

AMENDED IN SENATE MARCH 18, 1999

SENATE BILL

No. 382

Introduced by Senator Haynes
(Principal coauthor: Senator Morrow)
(Principal coauthor: Assembly Member Bates)

February 11, 1999

An act to repeal Section 11010.05 of the Business and Professions Code, to amend Section 1368 of, to repeal Sections 51.3, 51.4, 51.10, 51.11, and 51.12 of, and to repeal and add Section 51.2 of, the Civil Code, to amend Sections 12955.9, 65915, and 65995.1 of the Government Code, and to amend Sections 1775 and 19904 of the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 382, as amended, Haynes. Housing: older persons.

The Unruh Civil Rights Act prohibits business establishments from discriminating on the basis of sex, color, race, religion, ancestry, national origin, or disability, or in the sale or rental of housing, based on age, except as specified. The California Fair Employment and Housing Act provides that its provisions relating to discrimination on the basis of familial status shall not apply to housing for older persons, as defined.

This bill would repeal those provisions of the Unruh Civil Rights Act relating to housing discrimination, and instead provide that nothing in the act regarding familial status or age shall apply to housing for older persons, as defined by a specified federal law. The bill would redefine housing for older persons for purposes of the California Fair Employment

and Housing Act by deleting references to housing that ~~comply~~ *complies* with the Unruh Civil Rights Act and to certain mobilehome parks, and inserting references to housing accommodations ~~intended and solely occupied for older persons 62 years of age or older and housing accommodations intended and operated for occupancy by at least one person who is 55 years of age per unit as determined under defined by~~ federal law. The bill would make conforming changes in other provisions of law relating to senior citizen housing developments and continuing care providers.

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 11010.05 of the Business and
2 Professions Code is repealed.

3 SEC. 2. Section 51.2 of the Civil Code is repealed.

4 SEC. 3. Section 51.2 is added to the Civil Code, to
5 read:

6 51.2. Nothing in Section 51 regarding familial status or
7 age shall apply to housing for older persons, as defined by
8 Section 3607(b)(2) of Title 42 of the United States Code.

9 SEC. 4. Section 51.3 of the Civil Code is repealed.

10 SEC. 5. Section 51.4 of the Civil Code is repealed.

11 SEC. 6. Section 51.10 of the Civil Code is repealed.

12 SEC. 7. Section 51.11 of the Civil Code is repealed.

13 SEC. 8. Section 51.12 of the Civil Code is repealed.

14 SEC. 9. Section 1368 of the Civil Code is amended to
15 read:

16 1368. (a) The owner of a separate interest, other than
17 an owner subject to the requirements of Section 11018.6
18 of the Business and Professions Code, shall, as soon as
19 practicable before transfer of title to the separate interest
20 or execution of a real property sales contract therefor, as
21 defined in Section 2985, provide the following to the
22 prospective purchaser:

23 (1) A copy of the governing documents of the common
24 interest development.



1 (2) A copy of the most recent documents distributed
2 pursuant to Section 1365.

3 (3) A true statement in writing from an authorized
4 representative of the association as to the amount of the
5 association's current regular and special assessments and
6 fees, as well as any assessments levied upon the owner's
7 interest in the common interest development which are
8 unpaid on the date of the statement. The statement shall
9 also include true information on late charges, interest,
10 and costs of collection which, as of the date of the
11 statement, are or may be made a lien upon the owner's
12 interest in a common interest development pursuant to
13 Section 1367.

14 (4) A copy of the preliminary list of defects provided
15 to each member of the association pursuant to Section
16 1375, unless the association and the builder subsequently
17 enter into a settlement agreement or otherwise resolve
18 the matter and the association complies with Section
19 1375.1. Disclosure of the preliminary list of defects
20 pursuant to this paragraph shall not waive any privilege
21 attached to the document. The preliminary list of defects
22 shall also include a statement that a final determination
23 as to whether the list of defects is accurate and complete
24 has not been made.

25 (5) A copy of the latest information provided for in
26 Section 1375.1.

27 (6) Any change in the association's current regular
28 and special assessments and fees which have been
29 approved by the association's board of directors, but have
30 not become due and payable as of the date disclosure is
31 provided pursuant to this subdivision.

32 (b) Upon written request, an association shall, within
33 10 days of the mailing or delivery of the request, provide
34 the owner of a separate interest with a copy of the
35 requested items specified in paragraphs (1) to (6),
36 inclusive, of subdivision (a). The association may charge
37 a fee for this service, which shall not exceed the
38 association's reasonable cost to prepare and reproduce
39 the requested items.



1 (c) An association shall not impose or collect any
2 assessment, penalty, or fee in connection with a transfer
3 of title or any other interest except the association's actual
4 costs to change its records and that authorized by
5 subdivision (b).

