An act to amend Section 51 of the Civil Code, to amend Sections 200, 210.2, 210.7, 220, 32228, 47605.6, 51007, 66260.6, 66260.7, and 66270 of the Education Code, to amend Sections 12920, 12921, 12926, 12930, 12931, 12935, 12940, 12944, 12949, 12955, 12955.8, 12956.1, and 12956.2 of the Government Code, to amend Sections 676.10, 10140, 10140.2, and 12693.28 of the Insurance Code, to amend Section 3600 of the Labor Code, and to amend Sections 186.21, 422.56, 422.85, 3053.4, and 11410 of the Penal Code, relating to gender.

LEGISLATIVE COUNSEL’S DIGEST

AB 887, as amended, Atkins. Gender.

(1) Existing law contains various provisions that define sex as including gender and define gender as including a person’s gender identity and gender related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

This bill would make technical changes to those provisions by refining the definition of gender to also mean a person’s gender identity and gender expression and would define gender expression as meaning a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth. The
bill would also replace cross-references to definitions of gender with the referenced definitions refined in the same manner as specified above.

(2) Existing law contains various provisions that require equal rights and opportunities in various aspects, including education, housing, and employment, regardless of gender and prohibits discrimination based on specified characteristics, including sex and gender. Existing law also includes various statements of legislative intent and the policies of the state regarding the equal treatment and equal rights of people regardless of certain enumerated characteristics, including sex and gender. Existing law authorizes the Fair Employment and Housing Commission and the Department of Fair Employment and Housing to perform certain functions to eliminate discrimination in employment and housing on the basis of sex. Existing law requires the county counsel to determine whether certain documents contain an unlawful restrictive covenant based on sex and other characteristics. In these provisions, sex and gender are defined in the same manner described above.

This bill would make technical changes to those provisions by including gender, gender identity, and gender expression among the enumerated characteristics. The bill would make related conforming changes.

(3) Existing law declares the intent of the Legislature that prohibits public schools from discriminating on the basis of, specified characteristics, including gender, and specifies various statements of legislative intent and the policies of the state in that regard. Existing law also prohibits discrimination based on specified characteristics by any postsecondary educational institution that receives, or benefits from, state financial assistance.

This bill would additionally include gender identity and gender expression among those characteristics.

(4) Existing law requires an employer to allow an employee to appear or dress consistently with the employee’s gender identity.

This bill would additionally require an employer to allow an employee to appear or dress consistently with the employee’s gender expression.

(5) Existing law requires a county recorder who provides a copy of a declaration, governing document, or deed to any person to place a cover page or stamp on the first page of the previously recorded document stating that if the document contains any restriction based on certain characteristics, including sex, that the restriction violates state and federal fair housing laws and is void, and may be removed.
This bill would require the specified language in the cover page or stamp to include the characteristics of gender, gender identity, and gender expression. By requiring the county recorder to change the cover page or stamp, this bill would impose a state-mandated local program.

(6) Existing law prohibits certain property insurance policies from being canceled or refused renewal, and prohibits any premium from being excessive or unfairly discriminatory, solely on the basis that one or more claims has been made against the policy during the preceding 60 months for a loss that is the result of a hate crime committed against the person or property of the insured. That provision defines hate crime as specified acts done to a person because of any enumerated characteristics of that person, including gender.

This bill would additionally include gender expression and gender identity among those characteristics.

(7) Existing law requires the Healthy Families Program to be administered without regard to gender, race, creed, color, sexual orientation, health status, disability, or occupation.

This bill would additionally require that program to be administered without regard to gender, gender identity, or gender expression.

(8) Existing law prohibits a personal relationship or personal connection from being deemed to exist between an employee who is injured or killed by a third party in the course of the employee’s employment and that third party based only on a determination that the third party injured or killed the employee solely because of the third party’s perception of the employee’s race, religious creed, color, national origin, age, gender, disability, sex, or sexual orientation, for purposes of determining whether to grant or deny a workers’ compensation claim.

This bill would include among those characteristics gender, gender identity, and gender expression.

(9) Existing law requires the parole authority upon the release of any person who has been imprisoned for any felony offense committed against someone due to the victim’s actual or perceived gender, among other characteristics, to order the defendant to refrain from further acts of violence, threats, stalking, or harassment of the victim as a condition of parole, as specified. Existing law also requires the court in any case when a person is convicted of an offense against someone due to the victim’s actual or perceived gender, among other characteristics, to make an order protecting the victim, or known immediate family or domestic partner of the victim.
This bill would additionally require the parole authority and the court to make those orders when the offense was due to a victim’s actual or perceived gender identity or gender expression.

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

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.


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

SECTION 1. Section 51 of the Civil Code is amended to read:

51. (a) This section shall be known, and may be cited, as the Unruh Civil Rights Act.

(b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

(c) This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation.

(d) Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

(e) For purposes of this section:
(1) “Disability” means any mental or physical disability as defined in Sections 12926 and 12926.1 of the Government Code.

(2) “Medical condition” has the same meaning as defined in subdivision (h) of Section 12926 of the Government Code.

(3) “Religion” includes all aspects of religious belief, observance, and practice.

(4) “Sex” includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. “Sex” also includes, but is not limited to, a person’s gender. “Gender” means sex, and includes a person’s gender identity and gender expression. “Gender expression” means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

(5) “Sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation” includes a perception that the person has any particular characteristic or characteristics within the listed categories or that the person is associated with a person who has, or is perceived to have, any particular characteristic or characteristics within the listed categories.

(6) “Sexual orientation” has the same meaning as defined in subdivision (q) of Section 12926 of the Government Code.

(f) A violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.

SEC. 2. Section 200 of the Education Code is amended to read:

200. It is the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor.

SEC. 3. Section 210.2 of the Education Code is amended to read:

210.2. “Disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes
set forth in Section 422.55 of the Penal Code” includes a perception
that the person has any of those characteristics or that the person
is associated with a person who has, or is perceived to have, any
of those characteristics.
SEC. 4. Section 210.7 of the Education Code is amended to
read:
210.7. “Gender” means sex, and includes a person’s gender
identity and gender expression. “Gender expression” means a
person’s gender-related appearance and behavior whether or not
stereotypically associated with the person’s assigned sex at birth.
SEC. 5. Section 220 of the Education Code is amended to read:
220. No person shall be subjected to discrimination on the basis
of disability, gender, gender identity, gender expression,
nationality, race or ethnicity, religion, sexual orientation, or any
other characteristic that is contained in the definition of hate crimes
set forth in Section 422.55 of the Penal Code in any program or
activity conducted by an educational institution that receives, or
benefits from, state financial assistance or enrolls pupils who
receive state student financial aid.
SEC. 6. Section 32228 of the Education Code is amended to
read:
32228. (a) It is the intent of the Legislature that public schools
serving pupils in any of grades 8 to 12, inclusive, have access to
supplemental resources to establish programs and strategies that
promote school safety and emphasize violence prevention among
children and youth in the public schools.
(b) It is also the intent of the Legislature that public schools
have access to supplemental resources to combat bias on the basis
of race, color, religion, ancestry, national origin, disability, gender,
gender identity, gender expression, or sexual orientation, as defined
in subdivision (q) of Section 12926 of the Government Code, and
to prevent and respond to acts of hate violence and bias related
incidents. Sexual orientation shall not include pedophilia.
(c) It is further the intent of the Legislature that schoolsites
receiving funds pursuant to this article accomplish all of the
following goals:
(1) Teach pupils techniques for resolving conflicts without
violence.
(2) Train school staff and administrators to support and promote conflict resolution and mediation techniques for resolving conflicts between and among pupils.

(3) Reduce incidents of violence at the schoolsite with an emphasis on prevention and early detection.

(4) Provide age-appropriate instruction in domestic violence prevention, dating violence prevention, and interpersonal violence prevention.

