

AMENDED IN ASSEMBLY APRIL 28, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1001

**Introduced by Assembly Members Villaraigosa, Kuehl,
Keeley, Migden, and Shelley**

(Principal coauthor: Senator Vasconcellos)

**(Coauthors: Assembly Members Aroner, ~~Mazzoni, Steinberg,~~
~~and Strom-Martin~~) Corbett, Firebaugh, Honda, Jackson,
Knox, Mazzoni, Romero, Steinberg, Strom-Martin, and
Thomson)**

(Coauthors: Senators Hayden, Solis, and Speier)

February 25, 1999

An act to amend Sections 12920, 12921, 12926, 12930, 12931, 12935, 12940, 12944, 12955, 12955.8, and 12993 of the Government Code, and to repeal Section 1102.1 of the Labor Code, relating to fair employment and housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1001, as amended, Villaraigosa. Fair employment and housing.

(1) Under the California Fair Employment and Housing Act, it is unlawful to engage in specified discriminatory employment practices, including hiring, promotion, and termination on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age. The act also makes it unlawful to engage in specified discriminatory practices in housing accommodations on the basis of race, color, religion,

sex, marital status, national origin, ancestry, familial status, or disability.

This bill would amend the act to include sexual orientation, as defined, within the unlawful bases for discrimination in employment and housing accommodations.

(2) Under existing law codified in the Labor Code, discrimination or different treatment in any aspect of employment or opportunity for employment, as specified, and with certain exceptions, based on actual or perceived sexual orientation, is prohibited.

This bill would repeal the provision of the Labor Code that expresses that prohibition.

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. *It is the intent of the Legislature that the*
2 *purpose of this act is to incorporate in the California Fair*
3 *Employment and Housing Act (Part 2.8 (commencing*
4 *with Section 12900) of Division 3 of Title 2 of the*
5 *Government Code) the prohibition against*
6 *discrimination or different treatment in any aspect of*
7 *employment or opportunity for employment based on*
8 *sexual orientation, contained in Section 1102.1 of the*
9 *Labor Code, as that section read on December 31, 1999.*
10 *As was the intent of Section 1102.1 of the Labor Code, as*
11 *that section read on December 31, 1999, this act is*
12 *intended to codify the court decisions in Gay Law*
13 *Students v. Pacific Telephone and Telegraph (1979) 24*
14 *Cal.3d 458 and Soroka v. Dayton Hudson Corp. (1991) 235*
15 *Cal.App.3d 654, prohibiting discrimination based on*
16 *sexual orientation. Any conduct that would have been a*
17 *violation of Section 1102.1 of the Labor Code, as it read on*
18 *December 1, 1999, shall be deemed a violation of this act.*

19 SEC. 1.5. Section 12920 of the Government Code is
20 amended to read:

21 12920. It is hereby declared as the public policy of this
22 state that it is necessary to protect and safeguard the right
23 and opportunity of all persons to seek, obtain, and hold

1 employment without discrimination or abridgment on
2 account of race, religious creed, color, national origin,
3 ancestry, physical disability, mental disability, medical
4 condition, marital status, sex, age, or sexual orientation.

5 It is recognized that the practice of denying
6 employment opportunity and discriminating in the terms
7 of employment for these reasons foment domestic strife
8 and unrest, deprives the state of the fullest utilization of
9 its capacities for development and advance, and
10 substantially and adversely affects the interest of
11 employees, employers, and the public in general.

12 Further, the practice of discrimination because of race,
13 color, religion, sex, marital status, national origin,
14 ancestry, familial status, disability, or sexual orientation in
15 housing accommodations is declared to be against public
16 policy.

17 It is the purpose of this part to provide effective
18 remedies that will eliminate these discriminatory
19 practices.

20 This part shall be deemed an exercise of the police
21 power of the state for the protection of the welfare,
22 health, and peace of the people of this state.

23 SEC. 2. Section 12921 of the Government Code is
24 amended to read:

25 12921. The opportunity to seek, obtain and hold
26 employment without discrimination because of race,
27 religious creed, color, national origin, ancestry, physical
28 disability, mental disability, medical condition, marital
29 status, sex, age, or sexual orientation is hereby recognized
30 as and declared to be a civil right.

