

Case No. S266254**SUPREME COURT OF THE STATE OF CALIFORNIA**

BRENNON B.,

*Plaintiff, Appellant,
and Petitioner,*

vs.

SUPERIOR COURT, CONTRA
COSTA*Defendant and
Respondent,*WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT, et al.*Real Parties in Interest.*First Appellate District,
Division One
No. A157026Contra Costa Superior Court
No. MSC16-01005

**REQUEST FOR JUDICIAL NOTICE AIDS LEGAL REFERRAL
PANEL, ARC OF CALIFORNIA, ASSOCIATION OF HIGHER
EDUCATION AND DISABILITY, CALIFORNIA ASSOCIATION
OF PARENT-CHILD ADVOCACY, CIVIL RIGHTS EDUCATION
AND ENFORCEMENT CENTER, COMMUNICATION FIRST,
DISABILITY RIGHTS ADVOCATES, DISABILITY RIGHTS
CALIFORNIA, DISABILITY RIGHTS LEGAL CENTER, IMPACT
FUND, LEGAL AID AT WORK, MENTAL HEALTH ADVOCACY
SERVICES AND PUBLIC LAW CENTER AS PROPOSED *AMICI
CURIAE* IN SUPPORT OF PLAINTIFF AND APPELLANT
BRENNON B.; DECLARATION OF ALEXIS ALVAREZ;
PROPOSED ORDER**

First Appellate District, Division One No. A157026
On Review of an Order Sustaining a Demurrer
Contra Costa Superior Court, No. MSC16-01005
The Honorable Charles Treat, Judge

Jinny Kim, State Bar No. 208953
Alexis Alvarez, State Bar No. 281377
LEGAL AID AT WORK
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Attorneys for *Amici Curiae*

**TO THE HONORABLE CHIEF JUSTICE TANI CANTIL-
SAKAUYE, AND TO THE HONORABLE ASSOCIATE JUSTICES
OF THE SUPREME COURT OF CALIFORNIA:**

Pursuant to California Rules of Court, Rules 8.252(a) and 8.520(g), and Evidence Code sections 452 and 459, proposed *amici curiae* AIDS Legal Referral Panel, Arc of California, Association for Higher Education and Disability, California Association for Parent-Child Advocacy, Civil Rights Education and Enforcement Center, Communication First, Disability Rights Advocates, Disability Rights California, Disability Rights Legal Center, Impact Fund, Legal Aid at Work, Mental Health Advocacy Services and Public Law Center, respectfully move and request that the Court take judicial notice of the following exhibits in support of their proposed *amicus curiae* brief:

Exhibit 1: A true and correct copy of the chaptered version of AB 1309 (1977), Stats. 1977, ch. 1196, approved by the Governor on September 30, 1977. The attached chaptered bill was obtained from the official website of the California State Assembly's Office of the Chief Clerk at <https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1977/77Vol2.PDF#page=3>

Exhibit 2: A true and correct copy of the chaptered version of AB 1077 (1992), Stats. 1992 ch. 913, approved by the Governor on September 24, 1992. The attached chaptered bill was obtained from the official website for California legislative materials maintained by the Legislative Counsel at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=199119920AB1077.

Exhibit 3: A true and correct copy of the chaptered version of AB 2222 (2000), Stats. 2000, ch. 1049, approved by the Governor on September 30, 2000. The attached chaptered bill was obtained from the official website for California legislative materials maintained by the Legislative Counsel at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=19992000AB2222.

ARGUMENT

A reviewing court may take optional judicial notice according to the specifications of Evidence Code sections 452 and 459, subdivision (a). (*Messenger Courier Assn. of Americas v. California Unemployment Ins. Appeals Bd.* (2009) 175 Cal.App.4th 1074, 1088.) ““To the extent a statutory text is susceptible of more than one reasonable interpretation, [the court] will consider ‘a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the

statutory scheme of which the statute is a part.” (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 929 [quoting *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977].) “A wide variety of factors may illuminate legislative design, such as context, the object in view, the evils to be remedied, the history of the times . . .” (*People v. White* (1978) 77 Cal.App.3d Supp. 17, 21; see also *Cossack v. City of Los Angeles* (1974) 11 Cal.3d 726, 733.)

The documents described in this motion all relate to events that predate the Superior Court’s order sustaining the demurrer to Appellant’s Unruh Act claim without leave to amend on March 4, 2019 and the Court of Appeal’s denial of Appellant’s petition for writ of mandate on November 13, 2020. Upon information and belief, these documents were not presented to either the Superior Court or the Court of Appeal for judicial notice. As described below, however, they are nonetheless subject to judicial notice under Evidence Code 452 and this Court’s precedent.

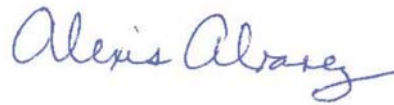
Exhibit 1 is a copy of the chaptered version of AB 1309 (1977), Stats. 1977, ch. 1196, approved by the Governor on September 30, 1977. Exhibit 2 is a copy of the chaptered version of AB 1077 (1992); Stats. 1992 ch. 913, approved by the Governor on September 25, 1992, and Exhibit 3 is a copy of the chaptered version of AB 2222 (2000), Stats. 2000, ch. 1049, approved by the Governor on September 30, 2000. These bills provide relevant historical context for the disability rights protections provided by the Unruh Civil Rights Act and supports the argument that the law was

intended to provide expansive protections that broaden enforcement of the civil rights of *all* students with disabilities. They are relevant to the issues pending before this Court because they demonstrate California's commitment to full and equal access for people with disabilities in every aspect of community life, including public education. As this Court has repeatedly held, legislative history is appropriate for judicial notice. (See, e.g., *County of Los Angeles v. Los Angeles County Employee Relations Comm.* (2013) 56 Cal.4th 905, 923, fn. 16; *In re J. W.* (2002) 29 Cal.4th 200, 211.)