SEC. 7. Section 47605.6 of the Education Code is amended to read:

47605.6. (a) (1) In addition to the authority provided by Section 47605.5, a county board of education may also approve a petition for the operation of a charter school that operates at one or more sites within the geographic boundaries of the county and that provides instructional services that are not generally provided by a county office of education. A county board of education may only approve a countywide charter if it finds, in addition to the other requirements of this section, that the educational services to be provided by the charter school will offer services to a pupil population that will benefit from those services and that cannot be served as well by a charter school that operates in only one school district in the county. A petition for the establishment of a countywide charter school pursuant to this subdivision may be circulated throughout the county by any one or more persons seeking to establish the charter school. The petition may be submitted to the county board of education for review after either of the following conditions are met:

(A) The petition has been signed by a number of parents or guardians of pupils residing within the county that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation and each of the school districts where the charter school petitioner proposes to operate a facility has received at least 30 days notice of the petitioner’s intent to operate a school pursuant to this section.

(B) The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation and each of the school districts where the charter school petitioner proposes to operate a facility has received
at least 30 days notice of the petitioner’s intent to operate a school pursuant to this section.

(2) An existing public school may not be converted to a charter school in accordance with this section.

(3) After receiving approval of its petition, a charter school that proposes to establish operations at additional sites within the geographic boundaries of the county board of education shall notify the school districts where those sites will be located. The charter school shall also request a material revision of its charter by the county board of education that approved its charter and the county board shall consider whether to approve those additional locations at an open, public meeting, held no sooner than 30 days following notification of the school districts where the sites will be located. If approved, the location of the approved sites shall be a material revision of the school’s approved charter.

(4) A petition shall include a prominent statement indicating that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child or ward attend the charter school, or in the case of a teacher’s signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(b) No later than 60 days after receiving a petition, in accordance with subdivision (a), the county board of education shall hold a public hearing on the provisions of the charter, at which time the county board of education shall consider the level of support for the petition by teachers, parents or guardians, and the school districts where the charter school petitioner proposes to place school facilities. Following review of the petition and the public hearing, the county board of education shall either grant or deny the charter within 90 days of receipt of the petition. However, this date may be extended by an additional 30 days if both parties agree to the extension. A county board of education may impose any additional requirements beyond those required by this section that it considers necessary for the sound operation of a countywide charter school. A county board of education may grant a charter for the operation of a school under this part only if the board is satisfied that granting the charter is consistent with sound educational practice and that the charter school has reasonable justification for why it could not be established by petition to a school district pursuant to Section 47605. The county board of
education shall deny a petition for the establishment of a charter
school if the board finds, one or more of the following:
  (1) The charter school presents an unsound educational program
for the pupils to be enrolled in the charter school.
  (2) The petitioners are demonstrably unlikely to successfully
implement the program set forth in the petition.
  (3) The petition does not contain the number of signatures
required by subdivision (a).
  (4) The petition does not contain an affirmation of each of the
conditions described in subdivision (d).
  (5) The petition does not contain reasonably comprehensive
descriptions of all of the following:
    (A) (i) A description of the educational program of the school,
designed, among other things, to identify those pupils whom the
school is attempting to educate, what it means to be an “educated
person” in the 21st century, and how learning best occurs. The
goals identified in that program shall include the objective of
enabling pupils to become self-motivated, competent, and lifelong
learners.
    (ii) If the proposed charter school will enroll high school pupils,
a description of the manner in which the manner in which the
charter school will inform parents regarding the transferability of
courses to other public high schools. Courses offered by the charter
school that are accredited by the Western Association of Schools
and Colleges may be considered to be transferable to other public
high schools.
    (iii) If the proposed charter school will enroll high school pupils,
information as to the manner in which the charter school will
inform parents as to whether each individual course offered by the
charter school meets college entrance requirements. Courses
approved by the University of California or the California State
University as satisfying their prerequisites for admission may be
considered as meeting college entrance requirements for purposes
of this clause.
    (B) The measurable pupil outcomes identified for use by the
charter school. “Pupil outcomes,” for purposes of this part, means
the extent to which all pupils of the school demonstrate that they
have attained the skills, knowledge, and attitudes specified as goals
in the school’s educational program.
(C) The method by which pupil progress in meeting those pupil outcomes is to be measured.
(D) The location of each charter school facility that the petitioner proposes to operate.
(E) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.
(F) The qualifications to be met by individuals to be employed by the school.
(G) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.
(H) The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.
(I) The manner in which annual, independent, financial audits shall be conducted, in accordance with regulations established by the State Board of Education, and the manner in which audit exceptions and deficiencies shall be resolved.
(J) The procedures by which pupils can be suspended or expelled.
(K) The manner by which staff members of the charter schools will be covered by the State Teachers’ Retirement System, the Public Employees’ Retirement System, or federal social security.
(L) The procedures to be followed by the charter school and the county board of education to resolve disputes relating to provisions of the charter.
(M) A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code).
(N) Admission requirements, of the charter school, if applicable.
(O) The public school attendance alternatives for pupils residing within the county who choose not to attend the charter school.
(P) A description of the rights of an employee of the county office of education, upon leaving the employment of the county office of education, to be employed by the charter school, and a
description of any rights of return to the county office of education
that an employee may have upon leaving the employ of the charter
school.
(Q) A description of the procedures to be used if the charter
school closes. The procedures shall ensure a final audit of the
school to determine the disposition of all assets and liabilities of
the charter school, including plans for disposing of any net assets
and for the maintenance and transfer of public records.
(6) Any other basis that the board finds justifies the denial of
the petition.
(c) A county board of education that approves a petition for the
operation of a countywide charter may, as a condition of charter
approval, enter into an agreement with a third party, at the expense
of the charter school, to oversee, monitor, and report to the county
board of education on the operations of the charter school. The
county board of education may prescribe the aspects of the charter
school’s operations to be monitored by the third party and may
prescribe appropriate requirements regarding the reporting of
information concerning the operations of the charter school to the
county board of education.
(d) (1) Charter schools shall meet all statewide standards and
conduct the pupil assessments required pursuant to Section 60605
and any other statewide standards authorized in statute or pupil
assessments applicable to pupils in noncharter public schools.
(2) Charter schools shall on a regular basis consult with their
parents and teachers regarding the school’s educational programs.
(e) (1) In addition to any other requirement imposed under this
part, a charter school shall be nonsectarian in its programs,
admission policies, employment practices, and all other operations,
shall not charge tuition, and shall not discriminate against any
pupil on the basis of ethnicity, national origin, gender, gender
identity, gender expression, or disability. Except as provided in
paragraph (2), admission to a charter school shall not be determined
according to the place of residence of the pupil, or of his or her
parent or guardian, within this state.
(2) (A) A charter school shall admit all pupils who wish to
attend the school.
(B) However, if the number of pupils who wish to attend the
charter school exceeds the school’s capacity, attendance, except
for existing pupils of the charter school, shall be determined by a
public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the county except as provided for in Section 47614.5. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

(C) In the event of a drawing, the county board of education shall make reasonable efforts to accommodate the growth of the charter school and, in no event, shall take any action to impede the charter school from expanding enrollment to meet pupil demand.

(f) No county board of education shall require any employee of the county or a school district to be employed in a charter school.

(g) No county board of education shall require any pupil enrolled in a county program to attend a charter school.

(h) The county board of education shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school, any school district where the charter school may operate and upon the county board of education. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cashflow and financial projections for the first three years of operation.

(i) In reviewing petitions for the establishment of charter schools within the county, the county board of education shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low-achieving pursuant to the standards established by the State Department of Education under Section 54032.

(j) Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the school districts within the county, the Superintendent of Public Instruction and to the State Board of Education.

(k) If a county board of education denies a petition, the petitioner may not elect to submit the petition for the establishment of the charter school to the State Board of Education.
(I) Teachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and shall be subject to periodic inspection by the chartering authority.

(m) A charter school shall transmit a copy of its annual, independent, financial audit report for the preceding fiscal year, as described in subparagraph (I) of paragraph (5) of subdivision (b), to the County Office of Education, State Controller and the State Department of Education by December 15 of each year. This subdivision shall not apply if the audit of the charter school is encompassed in the audit of the chartering entity pursuant to Section 41020.