6 (d) Any person or entity who willfully violates this
7 section shall be liable to the purchaser of a separate
8 interest that is subject to this section for actual damages
9 occasioned thereby and, in addition, shall pay a civil
10 penalty in an amount not to exceed five hundred dollars
11 (\$500). In an action to enforce this liability, the prevailing
12 party shall be awarded reasonable attorneys' fees.

13 (e) Nothing in this section affects the validity of title
14 to real property transferred in violation of this section.

15 (f) In addition to the requirements of this section, an
16 owner transferring title to a separate interest shall
17 comply with applicable requirements of Sections 1133
18 and 1134.

19 SEC. 10. Section 12955.9 of the Government Code is
20 amended to read:

21 12955.9. (a) The provisions of this part relating to
22 discrimination on the basis of familial status shall not
23 apply to housing for older persons.

24 (b) As used in this section, "housing for older persons"
25 means any of the following:

26 ~~(1) Housing accommodations provided under any~~
27 ~~state or federal program that have been determined~~
28 ~~under the federal Fair Housing Amendments Act of 1988~~
29 ~~(42 U.S.C. Sec. 3607, as amended) to be specifically~~
30 ~~designed and operated to assist elderly persons.~~

31 *(1) Housing provided under any state or federal*
32 *program that the Secretary of Housing and Urban*
33 *Development determines is specifically designed and*
34 *operated to assist elderly persons, as defined in the state*
35 *or federal program.*

36 (2) Housing accommodations intended for and solely
37 occupied by persons who are 62 years of age or older, *as*
38 *defined in Section 3607 of Title 42 of the United States*
39 *Code.*



1 (3) Housing accommodations intended and ~~operated~~
2 ~~for occupancy by at least one person who is 55 years of age~~
3 ~~or older per unit, as determined under the federal Fair~~
4 ~~Housing Amendments Act of 1988.~~ *operated for*
5 *occupancy in each unit by persons who are 55 years of age*
6 *or older, as defined in Section 3607 of Title 42 of the*
7 *United States Code.*

8 (c) For purposes of this section, the burden of proof
9 shall be on the owner to prove that the housing qualifies
10 as housing for older persons.

11 SEC. 11. Section 65915 of the Government Code is
12 amended to read:

13 65915. (a) When a developer of housing proposes a
14 housing development within the jurisdiction of the local
15 government, the city, county, or city and county shall
16 provide the developer incentives for the production of
17 lower income housing units within the development if
18 the developer meets the requirements set forth in
19 subdivisions (b) and (c). The city, county, or city and
20 county shall adopt an ordinance which shall specify the
21 method of providing developer incentives.

22 (b) When a developer of housing agrees or proposes to
23 construct at least (1) 20 percent of the total units of a
24 housing development for lower income households, as
25 defined in Section 50079.5 of the Health and Safety Code,
26 ~~or~~ (2) 10 percent of the total units of a housing
27 development for very low income households, as defined
28 in Section 50105 of the Health and Safety Code, *or (3) 50*
29 *percent of the total dwelling units of a project qualifying*
30 *as housing for older persons, as defined in Section 3607 of*
31 *Title 42 of the United States Code, a city, county, or city*
32 *and county shall either (1) grant a density bonus and at*
33 *least one of the concessions or incentives identified in*
34 *subdivision (h) unless the city, county, or city and county*
35 *makes a written finding that the additional concession or*
36 *incentive is not required in order to provide for*
37 *affordable housing costs as defined in Section 50052.5 of*
38 *the Health and Safety Code or for rents for the targeted*
39 *units to be set as specified in subdivision (c), or (2)*



1 provide other incentives of equivalent financial value
2 based upon the land cost per dwelling unit.

3 (c) A developer shall agree to and the city, county, or
4 city and county shall ensure continued affordability of all
5 lower income density bonus units for 30 years or a longer
6 period of time if required by the construction or
7 mortgage financing assistance program, mortgage
8 insurance program, or rental subsidy program. Those
9 units targeted for lower income households, as defined in
10 Section 50079.5 of the Health and Safety Code, shall be
11 affordable at a rent that does not exceed 30 percent of 60
12 percent of area median income. Those units targeted for
13 very low income households, as defined in Section 50105
14 of the Health and Safety Code, shall be affordable at a rent
15 that does not exceed 30 percent of 50 percent of area
16 median income. If a city, county, or city and county does
17 not grant at least one additional concession or incentive
18 pursuant to paragraph (1) of subdivision (b), the
19 developer shall agree to and the city, county, or city and
20 county shall ensure continued affordability for 10 years of
21 all lower income housing units receiving a density bonus.