31 SEC. 3. Section 12926 of the Government Code is
32 amended to read:

33 12926. As used in this part in connection with
34 unlawful practices, unless a different meaning clearly
35 appears from the context:

36 (a) "Affirmative relief" or "prospective relief"
37 includes the authority to order reinstatement of an
38 employee, awards of backpay, reimbursement of
39 out-of-pocket expenses, hiring, transfers, reassignments,
40 grants of tenure, promotions, cease and desist orders,

1 posting of notices, training of personnel, testing,
2 expunging of records, reporting of records, and any other
3 similar relief that is intended to correct unlawful
4 practices under this part.

5 (b) “Age” refers to the chronological age of any
6 individual who has reached his or her 40th birthday.

7 (c) “Employee” does not include any individual
8 employed by his or her parents, spouse, or child, or any
9 individual employed under a special license in a nonprofit
10 sheltered workshop or rehabilitation facility.

11 (d) “Employer” includes any person regularly
12 employing five or more persons, or any person acting as
13 an agent of an employer, directly or indirectly, the state
14 or any political or civil subdivision of the state, and cities,
15 except as follows:

16 (1) “Employer” does not include a religious
17 association or corporation not organized for private
18 profit.

19 (2) “Employer,” for purposes of provisions defining
20 unlawful employment practices related to mental
21 disability, means any person regularly employing 15 or
22 more persons, or any person directly or indirectly acting
23 as an agent of such an employer, and also includes the
24 state and municipalities and political subdivisions of the
25 state.

26 (e) “Employment agency” includes any person
27 undertaking for compensation to procure employees or
28 opportunities to work.

29 (f) “Essential functions” means the fundamental job
30 duties of the employment position the individual with a
31 disability holds or desires. “Essential functions” does not
32 include the marginal functions of the position.

33 (1) A job function may be considered essential for any
34 of several reasons, including, but not limited to, any one
35 or more of the following:

36 (A) The function may be essential because the reason
37 the position exists is to perform that function.

38 (B) The function may be essential because of the
39 limited number of employees available among whom the
40 performance of that job function can be distributed.

1 (C) The function may be highly specialized, so that the
2 incumbent in the position is hired for his or her expertise
3 or ability to perform the particular function.

4 (2) Evidence of whether a particular function is
5 essential includes, but is not limited to, the following:

6 (A) The employer's judgment as to which functions
7 are essential.

8 (B) Written job descriptions prepared before
9 advertising or interviewing applicants for the job.

10 (C) The amount of time spent on the job performing
11 the function.

12 (D) The consequences of not requiring the incumbent
13 to perform the function.

14 (E) The terms of a collective bargaining agreement.

15 (F) The work experiences of past incumbents in the
16 job.

17 (G) The current work experience of incumbents in
18 similar jobs.

19 (g) "Labor organization" includes any organization
20 that exists and is constituted for the purpose, in whole or
21 in part, of collective bargaining or of dealing with
22 employers concerning grievances, terms or conditions of
23 employment, or of other mutual aid or protection.

24 (h) "Medical condition" includes (1) genetic
25 characteristics, or (2) any health impairment related to
26 or associated with a diagnosis of cancer, for which a
27 person has been rehabilitated or cured, based on
28 competent medical evidence. For purposes of this
29 section, "genetic characteristics" means any scientifically
30 or medically identifiable gene or chromosome, or
31 combination or alteration thereof, that is known to be a
32 cause of a disease or disorder in a person or his or her
33 offspring, or is determined to be associated with a
34 statistically increased risk of development of a disease or
35 disorder, or inherited characteristics that may derive
36 from the individual or family member, that is presently
37 not associated with any symptoms of any disease or
38 disorder.

39 (i) "Mental disability" includes any mental or
40 psychological disorder, such as mental retardation,

1 organic brain syndrome, emotional or mental illness, and
2 specific learning disabilities. However, “mental
3 disability” does not include conditions excluded from the
4 federal definition of “disability” pursuant to Section 511
5 of the Americans with Disabilities Act of 1990 (42 U.S.C.,
6 Sec. 12211). Additionally, for purposes of this part, the
7 unlawful use of controlled substances or other drugs shall
8 not be deemed, in and of itself, to constitute a mental
9 disability.

10 (j) “On the bases enumerated in this part” means or
11 refers to discrimination on the basis of one or more of the
12 following: race, religious creed, color, national origin,
13 ancestry, physical disability, mental disability, medical
14 condition, marital status, sex, age, or sexual orientation.