SEC. 8. Section 51007 of the Education Code is amended to read:

51007. (a) It is the policy of the State of California that all students enrolled in the state’s public elementary and secondary schools, regardless of race, creed, color, national origin, gender, gender identity, gender expression, physical disability, geographic location, or socioeconomic background, shall have equitable access to educational programs designed to strengthen technological skills, including, but not limited to, computer education programs.

(b) It is the intent of the Legislature that state appropriations for educational programs designed to strengthen technological skills, including, but not limited to, computer education programs, shall have the goal of ensuring equitable access to those programs for all students.

(c) It is the intent of the Legislature that this section shall not be construed to preclude funding of programs designed to serve certain categories of students as part of the state’s efforts to target areas of high need.

SEC. 9. Section 66260.6 of the Education Code is amended to read:

66260.6. “Disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code” includes a perception that the person has any of those
characteristics or that the person is associated with a person who
has, or is perceived to have, any of those characteristics.
SEC. 10. Section 66260.7 of the Education Code is amended
to read:
66260.7. “Gender” means sex, and includes a person’s gender
identity and gender expression. “Gender expression” means a
person’s gender-related appearance and behavior whether or not
stereotypically associated with the person’s assigned sex at birth.
SEC. 11. Section 66270 of the Education Code is amended to
read:
66270. No person shall be subjected to discrimination on the
basis of disability, gender, gender identity, gender expression,
nationality, race or ethnicity, religion, sexual orientation, or any
characteristic listed or defined in Section 11135 of the Government
Code or any other characteristic that is contained in the prohibition
of hate crimes set forth in subdivision (a) of Section 422.6 of the
Penal Code in any program or activity conducted by any
postsecondary educational institution that receives, or benefits
from, state financial assistance or enrolls students who receive
state student financial aid.
SEC. 12. Section 12920 of the
Government Code is amended
to read:
12920. It is hereby declared as the public policy of this state
that it is necessary to protect and safeguard the right and
opportunity of all persons to seek, obtain, and hold employment
without discrimination or abridgment on account of race, religious
creed, color, national origin, ancestry, physical disability, mental
disability, medical condition, marital status, sex, gender, gender
identity, gender expression, age, or sexual orientation.
It is recognized that the practice of denying employment
opportunity and discriminating in the terms of employment for
these reasons foments domestic strife and unrest, deprives the state
of the fullest utilization of its capacities for development and
advancement, and substantially and adversely affects the interest
of employees, employers, and the public in general:
Further, the practice of discrimination because of race, color,
religion, sex, gender, gender identity, gender expression, marital
status, national origin, ancestry, familial status, disability, or sexual
orientation in housing accommodations is declared to be against
public policy.
It is the purpose of this part to provide effective remedies that will eliminate these discriminatory practices. This part shall be deemed an exercise of the police power of the state for the protection of the welfare, health, and peace of the people of this state.

SEC. 13. Section 12921 of the Government Code is amended to read:

12921. (a) The opportunity to seek, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation is hereby recognized as and declared to be a civil right.

(b) The opportunity to seek, obtain, and hold housing without discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, disability, or any other basis prohibited by Section 51 of the Civil Code is hereby recognized as and declared to be a civil right.

SEC. 12. Section 12920 of the Government Code is amended to read:

12920. It is hereby declared as the public policy of this state that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation.

It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment for these reasons foments domestic strife and unrest, deprives the state of the fullest utilization of its capacities for development and advancement, and substantially and adversely affects the interest of employees, employers, and the public in general.

Further, the practice of discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability in housing accommodations is declared to be against public policy.
It is the purpose of this part to provide effective remedies that will eliminate these discriminatory practices.

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

SEC. 13. Section 12921 of the Government Code is amended to read:

12921. (a) The opportunity to seek, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, gender identity, gender expression, age, or sexual orientation is hereby recognized as and declared to be a civil right.

(b) The opportunity to seek, obtain, and hold housing without discrimination because of race, color, religion, sex, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or any other basis prohibited by Section 51 of the Civil Code is hereby recognized as and declared to be a civil right.

SEC. 14. Section 12926 of the Government Code is amended to read:

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

(a) “Affirmative relief” or “prospective relief” includes the authority to order reinstatement of an employee, awards of backpay, reimbursement of out-of-pocket expenses, hiring, transfers, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices under this part.

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

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

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

“Employer” does not include a religious association or corporation not organized for private profit.

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

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

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

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

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

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

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

(A) The employer’s judgment as to which functions are essential.

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

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

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

(E) The terms of a collective bargaining agreement.

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

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

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

(h) “Medical condition” means either of the following:

(1) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.
(2) Genetic characteristics. For purposes of this section, “genetic characteristics” means either of the following:

(A) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.

(B) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

(i) “Mental disability” includes, but is not limited to, all of the following:

(1) Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:

(A) “Limits” shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.

(C) “Major life activities” shall be broadly construed and shall include physical, mental, and social activities and working.

(2) Any other mental or psychological disorder or condition not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.
(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).

“Mental disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

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

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

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

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

(B) Limits a major life activity. For purposes of this section:

(i) “Limits” shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) “Major life activities” shall be broadly construed and includes physical, mental, and social activities and working.

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

(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.
(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) “Physical disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

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

(m) “Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation” includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(n) “Reasonable accommodation” may include either of the following:

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

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

(o) “Religious creed,” “religion,” “religious observance,” “religious belief,” and “creed” include all aspects of religious belief, observance, and practice.
(p) “Sex” includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. “Sex” also includes, but is not limited to, a person’s gender. “Gender” means sex, and includes a person’s gender identity and gender expression. “Gender expression” means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

(q) “Sexual orientation” means heterosexuality, homosexuality, and bisexuality.

(r) “Supervisor” means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(s) “Undue hardship” means an action requiring significant difficulty or expense, when considered in light of the following factors:

1. The nature and cost of the accommodation needed.
2. The overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility.
3. The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities.
4. The type of operations, including the composition, structure, and functions of the workforce of the entity.
5. The geographic separateness, administrative, or fiscal relationship of the facility or facilities.

SEC. 15. Section 12930 of the Government Code is amended to read:

12930. The department shall have the following functions, powers, and duties:
(a) To establish and maintain a principal office and any other
offices within the state as are necessary to carry out the purposes
of this part.
(b) To meet and function at any place within the state.
(c) To appoint attorneys, investigators, conciliators, and other
employees as it may deem necessary, fix their compensation within
the limitations provided by law, and prescribe their duties.
(d) To obtain upon request and utilize the services of all
governmental departments and agencies and, in addition, with
respect to housing discrimination, of conciliation councils.
(e) To adopt, promulgate, amend, and rescind suitable rules and
regulations to carry out the functions and duties 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 , 51.5, 51.7, 54, 54.1, or 54.2 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, gender, gender identity, gender expression, 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.

SEC. 16. Section 12931 of the Government Code is amended to read:

12931. The department may also provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, gender, gender identity, gender expression, familial status, age, or sexual orientation that impair the rights of persons in those communities under the Constitution or laws of the United States or of this state. The services of the department may be made available in cases of these disputes, disagreements, or difficulties only when, in its judgment, peaceful relations among the citizens of the community involved are threatened thereby. The department’s services are to be made available only upon the request of an appropriate state or local public body, or upon the request of any person directly affected by any such dispute, disagreement, or difficulty.

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

SEC. 17. Section 12935 of the Government Code is amended to read:

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

(a) To adopt, promulgate, amend, and rescind suitable rules, regulations, and standards (1) to interpret, implement, and apply all provisions of this part, (2) to regulate the conduct of hearings held pursuant to Sections 12967 and 12981, and (3) to carry out all other functions and duties of the commission pursuant to this part.
(b) To conduct hearings pursuant to Sections 12967 and 12981.

(c) To conduct mediations at the request of the department at any time after a complaint is filed pursuant to Section 12960, 12961, or 12980. The department may withdraw a request for mediation at any time to pursue an investigation.

