137 of the Government Code is amended
18 to read:

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

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

26 SEC. 8. Section 11139 of the Government Code is amended
27 to read:

28 11139. The prohibitions and sanctions imposed by this article
29 are in addition to any other prohibitions and sanctions imposed by
30 law.

31 This article shall not be interpreted in a manner that would
32 frustrate its purpose.

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

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

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

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

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

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

3 SEC. 13. Section 12930 of the Government Code is amended

4 to read:

5 12930. The department shall have the following functions,
6 powers, and duties:

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

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

11 (c) To appoint attorneys, investigators, conciliators, mediators,
12 and other employees as it may deem necessary, fix their
13 compensation within the limitations provided by law, and prescribe
14 their duties.

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

18 (e) To adopt, promulgate, amend, and rescind suitable procedural
19 rules and regulations to carry out the investigation, prosecution,
20 and dispute resolution functions and duties of the department
21 pursuant to this part.

22 (f) (1) To receive, investigate, conciliate, mediate, and prosecute
23 complaints alleging practices made unlawful pursuant to Chapter
24 6 (commencing with Section 12940).

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

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

39 (A) Nothing in this part prevents the director or his or her
40 authorized representative, in his or her discretion, from making,

1 signing, and filing a complaint pursuant to Section 12960 or 12961
2 alleging practices made unlawful under Section 11135.

3 (B) Remedies available to the department in conciliating,
4 mediating, and prosecuting complaints alleging these practices are
5 the same as those available to the department in conciliating,
6 mediating, and prosecuting complaints alleging violations of Article
7 1 (commencing with Section 12940) of Chapter 6.

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

11 (1) To issue subpoenas to require the attendance and testimony
12 of witnesses and the production of books, records, documents, and
13 physical materials.

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

16 (3) To issue written interrogatories.

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

19 (5) To petition the superior courts to compel the appearance
20 and testimony of witnesses, the production of books, records,
21 documents, and physical materials, and the answering of
22 interrogatories.

23 (h) To bring civil actions pursuant to Section 12965 or 12981
24 and to prosecute those civil actions before state and federal trial
25 courts.

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

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

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

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

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

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

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

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

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

27 SEC. 14. Section 12935 of the Government Code is amended
28 to read:

29 12935. The council shall have the following functions, powers,
30 and duties:

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

33 (1) Interpret, implement, and apply all provisions of this part,
34 Article 9.5 (commencing with Section 11135) of Chapter 1 of Part
35 1 of *Division 3 of Title 2* of this code, and Sections 51, 51.5, 51.7,
36 54, 54.1, and 54.2 of the Civil Code.

37 (A) *Chapter 1 (commencing with Section 98000), Chapter 2*
38 *(commencing with Section 98100), and Chapter 3 (commencing*
39 *with Section 98200) of Division 8 of Title 22 of the California*
40 *Code of Regulations shall be transferred from the portion of the*

1 *California Code of Regulations that is under the authority of the*
2 *California Health and Human Services Agency to the portion of*
3 *the California Code of Regulations that is under the authority of*
4 *the department.*

5 (B) *The council shall, within existing resources, adopt, amend,*
6 *or repeal regulations transferred to the department from the*
7 *California Health and Human Services Agency relating to Article*
8 *9.5 (commencing with Section 11135) of Chapter 1 of Part 1.*

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

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

13 (c) To create or provide technical assistance to any advisory
14 agencies and conciliation councils, local or otherwise, as in its
15 judgment will aid in effectuating the purposes of this part, and to
16 empower them to study the problems of discrimination in all or
17 specific fields of human relationships or in particular instances of
18 employment discrimination on the bases enumerated in this part
19 or in specific instances of housing discrimination on the bases
20 enumerated in this part and to foster, through community effort or
21 otherwise, good will, cooperation, and conciliation among the
22 groups and elements of the population of the state and to make
23 recommendations to the Fair Employment and Housing Council
24 for the development of policies and procedures in general except
25 for procedural rules and regulations that carry out the investigation,
26 prosecution, and dispute resolution functions and duties of the
27 department. These advisory agencies and conciliation councils
28 shall be composed of representative citizens, serving without pay.

29 (d) To hold hearings, issue publications, results of inquiries and
30 research, and reports to the Governor and the Legislature that, in
31 its judgment, will tend to aid in effectuating the purpose of this
32 part, promote good will, cooperation and conciliation, and
33 minimize or eliminate unlawful discrimination, or advance civil
34 rights in the State of California.

35 SEC. 15. Section 12957 is added to the Government Code, to
36 read:

37 12957. (a) It is the policy of this state and the purpose of this
38 section to facilitate and support the development and operation of
39 housing for homeless youth.

1 (b) The provision of housing for homeless youth is hereby
2 authorized and shall not be considered unlawful age discrimination,
3 notwithstanding any other provision of law, including, but not
4 limited to, Sections 51, 51.2, and 51.10 of the Civil Code, Sections
5 11135, 12920, and 12955 of this code, Chapter 11.5 (commencing
6 with Section 50800) of Part 2 of Division 31 of the Health and
7 Safety Code, and local housing or age discrimination ordinances.

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

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

13 (e) For purposes of this section, the following definitions shall
14 apply:

15 (1) “At risk of becoming homeless” means facing eviction or
16 termination of one’s current housing situation.

17 (2) “Homeless youth” means either of the following:

18 (A) A person who is not older than 24 years of age, and meets
19 one of the following conditions:

20 (i) Is homeless or at risk of becoming homeless.

21 (ii) Is no longer eligible for foster care on the basis of age.

22 (iii) Has run away from home.

23 (B) A person who is younger than 18 years of age, who is
24 emancipated pursuant to Part 6 (commencing with Section 7000)
25 of Division 11 of the Family Code, and who is homeless or at risk
26 of becoming homeless.

27 (3) “Housing for homeless youth” means emergency,
28 transitional, or permanent housing tied to supportive services that
29 assist homeless youth in stabilizing their lives and developing the
30 skills and resources they need to make a successful transition to
31 independent, self-sufficient adulthood.

O