15 (k) “Physical disability” includes, but is not limited to,
16 all of the following:

17 (1) Having any physiological disease, disorder,
18 condition, cosmetic disfigurement, or anatomical loss that
19 does both of the following:

20 (A) Affects one or more of the following body systems:
21 neurological, immunological, musculoskeletal, special
22 sense organs, respiratory, including speech organs,
23 cardiovascular, reproductive, digestive, genitourinary,
24 hemic and lymphatic, skin, and endocrine.

25 (B) Limits an individual’s ability to participate in
26 major life activities.

27 (2) Any other health impairment not described in
28 paragraph (1) that requires special education or related
29 services.

30 (3) Being regarded as having or having had a disease,
31 disorder, condition, cosmetic disfigurement, anatomical
32 loss, or health impairment described in paragraph (1) or
33 (2).

34 (4) Being regarded as having, or having had, a disease,
35 disorder, condition, cosmetic disfigurement, anatomical
36 loss, or health impairment that has no present disabling
37 effect but may become a physical disability as described
38 in paragraph (1) or (2).

39 It is the intent of the Legislature that the definition of
40 “physical disability” in this subdivision shall have the

1 same meaning as the term “physical handicap” formerly
2 defined by this subdivision and construed in American
3 National Ins. Co. v. Fair Employment & Housing Com.,
4 32 Cal. 3d 603. However, “physical disability” does not
5 include conditions excluded from the federal definition of
6 “disability” pursuant to Section 511 of the Americans with
7 Disabilities Act of 1990 (42 U.S.C. Sec. 12211).
8 Additionally, for purposes of this part, the unlawful use of
9 controlled substances or other drugs shall not be deemed,
10 in and of itself, to constitute a physical disability.

11 (l) Notwithstanding subdivisions (i) and (k), if the
12 definition of “disability” used in the Americans with
13 Disabilities Act of 1990 (Public Law 101-336) would result
14 in broader protection of the civil rights of individuals with
15 a mental disability or physical disability, as defined in
16 subdivision (i) or (k), or would include any medical
17 condition not included within those definitions, then that
18 broader protection or coverage shall be deemed
19 incorporated by reference into, and shall prevail over
20 conflicting provisions of, the definitions in subdivisions
21 (i) and (k).

22 (m) “Reasonable accommodation” may include either
23 of the following:

24 (1) Making existing facilities used by employees
25 readily accessible to, and usable by, individuals with
26 disabilities.

27 (2) Job restructuring, part-time or modified work
28 schedules, reassignment to a vacant position, acquisition
29 or modification of equipment or devices, adjustment or
30 modifications of examinations, training materials or
31 policies, the provision of qualified readers or interpreters,
32 and other similar accommodations for individuals with
33 disabilities.

34 (n) “Religious creed,” “religion,” “religious
35 observance,” “religious belief,” and “creed” include all
36 aspects of religious belief, observance, and practice.

37 (o) “Sex” includes, but is not limited to, pregnancy,
38 childbirth, or medical conditions related to pregnancy or
39 childbirth.

1 (p) “Sexual orientation” means heterosexuality,
2 homosexuality, and bisexuality.

3 (q) “Undue hardship” means an action requiring
4 significant difficulty or expense, when considered in light
5 of the following factors: (1) the nature and cost of the
6 accommodation needed, (2) the overall financial
7 resources of the facilities involved in the provision of the
8 reasonable accommodations, the number of persons
9 employed at the facility, and the effect on expenses and
10 resources or the impact otherwise of these
11 accommodations upon the operation of the facility, (3)
12 the overall financial resources of the covered entity, the
13 overall size of the business of a covered entity with
14 respect to the number of employees, and the number,
15 type, and location of its facilities, (4) the type of
16 operations, including the composition, structure, and
17 functions of the work force of the entity, and (5) the
18 geographic separateness, administrative, or fiscal
19 relationship of the facility or facilities.

20 SEC. 4. Section 12930 of the Government Code is
21 amended to read:

22 12930. The department shall have the following
23 functions, powers, and duties:

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

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

28 (c) To appoint attorneys, investigators, conciliators,
29 and other employees as it may deem necessary, fix their
30 compensation within the limitations provided by law, and
31 prescribe their duties.