(d) To establish and maintain a principal office within the state and to meet and function at any place within the state.

(e) To appoint an executive secretary, and any attorneys and other employees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

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

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

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

(i) To issue publications and results of inquiries and research that in its judgment will tend to promote good will and minimize or eliminate unlawful discrimination. These publications shall
include an annual report to the Governor and the Legislature of its
activities and recommendations.
(j) Notwithstanding Sections 11370.3 and 11502, to appoint
administrative law judges, as it may deem necessary, to conduct
hearings and mediations. Each administrative law judge shall
possess the qualifications established by the State Personnel Board
for the particular class of position involved. The hearing officers
of the commission shall become administrative law judges on the
effective date of this subdivision.

SEC. 18. Section 12940 of the Government Code is amended
to read:
12940. It shall be an unlawful employment practice, unless
based upon a bona fide occupational qualification, or, except where
based upon applicable security regulations established by the
United States or the State of California:
(a) For an employer, because of the race, religious creed, color,
national origin, ancestry, physical disability, mental disability,
medical condition, marital status, sex, gender, gender identity,
gender expression, age, or sexual orientation of any person, to
refuse to hire or employ the person or to refuse to select the person
for a training program leading to employment, or to bar or to
discharge the person from employment or from a training program
leading to employment, or to discriminate against the person in
compensation or in terms, conditions, or privileges of employment.
(1) This part does not prohibit an employer from refusing to
hire or discharging an employee with a physical or mental
disability, or subject an employer to any legal liability resulting
from the refusal to employ or the discharge of an employee with
a physical or mental disability, where the employee, because of
his or her physical or mental disability, is unable to perform his
or her essential duties even with reasonable accommodations, or
cannot perform those duties in a manner that would not endanger
his or her health or safety or the health or safety of others even
with reasonable accommodations.
(2) This part does not prohibit an employer from refusing to
hire or discharging an employee who, because of the employee’s
medical condition, is unable to perform his or her essential duties
even with reasonable accommodations, or cannot perform those
duties in a manner that would not endanger the employee’s health
or safety or the health or safety of others even with reasonable
accommodations. Nothing in this part shall subject an employer
to any legal liability resulting from the refusal to employ or the
discharge of an employee who, because of the employee’s medical
condition, is unable to perform his or her essential duties, or cannot
perform those duties in a manner that would not endanger the
employee’s health or safety or the health or safety of others even
with reasonable accommodations.

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

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

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

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

(5) Nothing in this part prohibits an employer from refusing to
employ an individual because of his or her age if the law compels
or provides for that refusal. Promotions within the existing staff,
hiring or promotion on the basis of experience and training, rehiring
on the basis of seniority and prior service with the employer, or
hiring under an established recruiting program from high schools,
colleges, universities, or trade schools do not, in and of themselves,
constitute unlawful employment practices.

(b) For a labor organization, because of the race, religious creed,
color, national origin, ancestry, physical disability, mental
disability, medical condition, marital status, sex, gender, gender
definition, gender expression, age, or sexual orientation of any
person, to exclude, expel or restrict from its membership the
person, or to provide only second-class or segregated membership
or to discriminate against any person because of the race, religious
creed, color, national origin, ancestry, physical disability, mental
disability, medical condition, marital status, sex, age, or sexual
orientation of the person in the election of officers of the labor
organization or in the selection of the labor organization’s staff or
to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation, or any intent to make any such limitation, specification or discrimination. Nothing in this part prohibits an employer or employment agency from inquiring into the age of an applicant, or from specifying age limitations, where the law compels or provides for that action.

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job related functions and may respond to an applicant's request for reasonable accommodation.

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job-related and consistent with business
necessity and that all entering employees in the same job
classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer
or employment agency to require any medical or psychological
examination of an employee, to make any medical or psychological
inquiry of an employee, to make any inquiry whether an employee
has a mental disability, physical disability, or medical condition,
or to make any inquiry regarding the nature or severity of a physical
disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment
agency may require any examinations or inquiries that it can show
to be job related and consistent with business necessity. An
employer or employment agency may conduct voluntary medical
examinations, including voluntary medical histories, which are
part of an employee health program available to employees at that
worksite.

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

(h) For any employer, labor organization, employment agency,
or person to discharge, expel, or otherwise discriminate against
any person because the person has opposed any practices forbidden
under this part or because the person has filed a complaint, testified,
or assisted in any proceeding under this part.

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

(j) (1) For an employer, labor organization, employment agency,
apprenticeship training program or any training program leading
to employment, or any other person, because of race, religious
creed, color, national origin, ancestry, physical disability, mental
disability, medical condition, marital status, sex, gender, gender
identity, gender expression, age, or sexual orientation, to harass
an employee, an applicant, or a person providing services pursuant
to a contract. Harassment of an employee, an applicant, or a person
providing services pursuant to a contract by an employee, other
than an agent or supervisor, shall be unlawful if the entity, or its
agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An employer may also be responsible for the acts of nonemployees, with respect to sexual harassment of employees, applicants, or persons providing services pursuant to a contract in the workplace, where the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing cases involving the acts of nonemployees, the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of those nonemployees shall be considered. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

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

(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(4) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of "employer" in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.

(C) For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.

(5) For purposes of this subdivision, "a person providing services pursuant to a contract" means a person who meets all of the following criteria:
(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer’s work.

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

(l) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person’s religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

(m) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship to its operation.
(n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

SEC. 18. Section 12940 of the Government Code is amended to read:

12940. It is unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, where the employee, because of his or her physical or mental disability, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger his or her health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee’s medical condition, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee’s health or safety or the health or safety of others even with reasonable accommodations.
accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee’s medical condition, is unable to perform his or her essential duties, or cannot perform those duties in a manner that would not endanger the employee’s health or safety or the health or safety of others even with reasonable accommodations.

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

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

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

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

(5) (A) This part does not prohibit an employer from refusing to employ an individual because of his or her age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.

(B) The provisions of this part relating to discrimination on the basis of age do not prohibit an employer from providing health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the person becomes eligible for Medicare health benefits. This subparagraph applies to all retiree health benefit plans and contractual provisions or practices concerning retiree health benefits and health care reimbursement plans in effect on or after January 1, 2011.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of any person, to exclude, expel, or restrict from its
membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of the person in the election of officers of the labor organization or in the selection of the labor organization’s staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation, or any intent to make any such limitation, specification, or discrimination. This part does not prohibit an employer or employment agency from inquiring into the age of an applicant, or from specifying age limitations, where the law compels or provides for that action.

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform
job-related functions and may respond to an applicant’s request for reasonable accommodation.

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job-related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job-related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

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

(h) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

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

(j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading
to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation, to harass an employee, an applicant, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An employer may also be responsible for the acts of nonemployees, with respect to sexual harassment of employees, applicants, or persons providing services pursuant to a contract in the workplace, where the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing cases involving the acts of nonemployees, the extent of the employer’s control and any other legal responsibility which the employer may have with respect to the conduct of those nonemployees shall be considered. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

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

(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(4) (A) For purposes of this subdivision only, “employer” means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of “employer” in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, “employer” does not include a religious association
or corporation not organized for private profit, except as provided in Section 12926.2.

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

(5) For purposes of this subdivision, “a person providing services pursuant to a contract” means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer’s work.

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

(l) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person’s religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a
Sabbath or other religious holy day or days, and reasonable time
necessary for travel prior and subsequent to a religious observance.

(m) For an employer or other entity covered by this part to fail
to make reasonable accommodation for the known physical or
mental disability of an applicant or employee. Nothing in this
subdivision or in paragraph (1) or (2) of subdivision (a) shall be
construed to require an accommodation that is demonstrated by
the employer or other covered entity to produce undue hardship
to its operation.

(n) For an employer or other entity covered by this part to fail
to engage in a timely, good faith, interactive process with the
employee or applicant to determine effective reasonable
accommodations, if any, in response to a request for reasonable
accommodation by an employee or applicant with a known physical
or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to
subject, directly or indirectly, any employee, applicant, or other
person to a test for the presence of a genetic characteristic.