22 (d) A developer may submit to a city, county, or city
23 and county a preliminary proposal for the development
24 of housing pursuant to this section prior to the submittal
25 of any formal requests for general plan amendments,
26 zoning amendments, or subdivision map approvals. The
27 city, county, or city and county shall, within 90 days of
28 receipt of a written proposal, notify the housing
29 developer in writing of the procedures under which it
30 will comply with this section. The city, county, or city and
31 county shall establish procedures for carrying out this
32 section, which shall include legislative body approval of
33 the means of compliance with this section. The city,
34 county, or city and county shall also establish procedures
35 for waiving or modifying development and zoning
36 standards which would otherwise inhibit the utilization of
37 the density bonus on specific sites. These procedures shall
38 include, but not be limited to, such items as minimum lot
39 size, side yard setbacks, and placement of public works
40 improvements.



1 (e) The housing developer shall show that the waiver
2 or modification is necessary to make the housing units
3 economically feasible.

4 (f) For the purposes of this chapter, “density bonus”
5 means a density increase of at least 25 percent over the
6 otherwise maximum allowable residential density under
7 the applicable zoning ordinance and land use element of
8 the general plan as of the date of application by the
9 developer to the city, county, or city and county. The
10 density bonus shall not be included when determining
11 the number of housing units which is equal to 10 or 20
12 percent of the total. The density bonus shall apply to
13 housing developments consisting of five or more dwelling
14 units.

15 (g) “Housing development,” as used in this section,
16 means one or more groups of projects for residential units
17 constructed in the planned development of a city, county,
18 or city and county. For purposes of calculating a density
19 bonus, the residential units do not have to be based upon
20 individual subdivision maps or parcels. The density bonus
21 shall be permitted in geographic areas of the housing
22 development other than the areas where the units for the
23 lower income households are located.

24 (h) For purposes of this chapter, concession or
25 incentive means any of the following:

26 (1) A reduction in site development standards or a
27 modification of zoning code requirements or
28 architectural design requirements which exceed the
29 minimum building standards approved by the California
30 Building Standards Commission as provided in Part 2.5
31 (commencing with Section 18901) of Division 13 of the
32 Health and Safety Code, including, but not limited to, a
33 reduction in setback and square footage requirements
34 and in the ratio of vehicular parking spaces that would
35 otherwise be required.

36 (2) Approval of mixed use zoning in conjunction with
37 the housing project if commercial, office, industrial, or
38 other land uses will reduce the cost of the housing
39 development and if the commercial, office, industrial, or
40 other land uses are compatible with the housing project



1 and the existing or planned development in the area
2 where the proposed housing project will be located.

3 (3) Other regulatory incentives or concessions
4 proposed by the developer or the city, county, or city and
5 county which result in identifiable cost reductions.

6 This subdivision does not limit or require the provision
7 of direct financial incentives for the housing
8 development, including the provision of publicly owned
9 land, by the city, county, or city and county, or the waiver
10 of fees or dedication requirements.

11 (i) If a developer agrees to construct both 20 percent
12 of the total units for lower income households and 10
13 percent of the total units for very low income households,
14 the developer is entitled to only one density bonus and at
15 least one additional concession or incentive identified in
16 Section 65913.4 under this section although the city, city
17 and county, or county may, at its discretion, grant more
18 than one density bonus.

19 SEC. 12. Section 65995.1 of the Government Code is
20 amended to read:

21 65995.1. (a) Notwithstanding any other provision of
22 law, as to any development project for the construction
23 of *housing for older persons, as defined in Section 3607 of*
24 *Title 42 of the Unites States Code*, a residential care
25 facility for the elderly as described in subdivision (k) of
26 Section 1569.2 of the Health and Safety Code, or a
27 multilevel facility for the elderly as described in
28 paragraph (9) of subdivision (d) of Section 15432, any fee,
29 charge, dedication, or other form of requirement that is
30 levied under Section 53080 may be applied only to new
31 construction, and is subject to the limits and conditions
32 applicable under subdivision (b) of Section 65995 in the
33 case of commercial or industrial development.

34 (b) Notwithstanding any other provision of law, as to
35 any development project for the construction of
36 agricultural migrant worker housing financed in whole or
37 part pursuant to Chapter 8.5 (commencing with Section
38 50710) of Part 2 of Division 31 of the Health and Safety
39 Code, no fees, charges, dedications, or other forms of
40 requirements that are levied under Section 53080 shall be



1 applied to new construction, reconstruction, or
2 rehabilitation of this housing. The exemption provided by
3 this subdivision shall be applicable only to that
4 agricultural migrant worker housing which is owned by
5 the state and which is subject to a contract ensuring
6 compliance with the requirements of Chapter 8.5
7 (commencing with Section 50710) of Part 2 of Division 31
8 of the Health and Safety Code.