32 (d) To obtain upon request and utilize the services of
33 all governmental departments and agencies and, in
34 addition, with respect to housing discrimination, of
35 conciliation councils.

36 (e) To adopt, promulgate, amend, and rescind suitable
37 rules and regulations to carry out the functions and duties
38 of the department pursuant to this part.

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

(2) To receive, investigate, and conciliate complaints alleging a violation of Section 51 or 51.7 of the Civil Code. The remedies and procedures of this part shall be independent of any other remedy or procedure that might apply.

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

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

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

(3) To issue written interrogatories.

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

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

(h) To issue accusations pursuant to Section 12965 or 12981 and to prosecute those accusations before the commission.

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

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

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

1 SEC. 5. Section 12931 of the Government Code is
2 amended to read:

3 12931. The department may also provide assistance to
4 communities and persons therein in resolving disputes,
5 disagreements, or difficulties relating to discriminatory
6 practices based on race, religious creed, color, national
7 origin, ancestry, physical disability, mental disability,
8 medical condition, marital status, sex, familial status, age,
9 or sexual orientation that impair the rights of persons in
10 ~~such~~ *those* communities under the Constitution or laws of
11 the United States or of this state. The services of the
12 department may be made available in cases of these
13 disputes, disagreements, or difficulties only when, in its
14 judgment, peaceful relations among the citizens of the
15 community involved are threatened thereby. The
16 department's services are to be made available only upon
17 the request of an appropriate state or local public body,
18 or upon the request of any person directly affected by any
19 such dispute, disagreement, or difficulty.

20 The assistance of the department pursuant to this
21 section shall be limited to endeavors at investigation,
22 conference, conciliation, and persuasion.

23 SEC. 6. Section 12935 of the Government Code is
24 amended to read:

25 12935. The commission shall have the following
26 functions, powers, and duties:

27 (a) To adopt, promulgate, amend, and rescind suitable
28 rules, regulations, and standards (1) to interpret,
29 implement, and apply all provisions of this part, (2) to
30 regulate the conduct of hearings held pursuant to
31 Sections 12967 and 12980, and (3) to carry out all other
32 functions and duties of the commission pursuant to this
33 part.

34 (b) To conduct hearings pursuant to Sections 12967
35 and 12981.

36 (c) To establish and maintain a principal office within
37 the state.

38 (d) To meet and function at any place within the state.

39 (e) To appoint an executive secretary, and any
40 attorneys and other employees as it may deem necessary,

1 fix their compensation within the limitations provided by
2 law, and prescribe their duties.

3 (f) To hold hearings, subpoena witnesses, compel their
4 attendance, administer oaths, examine any person under
5 oath and, in connection therewith, to require the
6 production of any books or papers relating to any matter
7 under investigation or in question before the commission.

8 (g) To create or provide financial or technical
9 assistance to any advisory agencies and conciliation
10 councils, local or otherwise, as in its judgment will aid in
11 effectuating the purposes of this part, and to empower
12 them to study the problems of discrimination in all or
13 specific fields of human relationships or in particular
14 instances of employment discrimination on the bases
15 enumerated in this part or in specific instances of housing
16 discrimination because of race, religious creed, color,
17 national origin, ancestry, familial status, disability, marital
18 status, sex, or sexual orientation and to foster, through
19 community effort or otherwise, good will, cooperation,
20 and conciliation among the groups and elements of the
21 population of the state and to make recommendations to
22 the commission for the development of policies and
23 procedures in general. These advisory agencies and
24 conciliation councils shall be composed of representative
25 citizens, serving without pay.

26 (h) With respect to findings and orders made pursuant
27 to this part, to establish a system of published opinions
28 that shall serve as precedent in interpreting and applying
29 the provisions of this part. Commission findings, orders,
30 and opinions in an adjudicative proceeding are subject to
31 Section 11425.60.

32 (i) To issue publications and results of inquiries and
33 research that in its judgment will tend to promote good
34 will and minimize or eliminate unlawful discrimination.
35 These publications shall include an annual report to the
36 Governor and the Legislature of its activities and
37 recommendations.

38 (j) Notwithstanding Sections 11370.3 and 11502, to
39 appoint hearing officers, as it may deem necessary, to
40 conduct hearings. Each hearing officer shall possess the

1 qualifications established by the State Personnel Board
2 for the particular class of position involved.