SEC. 19. Section 12944 of the Government Code is amended
to read:

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

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

If an examination or other qualification for licensing is
determined to be unlawful under this section, that determination
shall not void, limit, repeal, or otherwise affect any right, privilege,
status, or responsibility previously conferred upon any person by
the examination or by a license issued in reliance on the
examination or qualification.
(b) It shall be unlawful for a licensing board to fail or refuse to
make reasonable accommodation to an individual’s mental or
physical disability or medical condition.
(c) It shall be unlawful for any licensing board, unless
specifically acting in accordance with federal equal employment
opportunity guidelines or regulations approved by the commission,
to print or circulate or cause to be printed or circulated any
publication, or to make any non-job-related inquiry, either verbal
or through use of an application form, which expresses, directly
or indirectly, any limitation, specification, or discrimination as to
race, religious creed, color, national origin, ancestry, physical
disability, mental disability, medical condition, sex, gender, gender
identity, gender expression, age, or sexual orientation or any intent
to make any such limitation, specification, or discrimination.
Nothing in this subdivision shall prohibit any licensing board from
making, in connection with prospective licensure or certification,
an inquiry as to, or a request for information regarding, the physical
fitness of applicants if that inquiry or request for information is
directly related and pertinent to the license or the licensed position
the applicant is applying for. Nothing in this subdivision shall
prohibit any licensing board, in connection with prospective
examinations, licensure, or certification, from inviting individuals
with physical or mental disabilities to request reasonable
accommodations or from making inquiries related to reasonable
accommodations.
(d) It is unlawful for a licensing board to discriminate against
any person because the person has filed a complaint, testified, or
assisted in any proceeding under this part.
(e) It is unlawful for any licensing board to fail to keep records
of applications for licensing or certification for a period of two
years following the date of receipt of the applications.
(f) As used in this section, “licensing board” means any state
board, agency, or authority in the State and Consumer Services
Agency that has the authority to grant licenses or certificates which
are prerequisites to employment eligibility or professional status.
SEC. 20. Section 12949 of the Government Code is amended
to read:
12949. Nothing in this part relating to gender-based
discrimination affects the ability of an employer to require an
employee to adhere to reasonable workplace appearance, grooming,
and dress standards not precluded by other provisions of state or federal law, provided that an employer shall allow an employee to appear or dress consistently with the employee's gender identity or gender expression.

SEC. 21. Section 12955 of the Government Code is amended to read:

12955. It shall be unlawful:

(a) For the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability of that person.

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

(c) For any person to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a housing accommodation that indicates any preference, limitation, or discrimination based on race, color, religion, sex, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability or an intention to make that preference, limitation, or discrimination.

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

(e) For any person, bank, mortgage company or other financial institution that provides financial assistance for the purchase, organization, or construction of any housing accommodation to discriminate against any person or group of persons because of the race, color, religion, sex, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability in the
terms, conditions, or privileges relating to the obtaining or use of
that financial assistance.

(f) For any owner of housing accommodations to harass, evict,
or otherwise discriminate against any person in the sale or rental
of housing accommodations when the owner’s dominant purpose
is retaliation against a person who has opposed practices unlawful
under this section, informed law enforcement agencies of practices
believed unlawful under this section, has testified or assisted in
any proceeding under this part, or has aided or encouraged a person
to exercise or enjoy the rights secured by this part. Nothing herein
is intended to cause or permit the delay of an unlawful detainer
action.

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

(h) For any person, for profit, to induce any person to sell or
rent any dwelling by representations regarding the entry or
prospective entry into the neighborhood of a person or persons of
a particular race, color, religion, sex, gender, gender identity,
gender expression, sexual orientation, marital status, ancestry,
disability, source of income, familial status, or national origin:

(i) For any person or other organization or entity whose business
involves real estate related transactions to discriminate against
any person in making available a transaction, or in the terms and
conditions of a transaction, because of race, color, religion, sex,
gender, gender identity, gender expression, sexual orientation,
marital status, national origin, ancestry, source of income, familial
status, or disability.

(j) To deny a person access to, or membership or participation
in, a multiple listing service, real estate brokerage organization,
or other service because of race, color, religion, sex, gender,
gender identity, gender expression, sexual orientation, marital
status, ancestry, disability, familial status, source of income, or national
origin.

(k) To otherwise make unavailable or deny a dwelling based
on discrimination because of race, color, religion, sex, gender,
gender identity, gender expression, sexual orientation, familial
status, source of income, disability, or national origin.

(l) To discriminate through public or private land use practices,
decisions, and authorizations because of race, color, religion, sex,
gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry. Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denial of use permits, and other actions authorized under the Planning and Zoning Law (Title 7—commencing with Section 65000), that make housing opportunities unavailable.

Discrimination under this subdivision also includes the existence of a restrictive covenant, regardless of whether accompanied by a statement that the restrictive covenant is repealed or void. This paragraph shall become operative on January 1, 2001.

(m) As used in this section, “race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability” includes a perception that the person has any of those characteristics, or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(n) To use a financial or income standard in the rental of housing that fails to account for the aggregate income of persons residing together or proposing to reside together on the same basis as the aggregate income of married persons residing together or proposing to reside together.

(o) In instances where there is a government rent subsidy, to use a financial or income standard in assessing eligibility for the rental of housing that is not based on the portion of the rent to be paid by the tenant.

(p) (1) For the purposes of this section, “source of income” means lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant. For the purposes of this section, a landlord is not considered a representative of a tenant.

(2) For the purposes of this section, it shall not constitute discrimination based on source of income to make a written or oral inquiry concerning the level or source of income.

SEC. 22. Section 12955.8 of the Government Code is amended to read:

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

(a) Proof of an intentional violation of this article includes, but is not limited to, an act or failure to act that is otherwise covered by this part, that demonstrates an intent to discriminate in any
manner in violation of this part. A person intends to discriminate
if race, color, religion, sex, gender, gender identity, gender
expression, sexual orientation, familial status, marital status,
disability, national origin, or ancestry is a motivating factor in
committing a discriminatory housing practice even though other
factors may have also motivated the practice. An intent to
discriminate may be established by direct or circumstantial
evidence.
(b) Proof of a violation causing a discriminatory effect is shown
if an act or failure to act that is otherwise covered by this part, and
that has the effect, regardless of intent, of unlawfully discriminating
on the basis of race, color, religion, sex, gender, gender identity,
gender expression, sexual orientation, familial status, marital status,
disability, national origin, or ancestry. A business establishment
whose action or inaction has an unintended discriminatory effect
shall not be considered to have committed an unlawful housing
practice in violation of this part if the business establishment can
establish that the action or inaction is necessary to the operation
of the business and effectively carries out the significant business
need it is alleged to serve. In cases that do not involve a business
establishment, the person whose action or inaction has an
unintended discriminatory effect shall not be considered to have
committed an unlawful housing practice in violation of this part
if the person can establish that the action or inaction is necessary
to achieve an important purpose sufficiently compelling to override
the discriminatory effect and effectively carries out the purpose it
is alleged to serve.
(1) Any determination of a violation pursuant to this subdivision
shall consider whether or not there are feasible alternatives that
would equally well or better accomplish the purpose advanced
with a less discriminatory effect.
(2) For purposes of this subdivision, the term “business
establishment” shall have the same meaning as in Section 51 of
the Civil Code:
SEC. 21. Section 12955 of the Government Code is amended to read:
12955. It shall be unlawful:
(a) For the owner of any housing accommodation to discriminate
against or harass any person because of the race, color, religion,
sex, gender, gender identity, gender expression, sexual orientation,
marital status, national origin, ancestry, familial status, source of income, or disability of that person.

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

(c) For any person to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a housing accommodation that indicates any preference, limitation, or discrimination based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability or an intention to make that preference, limitation, or discrimination.