9 (c) Any development project against which school
10 facilities fees or other requirements have been levied or
11 waived in accordance with the limit or exemption set
12 forth in subdivision (a) or (b) may be converted to any
13 use other than those uses described in the statutes cited
14 in that subdivision only with the approval of the city or
15 county that issued the building permit for the project.
16 That approval shall not be granted absent certification by
17 the appropriate school district that payment has been
18 made on the part of the development project at the rate
19 of the school facilities fee, charge, dedication, or other
20 form of requirement applied by the district under Section
21 53080 to residential development as of the date of
22 conversion, less the amount of any school facilities fees or
23 other requirements paid on the part of the project in
24 accordance with the limits set forth in subdivision (a) or
25 (b).

26 SEC. 13. Section 1775 of the Health and Safety Code
27 is amended to read:

28 1775. (a) To the extent that this chapter conflicts
29 with the statutes, regulations, or interpretations enforced
30 by the Department of Real Estate, this chapter as
31 interpreted by the department shall have precedence.

32 (b) Notwithstanding any law or regulation to the
33 contrary, in any continuing care retirement community
34 the provider may restrict or abridge the right of any
35 resident, whether or not he *or she* owns an equity interest,
36 to sell, lease, encumber, or otherwise convey any interest
37 in the resident's unit, and may require that the resident
38 only sell, lease, or otherwise convey the interest to
39 persons approved by the provider. Provider approval
40 may be based on factors which include, but are not



1 limited to, age, health status, insurance risk, financial
2 status, or burden on the provider's personnel, resources,
3 or physical facility. Any restrictions on a real property
4 interest shall be recorded by the provider.

5 (c) To the extent that this chapter conflicts with
6 Section 51.2 of the Civil Code, this chapter shall have
7 precedence. A continuing care provider, at its discretion,
8 may limit entrance based on age.

9 (d) This chapter imposes minimum requirements
10 upon any entity undertaking the responsibility for
11 providing one or more elements of care to an elderly
12 person for the duration of his or her life or for a term in
13 excess of one year, in exchange for any prepayment or
14 transfer of property prior to the services actually being
15 rendered, whether or not the prepayment or transfer of
16 property is supplemented with periodic or other
17 payments.

18 (e) This chapter shall be liberally construed for the
19 protection of persons attempting to secure their care for
20 the remainder of their lifetime or for a period in excess
21 of one year.

22 (f) A resident's entry into a continuing care contract
23 described in this chapter shall be presumptive evidence
24 of the resident's intent not to return to his or her prior
25 residence to live for purposes of qualifying for Medi-Cal
26 coverage under Sections 14000 et seq. of the Welfare and
27 Institutions Code and Section 50425 of Title 22 of the
28 California Code of Regulations.

29 SEC. 14. Section 19904 of the Health and Safety Code
30 is amended to read:

31 19904. (a) Notwithstanding any other provision of
32 law, or any rule, regulation, condition, covenant, or
33 restriction to the contrary, if a public agency owns and
34 operates, or owns and causes to be operated, or provides
35 assistance to, a housing development, and if a private
36 owner or operator of a housing development receives
37 assistance from a public agency, an elderly or
38 handicapped household may qualify and live together in
39 an efficiency, studio, or one bedroom unit of that housing
40 development.



1 (b) The public agency, or private owner or operator of
2 a housing development receiving assistance from a public
3 agency, may prohibit residency as provided in
4 subdivision (a) on any of the following grounds:

5 (1) If compliance with subdivision (a) would violate or
6 be inconsistent with a federal or state law or regulation or
7 local ordinance or regulation relating to health and safety.

8 (2) If the combined income of all persons in the elderly
9 or handicapped household, considering all permitted
10 deductions and adjustments, is not in the income
11 category of a family of the same size that would be eligible
12 for assisted rental housing, if and to the extent that
13 income limitations or requirements exist.

14 (3) If the density of use of the dwelling unit would
15 violate the requirements for efficiency, studio, or one
16 bedroom units as prescribed by the Uniform Housing
17 Code, or regulations promulgated by the Department of
18 Housing and Community Development pursuant to
19 Section 50152.7.

20 (4) Those persons otherwise violate the requirements
21 imposed pursuant to state or federal law for the particular
22 rental housing program for which they seek to qualify.

23 (c) *Subdivision (b) does not apply to any residency,*
24 *occupancy, or use of dwelling units of a project qualifying*
25 *as housing for older persons, as defined in Section 3607 of*
26 *Title 42 of the United States Code.*