3 SEC. 7. Section 12940 of the Government Code is
4 amended to read:

5 12940. It shall be an unlawful employment practice,
6 unless based upon a bona fide occupational qualification,
7 or, except where based upon applicable security
8 regulations established by the United States or the State
9 of California:

10 (a) For an employer, because of the race, religious
11 creed, color, national origin, ancestry, physical disability,
12 mental disability, medical condition, marital status, sex, or
13 sexual orientation of any person, to refuse to hire or
14 employ the person or to refuse to select the person for a
15 training program leading to employment, or to bar or to
16 discharge the person from employment or from a training
17 program leading to employment, or to discriminate
18 against the person in compensation or in terms,
19 conditions, or privileges of employment.

20 (1) Nothing in this part shall prohibit an employer
21 from refusing to hire or discharging an employee with a
22 physical or mental disability, or subject an employer to
23 any legal liability resulting from the refusal to employ or
24 the discharge of an employee with a physical or mental
25 disability, where the employee, because of his or her
26 physical or mental disability, is unable to perform his or
27 her essential duties even with reasonable
28 accommodations, or cannot perform those duties in a
29 manner that would not endanger his or her health or
30 safety or the health and safety of others even with
31 reasonable accommodations.

32 (2) Nothing in this part shall prohibit an employer
33 from refusing to hire or discharging an employee who,
34 because of the employee's medical condition, is unable to
35 perform his or her essential duties even with reasonable
36 accommodations, or cannot perform those duties in a
37 manner that would not endanger the employee's health
38 or safety or the health or safety of others even with
39 reasonable accommodations. Nothing in this part shall
40 subject an employer to any legal liability resulting from

1 the refusal to employ or the discharge of an employee
2 who, because of the employee's medical condition, is
3 unable to perform his or her essential duties, or cannot
4 perform those duties in a manner that would not
5 endanger the employee's health or safety or the health or
6 safety of others even with reasonable accommodations.

7 (3) Nothing in this part relating to discrimination on
8 account of marital status shall do either of the following:

9 (A) Affect the right of an employer to reasonably
10 regulate, for reasons of supervision, safety, security, or
11 morale, the working of spouses in the same department,
12 division, or facility, consistent with the rules and
13 regulations adopted by the commission.

14 (B) Prohibit bona fide health plans from providing
15 additional or greater benefits to employees with
16 dependents than to those employees without or with
17 fewer dependents.

18 (4) Nothing in this part relating to discrimination on
19 account of sex shall affect the right of an employer to use
20 veteran status as a factor in employee selection or to give
21 special consideration to Vietnam era veterans.

22 (b) For a labor organization, because of the race,
23 religious creed, color, national origin, ancestry, physical
24 disability, mental disability, medical condition, marital
25 status, sex, or sexual orientation of any person, to exclude,
26 expel or restrict from its membership the person, or to
27 provide only second-class or segregated membership or
28 to discriminate against any person because of the race,
29 religious creed, color, national origin, ancestry, physical
30 disability, mental disability, medical condition, marital
31 status, sex, or sexual orientation of the person in the
32 election of officers of the labor organization or in the
33 selection of the labor organization's staff or to
34 discriminate in any way against any of its members or
35 against any employer or against any person employed by
36 an employer.

37 (c) For any person to discriminate against any person
38 in the selection or training of that person in any
39 apprenticeship training program or any other training
40 program leading to employment because of the race,

1 religious creed, color, national origin, ancestry, physical
2 disability, mental disability, medical condition, marital
3 status, sex, or sexual orientation of the person
4 discriminated against.

5 (d) For any employer or employment agency, unless
6 specifically acting in accordance with federal equal
7 employment opportunity guidelines and regulations
8 approved by the commission, to print or circulate or
9 cause to be printed or circulated any publication, or to
10 make any non-job-related inquiry, either verbal or
11 through use of an application form, that expresses,
12 directly or indirectly, any limitation, specification, or
13 discrimination as to race, religious creed, color, national
14 origin, ancestry, physical disability, mental disability,
15 medical condition, marital status, sex, or sexual
16 orientation, or any intent to make any such limitation,
17 specification, or discrimination. Except as provided in the
18 Americans with Disabilities Act of 1990 (Public Law
19 101-336) and the regulations adopted pursuant thereto,
20 nothing in this subdivision shall prohibit any employer
21 from making, in connection with prospective
22 employment, an inquiry as to, or a request for information
23 regarding, the physical fitness, medical condition,
24 physical condition, or medical history of applicants if that
25 inquiry or request for information is directly related and
26 pertinent to the position the applicant is applying for or
27 directly related to a determination of whether the
28 applicant would endanger his or her health or safety or
29 the health or safety of others.