(d) For any person subject to the provisions of Section 51 of the Civil Code, as that section applies to housing accommodations, to discriminate against any person on the basis of sex, gender, gender identity, gender expression, sexual orientation, color, race, religion, ancestry, national origin, familial status, marital status, disability, source of income, or on any other basis prohibited by that section. Selection preferences based on age, imposed in connection with a federally approved housing program, do not constitute age discrimination in housing.

(e) For any person, bank, mortgage company or other financial institution that provides financial assistance for the purchase, organization, or construction of any housing accommodation to discriminate against any person or group of persons because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability in the terms, conditions, or privileges relating to the obtaining or use of that financial assistance.

(f) For any owner of housing accommodations to harass, evict, or otherwise discriminate against any person in the sale or rental of housing accommodations when the owner’s dominant purpose is retaliation against a person who has opposed practices unlawful under this section, informed law enforcement agencies of practices believed unlawful under this section, has testified or assisted in
any proceeding under this part, or has aided or encouraged a person
to exercise or enjoy the rights secured by this part. Nothing herein
is intended to cause or permit the delay of an unlawful detainer
action.

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

(h) For any person, for profit, to induce any person to sell or
rent any dwelling by representations regarding the entry or
prospective entry into the neighborhood of a person or persons of
a particular race, color, religion, sex, \textit{gender, gender identity, gender expression, sexual orientation, marital status, ancestry, disability, source of income, familial status, or national origin.}

(i) For any person or other organization or entity whose business
involves real estate-related transactions to discriminate against
any person in making available a transaction, or in the terms and
conditions of a transaction, because of race, color, religion, sex,
\textit{gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, source of income, familial status, or disability.}

(j) To deny a person access to, or membership or participation
in, a multiple listing service, real estate brokerage organization,
or other service because of race, color, religion, sex, \textit{gender, gender identity, gender expression, sexual orientation, marital status, ancestry, disability, familial status, source of income, or national origin.}

(k) To otherwise make unavailable or deny a dwelling based
on discrimination because of race, color, religion, sex, \textit{gender, gender identity, gender expression, sexual orientation, familial status, source of income, disability, or national origin.}

(l) To discriminate through public or private land use practices,
decisions, and authorizations because of race, color, religion, sex,
\textit{gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry.} Discrimination includes, but is not limited
to, restrictive covenants, zoning laws, denials of use permits, and
other actions authorized under the Planning and Zoning Law (Title
7 (commencing with Section 65000)), that make housing
opportunities unavailable.
Discrimination under this subdivision also includes the existence of a restrictive covenant, regardless of whether accompanied by a statement that the restrictive covenant is repealed or void. This paragraph shall become operative on January 1, 2001.

(m) As used in this section, “race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability” includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(n) To use a financial or income standard in the rental of housing that fails to account for the aggregate income of persons residing together or proposing to reside together on the same basis as the aggregate income of married persons residing together or proposing to reside together.

(o) In instances where there is a government rent subsidy, to use a financial or income standard in assessing eligibility for the rental of housing that is not based on the portion of the rent to be paid by the tenant.

(p) (1) For the purposes of this section, “source of income” means lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant. For the purposes of this section, a landlord is not considered a representative of a tenant.

(2) For the purposes of this section, it shall not constitute discrimination based on source of income to make a written or oral inquiry concerning the level or source of income.

SEC. 22. Section 12955.8 of the Government Code is amended to read:

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

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

(b) Proof of a violation causing a discriminatory effect is shown if an act or failure to act that is otherwise covered by this part, and that has the effect, regardless of intent, of unlawfully discriminating on the basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability. A business establishment whose action or inaction has an unintended discriminatory effect shall not be considered to have committed an unlawful housing practice in violation of this part if the business establishment can establish that the action or inaction is necessary to the operation of the business and effectively carries out the significant business need it is alleged to serve. In cases that do not involve a business establishment, the person whose action or inaction has an unintended discriminatory effect shall not be considered to have committed an unlawful housing practice in violation of this part if the person can establish that the action or inaction is necessary to achieve an important purpose sufficiently compelling to override the discriminatory effect and effectively carries out the purpose it is alleged to serve.

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

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

SEC. 23. Section 12956.1 of the Government Code is amended to read:

12956.1. (a) As used in this section, “association,” “governing documents,” and “declaration” have the same meanings as set forth in Section 1351 of the Civil Code.

(b) (1) A county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person shall place a cover page or stamp on the first page of the previously recorded document or documents stating, in at least 14-point boldface type, the following:
“If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.”

(2) The requirements set forth in paragraph (1) shall not apply to documents being submitted for recordation to a county recorder.

(c) Any person who records a document for the express purpose of adding a racially restrictive covenant is guilty of a misdemeanor. The county recorder shall not incur any liability for recording the document. Notwithstanding any other provision of law, a prosecution for a violation of this subdivision shall commence within three years after the discovery of the recording of the document.

SEC. 24. Section 12956.2 of the Government Code is amended to read:

12956.2. (a) A person who holds an ownership interest of record in property that he or she believes is the subject of an unlawfully restrictive covenant in violation of subdivision (l) of Section 12955 may record a document titled Restrictive Covenant Modification. The county recorder may choose to waive the fee prescribed for recording and indexing instruments pursuant to Section 27361 in the case of the modification document provided for in this section. The modification document shall include a complete copy of the original document containing the unlawfully restrictive language with the unlawfully restrictive language stricken.

(b) Before recording the modification document, the county recorder shall submit the modification document and the original document to the county counsel who shall determine whether the original document contains an unlawful restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry. The county counsel shall return the documents
and inform the county recorder of its determination. The county recorder shall refuse to record the modification document if the county counsel finds that the original document does not contain an unlawful restriction as specified in this paragraph.

(c) The modification document shall be indexed in the same manner as the original document being modified. It shall contain a recording reference to the original document in the form of a book and page or instrument number, and date of the recording.

(d) Subject to covenants, conditions, and restrictions that were recorded after the recording of the original document that contains the unlawfully restrictive language and subject to covenants, conditions, and restrictions that will be recorded after the Restrictive Covenant Modification, the restrictions in the Restrictive Covenant Modification, once recorded, are the only restrictions having effect on the property. The effective date of the terms and conditions of the modification document shall be the same as the effective date of the original document.

(e) The county recorder shall make available to the public Restrictive Covenant Modification forms.

(f) If the holder of an ownership interest of record in property causes to be recorded a modified document pursuant to this section that contains modifications not authorized by this section, the county recorder shall not incur liability for recording the document. The liability that may result from the unauthorized recordation is the sole responsibility of the holder of the ownership interest of record who caused the modified recordation.

(g) This section does not apply to persons holding an ownership interest in property that is part of a common interest development as defined in subdivision (c) of Section 1351 of the Civil Code if the board of directors of that common interest development is subject to the requirements of subdivision (b) of Section 1352.5 of the Civil Code.

SEC. 25. Section 676.10 of the Insurance Code is amended to read:

676.10. (a) This section applies to policies covered by Section 675, 675.5, or 676.5 if the insured is a religious organization described in clause (i) of subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of Title 26 of the United States Code, an educational organization described in clause (ii) of subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of Title 26 of the United States Code,
of the United States Code, or other nonprofit organization described
in clause (vi) of subparagraph (A) of paragraph (1) of subsection
(b) of Section 170 of Title 26 of the United States Code that is
organized and operated for religious, charitable, or educational
purposes, or a reproductive health services facility, as defined in
subdivision (h) of Section 423.1 of the Penal Code, or its
administrative offices.

(b) No insurer issuing policies subject to this section shall cancel
or refuse to renew the policy, nor shall any premium be excessive
or unfairly discriminatory solely on the basis that one or more
claims has been made against the policy during the preceding 60
months for a loss that is the result of a hate crime committed
against the person or property of the insured, or an
anti-reproductive-rights crime.