30 (e) For any employer, labor organization, or
31 employment agency to harass, discharge, expel, or
32 otherwise discriminate against any person because the
33 person has made a report pursuant to Section 11161.8 of
34 the Penal Code that prohibits retaliation against hospital
35 employees who report suspected patient abuse by health
36 facilities or community care facilities.

37 (f) For any employer, labor organization,
38 employment agency, or person to discharge, expel, or
39 otherwise discriminate against any person because the
40 person has opposed any practices forbidden under this

1 part or because the person has filed a complaint, testified,
2 or assisted in any proceeding under this part.

3 (g) For any person to aid, abet, incite, compel, or
4 coerce the doing of any of the acts forbidden under this
5 part, or to attempt to do so.

6 (h) (1) For an employer, labor organization,
7 employment agency, apprenticeship training program or
8 any training program leading to employment, or any
9 other person, because of race, religious creed, color,
10 national origin, ancestry, physical disability, mental
11 disability, medical condition, marital status, sex, age, or
12 sexual orientation, to harass an employee or applicant.
13 Harassment of an employee or applicant by an employee
14 other than an agent or supervisor shall be unlawful if the
15 entity, or its agents or supervisors, knows or should have
16 known of this conduct and fails to take immediate and
17 appropriate corrective action. An entity shall take all
18 reasonable steps to prevent harassment from occurring.
19 Loss of tangible job benefits shall not be necessary in
20 order to establish harassment.

21 (2) The provisions of this subdivision is declaratory of
22 existing law, except for the new duties imposed on
23 employers with regard to harassment.

24 (3) (A) For purposes of this subdivision only,
25 “employer” means any person regularly employing one
26 or more persons, or any person acting as an agent of an
27 employer, directly or indirectly, the state, or any political
28 or civil subdivision of the state, and cities.

29 (B) Notwithstanding subparagraph (A), for purposes
30 of this subdivision, “employer” does not include a
31 religious association or corporation not organized for
32 private profit.

33 (C) For purposes of this subdivision, “harassment”
34 because of sex includes sexual harassment, gender
35 harassment, and harassment based on pregnancy,
36 childbirth, or related medical conditions.

37 (4) For other types of discrimination as enumerated in
38 subdivision (a), an employer remains as defined in
39 subdivision (d) of Section 12926.

1 (5) Nothing contained in this subdivision shall be
2 construed to apply the definition of employer found in
3 this subdivision to subdivision (a).

4 (i) For an employer, labor organization, employment
5 agency, apprenticeship training program, or any training
6 program leading to employment, to fail to take all
7 reasonable steps necessary to prevent discrimination and
8 harassment from occurring.

9 (j) For an employer or other entity covered by this
10 part to refuse to hire or employ a person or to refuse to
11 select a person for a training program leading to
12 employment or to bar or to discharge a person from
13 employment or from a training program leading to
14 employment, or to discriminate against a person in
15 compensation or in terms, conditions, or privileges of
16 employment because of a conflict between the person's
17 religious belief or observance and any employment
18 requirement, unless the employer or other entity
19 covered by this part demonstrates that it has explored any
20 available reasonable alternative means of
21 accommodating the religious belief or observance,
22 including the possibilities of excusing the person from
23 those duties that conflict with his or her religious belief or
24 observance or permitting those duties to be performed at
25 another time or by another person, but is unable to
26 reasonably accommodate the religious belief or
27 observance without undue hardship on the conduct of the
28 business of the employer or other entity covered by this
29 part. Religious belief or observance, as used in this
30 section, includes, but is not limited to, observance of a
31 Sabbath or other religious holy day or days, and
32 reasonable time necessary for travel prior and subsequent
33 to a religious observance.

34 (k) For an employer or other entity covered by this
35 part to fail to make reasonable accommodation for the
36 known physical or mental disability of an applicant or
37 employee. Nothing in this subdivision or in paragraph (1)
38 or (2) of subdivision (a) shall be construed to require an
39 accommodation that is demonstrated by the employer or



1 other covered entity to produce undue hardship to its
2 operation.