(c) As it relates to this section, if determined by a law
enforcement agency, a “hate crime” may include any of the
following:

(1) By force or threat of force, willfully injure, intimidate,
interfere with, oppress, or threaten any other person in the free
exercise or enjoyment of any right or privilege secured to him or
her by the Constitution or laws of this state or by the Constitution
or laws of the United States because of the other person’s race,
color, religion, ancestry, national origin, disability, gender, gender
identity, gender expression, or sexual orientation, or because he
or she perceives that the other person has one or more of those
characteristics. However, the foregoing offense does not include
speech alone, except upon a showing that the speech itself
threatened violence against a specific person or group of persons
and that the defendant had the apparent ability to carry out the
threat.

(2) Knowingly deface, damage, or destroy the real or personal
property of any other person for the purpose of intimidating or
interfering with the free exercise or enjoyment of any right or
privilege secured to the other person by the Constitution or laws
of this state or by the Constitution or laws of the United States,
because of the other person’s race, color, religion, ancestry, national
origin, disability, gender, gender identity, gender expression, or
sexual orientation, or because he or she perceives that the other
person has one or more of those characteristics.
(d) As it relates to this section, if determined by a law enforcement agency, “anti-reproductive-rights crime” shall have the meaning set forth in subdivision (a) of Section 13776 of the Penal Code, and shall also include a violation of subdivision (e) of Section 423.2 of the Penal Code, if the crime results in a covered loss under a policy subject to this section.

(e) Upon cancellation of or refusal to renew a policy subject to this section after an insured has submitted a claim to the insurer that is the result of a hate crime committed against the person or property of the insured, or an anti-reproductive-rights crime, the insurer shall report the cancellation or nonrenewal to the commissioner.

(f) A violation of this section shall be an unfair practice subject to Article 6.5 (commencing with Section 790) of Chapter 1 of Division 2.

SEC. 26. Section 10140 of the Insurance Code is amended to read:

10140. (a) No admitted insurer, licensed to issue life or disability insurance, shall fail or refuse to accept an application for that insurance, to issue that insurance to an applicant therefor, or issue or cancel that insurance, under conditions less favorable to the insured than in other comparable cases, except for reasons applicable alike to persons of every race, color, religion, sex, gender, gender identity, gender expression, national origin, ancestry, or sexual orientation. Race, color, religion, national origin, ancestry, or sexual orientation shall not, of itself, constitute a condition or risk for which a higher rate, premium, or charge may be required of the insured for that insurance. Unless otherwise prohibited by law, premium, price, or charge differentials because of the sex of any individual when based on objective, valid, and up-to-date statistical and actuarial data or sound underwriting practices are not prohibited.

(b) Except as otherwise permitted by law, no admitted insurer, licensed to issue disability insurance policies for hospital, medical, and surgical expenses, shall fail or refuse to accept an application for that insurance, fail or refuse to issue that insurance to an
applicant therefor, cancel that insurance, refuse to renew that
insurance, charge a higher rate or premium for that insurance, or
offer or provide different terms, conditions, or benefits, or place
a limitation on coverage under that insurance, on the basis of a
person’s genetic characteristics that may, under some
circumstances, be associated with disability in that person or that
person’s offspring.

(c) No admitted insurer, licensed to issue disability insurance
for hospital, medical, and surgical expenses, shall seek information
about a person’s genetic characteristics for any nontherapeutic
purpose.

(d) No discrimination shall be made in the fees or commissions
of agents or brokers for writing or renewing a policy of disability
insurance, other than disability income, on the basis of a person’s
genetic characteristics that may, under some circumstances, be
associated with disability in that person or that person’s offspring.

(e) It shall be deemed a violation of subdivision (a) for any
insurer to consider sexual orientation in its underwriting criteria
or to utilize marital status, living arrangements, occupation, sex,
beneficiary designation, ZIP Codes or other territorial classification
within this state, or any combination thereof for the purpose of
establishing sexual orientation or determining whether to require
a test for the presence of the human immunodeficiency virus or
antibodies to that virus, where that testing is otherwise permitted
by law. Nothing in this section shall be construed to alter, expand,
or limit in any manner the existing law respecting the authority of
insurers to conduct tests for the presence of human
immunodeficiency virus or evidence thereof.

(f) This section shall not be construed to limit the authority of
the commissioner to adopt regulations prohibiting discrimination
because of sex, marital status, or sexual orientation or to enforce
these regulations, whether adopted before or on or after January
1, 1991.

(g) “Genetic characteristics” as used in this section shall have
the same meaning as defined in Section 10123.3.

(h) “Sex” as used in this section shall have the same meaning
as “gender.” “Gender” means sex, and includes a person’s gender
identity and gender expression. “Gender expression” means a
person’s gender-related appearance and behavior whether or not
stereotypically associated with the person’s assigned sex at birth.
SEC. 27. Section 10140.2 of the Insurance Code is amended to read:
10140.2. (a) Notwithstanding Section 10140, a health insurance policy issued, amended, or renewed on or after January 1, 2011, shall not be subject to premium, price, or charge differentials because of the sex of any contracting party, potential contracting party, or person reasonably expected to benefit from the policy as a policyholder, insured, or otherwise.
(b) For purposes of this section, “sex” shall have the same meaning as “gender.” “Gender” means sex, and includes a person’s gender identity and gender expression. “Gender expression” means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

SEC. 28. Section 12693.28 of the Insurance Code is amended to read:
12693.28. The program shall be administered without regard to gender, gender identity, gender expression, race, creed, color, sexual orientation, health status, disability, or occupation.

SEC. 29. Section 3600 of the Labor Code is amended to read:
3600. (a) Liability for the compensation provided by this division, in lieu of any other liability whatsoever to any person except as otherwise specifically provided in Sections 3602, 3706, and 4558, shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death, in those cases where the following conditions of compensation concur:
(1) Where, at the time of the injury, both the employer and the employee are subject to the compensation provisions of this division.
(2) Where, at the time of the injury, the employee is performing service growing out of and incidental to his or her employment and is acting within the course of his or her employment.
(3) Where the injury is proximately caused by the employment, either with or without negligence.
(4) Where the injury is not caused by the intoxication, by alcohol or the unlawful use of a controlled substance, of the injured employee. As used in this paragraph, “controlled substance” shall have the same meaning as prescribed in Section 11007 of the Health and Safety Code.
(5) Where the injury is not intentionally self-inflicted.

(6) Where the employee has not willfully and deliberately caused his or her own death.

(7) Where the injury does not arise out of an altercation in which the injured employee is the initial physical aggressor.

(8) Where the injury is not caused by the commission of a felony, or a crime which is punishable as specified in subdivision (b) of Section 17 of the Penal Code, by the injured employee, for which he or she has been convicted.

(9) Where the injury does not arise out of voluntary participation in any off-duty recreational, social, or athletic activity not constituting part of the employee’s work-related duties, except where these activities are a reasonable expectancy of, or are expressly or impliedly required by, the employment. The administrative director shall promulgate reasonable rules and regulations requiring employers to post and keep posted in a conspicuous place or places a notice advising employees of the provisions of this subdivision. Failure of the employer to post the notice shall not constitute an expression of intent to waive the provisions of this subdivision.

(10) Except for psychiatric injuries governed by subdivision (e) of Section 3208.3, where the claim for compensation is filed after notice of termination or layoff, including voluntary layoff, and the claim is for an injury occurring prior to the time of notice of termination or layoff, no compensation shall be paid unless the employee demonstrates by a preponderance of the evidence that one or more of the following conditions apply:

(A) The employer has notice of the injury, as provided under Chapter 2 (commencing with Section 5400), prior to the notice of termination or layoff.

(B) The employee’s medical records, existing prior to the notice of termination or layoff, contain evidence of the injury.

(C) The date of injury, as specified in Section 5411, is subsequent to the date of the notice of termination or layoff, but prior to the effective date of the termination or layoff.

(D) The date of injury, as specified in Section 5412, is subsequent to the date of the notice of termination or layoff.

For purposes of this paragraph, an employee provided notice pursuant to Sections 44948.5, 44949, 44951, 44955, 72411, 87740, and 87743 of the Education Code shall be considered to have been
provided a notice of termination or layoff only upon a district’s
decision not to reemploy that person.