3 (l) Initial application of this section to discrimination
4 by employers on the basis of mental disability shall be in
5 accordance with the following schedule:

6 (1) Commencing January 1, 1993, for employers with
7 25 or more employees, the state, and its municipalities
8 and political subdivisions.

9 (2) Commencing July 26, 1994, for all other employers
10 specified in paragraph (2) of the subdivision of Section
11 12926 that defines “employer.”

12 SEC. 8. Section 12944 of the Government Code is
13 amended to read:

14 12944. (a) It shall be unlawful for a licensing board to
15 require any examination or establish any other
16 qualification for licensing that has an adverse impact on
17 any class by virtue of its race, creed, color, national origin
18 or ancestry, sex, age, medical condition, physical
19 disability, mental disability, or sexual orientation, unless
20 the practice can be demonstrated to be job related.

21 Where the commission, after hearing, determines that
22 an examination is unlawful under this subdivision, the
23 licensing board may continue to use and rely on the
24 examination until such time as judicial review by the
25 superior court of the determination is exhausted.

26 If an examination or other qualification for licensing is
27 determined to be unlawful under this section, that
28 determination shall not void, limit, repeal, or otherwise
29 affect any right, privilege, status, or responsibility
30 previously conferred upon any person by the
31 examination or by a license issued in reliance on the
32 examination or qualification.

33 (b) It shall be unlawful for a licensing board to fail or
34 refuse to make reasonable accommodation to an
35 individual’s mental or physical disability or medical
36 condition.

37 (c) It shall be unlawful for any licensing board, unless
38 specifically acting in accordance with federal equal
39 employment opportunity guidelines or regulations
40 approved by the commission, to print or circulate or

1 cause to be printed or circulated any publication, or to
2 make any non-job-related inquiry, either verbal or
3 through use of an application form, which expresses,
4 directly or indirectly, any limitation, specification, or
5 discrimination as to race, religious creed, color, national
6 origin, ancestry, physical disability, mental disability,
7 medical condition, sex, age, or sexual orientation or any
8 intent to make any such limitation, specification, or
9 discrimination. Nothing in this subdivision shall prohibit
10 any licensing board from making, in connection with
11 prospective licensure or certification, an inquiry as to, or
12 a request for information regarding, the physical fitness
13 of applicants if that inquiry or request for information is
14 directly related and pertinent to the license or the
15 licensed position the applicant is applying for. Nothing in
16 this subdivision shall prohibit any licensing board, in
17 connection with prospective examinations, licensure, or
18 certification, from inviting individuals with physical or
19 mental disabilities to request reasonable
20 accommodations or from making inquiries related to
21 reasonable accommodations.

22 (d) It is unlawful for a licensing board to discriminate
23 against any person because the person has filed a
24 complaint, testified, or assisted in any proceeding under
25 this part.

26 (e) It is unlawful for any licensing board to fail to keep
27 records of applications for licensing or certification for a
28 period of two years following the date of receipt of the
29 applications.

30 (f) As used in this section, “licensing board” means any
31 state board, agency, or authority in the State and
32 Consumer Services Agency that has the authority to grant
33 licenses or certificates which are prerequisites to
34 employment eligibility or professional status.

35 SEC. 9. Section 12955 of the Government Code is
36 amended to read:

37 12955. It shall be unlawful:

38 (a) For the owner of any housing accommodation to
39 discriminate against any person because of the race,
40 color, religion, sex, sexual orientation, marital status,

1 national origin, ancestry, familial status, or disability of
2 that person.

3 (b) For the owner of any housing accommodation to
4 make or to cause to be made any written or oral inquiry
5 concerning the race, color, religion, sex, sexual
6 orientation, marital status, national origin, ancestry,
7 familial status, or disability of any person seeking to
8 purchase, rent or lease any housing accommodation.

9 (c) For any person to make, print, or publish, or cause
10 to be made, printed, or published any notice, statement,
11 or advertisement, with respect to the sale or rental of a
12 housing accommodation that indicates any preference,
13 limitation, or discrimination based on race, color, religion,
14 sex, sexual orientation, marital status, national origin,
15 ancestry, familial status, or disability or an intention to
16 make any such preference, limitation, or discrimination.

17 (d) For any person subject to the provisions of Section
18 51 of the Civil Code, as that section applies to housing
19 accommodations, to discriminate against any person on
20 the basis of sex, sexual orientation, color, race, religion,
21 ancestry, national origin, familial status, marital status,
22 disability, or on any other basis prohibited by that section.

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

32 (f) For any owner of housing accommodations to
33 harass, evict, or otherwise discriminate against any
34 person in the sale or rental of housing accommodations
35 when the owner's dominant purpose is retaliation against
36 a person who has opposed practices unlawful under this
37 section, informed law enforcement agencies of practices
38 believed unlawful under this section, has testified or
39 assisted in any proceeding under this part, or has aided or
40 encouraged a person to exercise or enjoy the rights

1 secured by this part. Nothing herein is intended to cause
2 or permit the delay of an unlawful detainer action.

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

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

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

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

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

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

37 SEC. 10. Section 12955.8 of the Government Code is
38 amended to read:

39 12955.8. For purposes of this article, in connection
40 with unlawful practices:

1 (a) Proof of an intentional violation of this article
2 includes, but is not limited to, an act or failure to act that
3 is otherwise covered by this part, that demonstrates an
4 intent to discriminate in any manner in violation of this
5 part. A person intends to discriminate if race, color,
6 religion, sex, sexual orientation, familial status, marital
7 status, disability, national origin, or ancestry is a
8 motivating factor in committing a discriminatory housing
9 practice even though other factors may have also
10 motivated the practice. An intent to discriminate may be
11 established by direct or circumstantial evidence.

12 (b) Proof of a violation causing a discriminatory effect
13 is shown if an act or failure to act that is otherwise covered
14 by this part, and that has the effect, regardless of intent,
15 of unlawfully discriminating on the basis of race, color,
16 religion, sex, sexual orientation, familial status, marital
17 status, disability, national origin, or ancestry. A business
18 establishment whose action or inaction has an
19 unintended discriminatory effect shall not be considered
20 to have committed an unlawful housing practice in
21 violation of this part if the business establishment can
22 establish that the action or inaction is necessary to the
23 operation of the business and effectively carries out the
24 significant business need it is alleged to serve. In cases
25 that do not involve a business establishment, the person
26 whose action or inaction has an unintended
27 discriminatory effect shall not be considered to have
28 committed an unlawful housing practice in violation of
29 this part if the person can establish that the action or
30 inaction is necessary to achieve an important purpose
31 sufficiently compelling to override the discriminatory
32 effect and effectively carries out the purpose it is alleged
33 to serve.

34 (1) Any determination of a violation pursuant to this
35 subdivision shall consider whether or not there are
36 feasible alternatives that would equally well or better
37 accomplish the purpose advanced with a less
38 discriminatory effect.

1 (2) For purposes of this subdivision, the term “business
2 establishment” shall have the same meaning as in Section
3 51 of the Civil Code.

4 SEC. 11. Section 12993 of the Government Code is
5 amended to read:

6 12993. (a) The provisions of this part shall be
7 construed liberally for the accomplishment of the
8 purposes of this part. Nothing contained in this part shall
9 be deemed to repeal any of the provisions of the Civil
10 Rights Law or of any other law of this state relating to
11 discrimination because of race, religious creed, color,
12 national origin, ancestry, physical disability, mental
13 disability, medical condition, marital status, sex, age, or
14 sexual orientation, unless those provisions provide less
15 protection to the enumerated classes of persons covered
16 under this part.

17 (b) Nothing contained in this part relating to
18 discrimination in employment on account of sex or
19 medical condition shall be deemed to affect the operation
20 of the terms or conditions of any bona fide retirement,
21 pension, employee benefit, or insurance plan, provided
22 the terms or conditions are in accordance with customary
23 and reasonable or actuarially sound underwriting
24 practices.

25 (c) While it is the intention of the Legislature to
26 occupy the field of regulation of discrimination in
27 employment and housing encompassed by the provisions
28 of this part, exclusive of all other laws banning
29 discrimination in employment and housing by any city,
30 city and county, county, or other political subdivision of
31 the state, nothing contained in this part shall be
32 construed, in any manner or way, to limit or restrict the
33 application of Section 51 of the Civil Code.

34 SEC. 12. Section 1102.1 of the Labor Code is repealed.