A notice of termination or layoff that is not followed within 60
days by that termination or layoff shall not be subject to the
provisions of this paragraph, and this paragraph shall not apply
until receipt of a later notice of termination or layoff. The issuance
of frequent notices of termination or layoff to an employee shall
be considered a bad faith personnel action and shall make this
paragraph inapplicable to the employee.

(b) Where an employee, or his or her dependents, receives the
compensation provided by this division and secures a judgment
for, or settlement of, civil damages pursuant to those specific
exemptions to the employee’s exclusive remedy set forth in
subdivision (b) of Section 3602 and Section 4558, the
compensation paid under this division shall be credited against the
judgment or settlement, and the employer shall be relieved from
the obligation to pay further compensation to, or on behalf of, the
employee or his or her dependents up to the net amount of the
judgment or settlement received by the employee or his or her
heirs, or that portion of the judgment as has been satisfied.

(c) For purposes of determining whether to grant or deny a
workers’ compensation claim, if an employee is injured or killed
by a third party in the course of the employee’s employment, no
personal relationship or personal connection shall be deemed to
exist between the employee and the third party based only on a
determination that the third party injured or killed the employee
solely because of the third party’s personal beliefs relating to his
or her perception of the employee’s race, religious creed, color,
national origin, age, gender, disability, sex, gender, gender identity,
gender expression, or sexual orientation.

SEC. 30. Section 186.21 of the Penal Code is amended to read:

186.21. The Legislature hereby finds and declares that it is the
right of every person, regardless of race, color, creed, religion,
national origin, gender, gender identity, gender expression, age,
sexual orientation, or handicap, to be secure and protected from
fear, intimidation, and physical harm caused by the activities of
violent groups and individuals. It is not the intent of this chapter
to interfere with the exercise of the constitutionally protected rights
of freedom of expression and association. The Legislature hereby
recognizes the constitutional right of every citizen to harbor and
express beliefs on any lawful subject whatsoever, to lawfully associate with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

The Legislature, however, further finds that the State of California is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected. The Legislature finds that there are nearly 600 criminal street gangs operating in California, and that the number of gang-related murders is increasing. The Legislature also finds that in Los Angeles County alone there were 328 gang-related murders in 1986, and that gang homicides in 1987 have increased 80 percent over 1986. It is the intent of the Legislature in enacting this chapter to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs, which together, are the chief source of terror created by street gangs. The Legislature further finds that an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by street gangs.

SEC. 31. Section 422.56 of the Penal Code is amended to read:

422.56. For purposes of this title, the following definitions shall apply:

(a) “Association with a person or group with these actual or perceived characteristics” includes advocacy for, identification with, or being on the ground owned or rented by, or adjacent to, any of the following: a community center, educational facility, family, individual, office, meeting hall, place of worship, private institution, public agency, library, or other entity, group, or person that has, or is identified with people who have, one or more of those characteristics listed in the definition of “hate crime” under paragraphs 1 to 6, inclusive, of subdivision (a) of Section 422.55.

(b) “Disability” includes mental disability and physical disability as defined in Section 12926 of the Government Code.

(c) “Gender” means sex, and includes a person’s gender identity and gender expression. “Gender expression” means a person’s
gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

(d) “In whole or in part because of” means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result. There is no requirement that the bias be a main factor, or that the crime would not have been committed but for the actual or perceived characteristic. This subdivision does not constitute a change in, but is declaratory of, existing law under In re M.S. (1995) 10 Cal. 4th 698 and People v. Superior Court (Aishman) (1995) 10 Cal. 4th 735.

(e) “Nationality” includes citizenship, country of origin, and national origin.

(f) “Race or ethnicity” includes ancestry, color, and ethnic background.

(g) “Religion” includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism.

(h) “Sexual orientation” means heterosexuality, homosexuality, or bisexuality.

(i) “Victim” includes, but is not limited to, a community center, educational facility, entity, family, group, individual, office, meeting hall, person, place of worship, private institution, public agency, library, or other victim or intended victim of the offense.

SEC. 32. Section 422.85 of the Penal Code is amended to read:

422.85. (a) In the case of any person who is convicted of any offense against the person or property of another individual, private institution, or public agency, committed because of the victim’s actual or perceived race, color, ethnicity, religion, nationality, country of origin, ancestry, disability, gender, gender identity, gender expression, or sexual orientation, including, but not limited to offenses defined in Section 302, 423.2, 594.3, 11411, 11412, or 11413, or for any hate crime, the court, absent compelling circumstances stated on the record, shall make an order protecting the victim, or known immediate family or domestic partner of the victim, from further acts of violence, threats, stalking, or harassment by the defendant, including any stay-away conditions the court deems appropriate, and shall make obedience of that order a condition of the defendant’s probation. In these cases the
court may also order that the defendant be required to do one or more of the following as a condition of probation:

1. Complete a class or program on racial or ethnic sensitivity, or other similar training in the area of civil rights, or a one-year counseling program intended to reduce the tendency toward violent and antisocial behavior if that class, program, or training is available and was developed or authorized by the court or local agencies in cooperation with organizations serving the affected community.

2. Make payments or other compensation to a community-based program or local agency that provides services to victims of hate violence.

3. Reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant’s acts.

(b) Any payments or other compensation ordered under this section shall be in addition to restitution payments required under Section 1203.04, and shall be made only after that restitution is paid in full.

SEC. 33. Section 3053.4 of the Penal Code is amended to read:

3053.4. In the case of any person who is released from prison on parole or after serving a term of imprisonment for any felony offense committed against the person or property of another individual, private institution, or public agency because of the victim’s actual or perceived race, color, ethnicity, religion, nationality, country of origin, ancestry, disability, gender, gender identity, gender expression, or sexual orientation, including, but not limited to, offenses defined in Section 422.6, 422.7, 422.75, 594.3, or 11411, the parole authority, absent compelling circumstances, shall order the defendant as a condition of parole to refrain from further acts of violence, threats, stalking, or harassment of the victim, or known immediate family or domestic partner of the victim, including stay-away conditions when appropriate. In these cases, the parole authority may also order that the defendant be required as a condition of parole to complete a class or program on racial or ethnic sensitivity, or other similar training in the area of civil rights, or a one-year counseling program intended to reduce the tendency toward violent and antisocial behavior if that class, program, or training is available and was
developed or authorized by the court or local agencies in cooperation with organizations serving the affected community.

SEC. 34. Section 11410 of the Penal Code is amended to read:

11410. (a) The Legislature finds and declares that it is the right of every person regardless of actual or perceived disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group of these actual or perceived characteristics, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this chapter to interfere with the exercise of rights protected by the Constitution of the United States. The Legislature recognizes the constitutional right of every citizen to harbor and express beliefs on any subject whatsoever and to associate with others who share similar beliefs. The Legislature further finds however, that the advocacy of unlawful violent acts by groups against other persons or groups under circumstances where death or great bodily injury is likely to result is not constitutionally protected, poses a threat to public order and safety and should be subject to criminal and civil sanctions.

(b) For purposes of this section, the following definitions shall apply:

(1) “Association with a person or group with these actual or perceived characteristics” includes advocacy for, identification with, or being on the ground owned or rented by, or adjacent to, any of the following: a community center, educational facility, family, individual, office, meeting hall, place of worship, private institution, public agency, library, or other entity, group, or person that has, or is identified with people who have, one or more of those characteristics listed in the definition of “hate crime” under paragraphs (1) to (6), inclusive, of subdivision (a) of Section 422.55.

(2) “Disability” includes mental disability and physical disability as defined in Section 12926 of the Government Code.

(3) “Gender” means sex, and includes a person’s gender identity and gender expression. “Gender expression” means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

(4) “Nationality” includes citizenship, country of origin, and national origin.
(5) “Race or ethnicity” includes ancestry, color, and ethnic background.

(6) “Religion” includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism.

(7) “Sexual orientation” means heterosexuality, homosexuality, or bisexuality.

SEC. 35. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.