While *amici* believe that the plain language of the Unruh Civil Rights Act leads to the conclusion that it applies to public schools, to the extent that the Court finds any ambiguity, *amici* respectfully request that the Court take notice of these materials to aid its interpretation.

Dated: September 15, 2021

Respectfully submitted,



By: _____

ALEXIS ALVAREZ
Legal Aid at Work

**DECLARATION OF ALEXIS ALVAREZ IN SUPPORT OF
PROPOSED AMICI CURIAE’S REQUEST FOR JUDICIAL
NOTICE**

I, Alexis Alvarez, declare:

1. I am a member of the State Bar of California, and I am an attorney with proposed amicus curiae Legal Aid at Work.
2. I have personal knowledge of the matters set forth in this declaration, and if called upon to testify to those matters, I could and would so testify.
3. Attached hereto as Exhibit 1 is a true and correct copy of the chaptered version of Assembly Bill 1309, enacted and signed into law by Statutes 1977, Chapter 1196. The attached chaptered bill was obtained from the official website of the California State Assembly’s Office of the Chief Clerk at <https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1977/77Vol2.PDF#page=3>
4. Attached hereto as Exhibit 2 is a true and correct copy of the chaptered version of Assembly Bill 1077, enacted and signed into law by Statutes 1992, Chapter 913. The attached chaptered bill was obtained from the official website for California legislative materials maintained by the Legislative Counsel at

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=199119920AB1077.

5. Attached hereto as Exhibit 3 is a true and correct copy of the chaptered version of Assembly Bill 2222, enacted and signed into law by Statutes 2000, Chapter 1049. The attached chaptered bill was obtained from the official website for California legislative materials maintained by the Legislative Counsel at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=199920000AB2222.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed in San Francisco, California on September 15, 2021.



Alexis Alvarez

[PROPOSED] ORDER

The Court grants the request for judicial notice by Proposed Amici Curie Legal Aid at Work, et al., and takes judicial notice of the following documents:

Exhibit 1 _____

Exhibit 2 _____

Exhibit 3 _____

IT IS SO ORDERED.

Dated: _____,

Justice of the Supreme Court

**STATEMENT OF COMPLIANCE WITH CAL. RULES OF COURT
RULE 8.204(c)(1)**

The text in this judicial notice by proposed *Amicus Curiae* Legal Aid at Work, et al., consists of 747 words as counted by the word processing program used to generate this document.

Executed on September 15, 2021, in San Francisco, California.



Alexis Alvarez
Legal Aid at Work

Attorneys for *Amicus Curiae*

PROOF OF SERVICE

I am employed in the County of San Francisco. I am over the age of eighteen years and not a party to the within entitled action. My business address is 180 Montgomery Street, Suite 600, San Francisco, CA 94104.

On 9/15/2021, I served the following document described as:

- **REQUEST FOR JUDICIAL NOTICE OF AIDS LEGAL REFERRAL PANL, DISABILITY RIGHTS LEGAL CENTER, LEGAL AID AT WORK, MENTAL HEALTH ADVOCACY SERVICES AND PUBLIC LAW CENTER AS PROPOSED *AMICI CURIAE* BRIEF IN SUPPORT OF PLAINTIFF AND APPELLANT BRENNON B.; DECLARATION OF ALEXIS ALVAREZ; PROPOSED ORDER**

on the interested parties in this action as follows:

- BY Electronic Transmission (TrueFiling 3.0):** I electronically uploaded a true and correct PDF copy of the above document(s) by filing via TrueFiling 3.0, an Electronic Filing Service Provider designated for this matter by the Court.

Case No. S266254

Alan Charles Dell’Ario ATTORNEY AT LAW P.O. Box 359 Napa, California 94559 (707) 666-5351 charles@dellario.org	Attorney for Petitioner <i>Brennon B.</i>
Micha Star Liberty LIBERTY LAW OFFICE 1970 Broadway, Suite 700 Oakland, CA 94612 (510) 645-1000 micha@libertylaw.com	Attorney for Petitioner <i>Brennon B.</i>
Timothy P. Murphy, Esq Cody Lee Saal, Esq EDRINGTON, SCHIRMER & MURPHY, LLP	Attorneys for Real Parties in Interest <i>West Contra Costa Unified School District. Et al.</i>

2300 Contra Costa Blvd., Suite 450 Pleasant Hill, CA 94523 Telephone: (925) 827-3300 Facsimile: (925) 827-3320 TMurphy@esmlawfirm.com CSaal@esmlawfirm.com	
Douglas J. Collodel, Esq Alison K. Beanum, Esq LLP CLYDE & CO US LLP 355 S. Grand Avenue, 14th Floor Los Angeles, CA 90071 Telephone: (213) 358-7600 Facsimile: (213) 358-7650 Douglas.collodel@clydeco.us Alison.beanum@clydeco.us	Attorneys for Real Parties in Interest <i>West Contra Costa Unified School District. Et al.</i>

☒ **BY U.S. Mail:** I served the said document by depositing a true copy thereof with the U.S. Postal Service with the postage fully pre-paid, addressed to the addresses set forth below:

Case No. S265223

Contra Costa County County Superior Court Attn: Hon. Charles Treat 1020 Ward Street Martinez, CA, 94553 (for Charles Treat)	MSC16-01005
California Court of Appeal First Appellate District, Division One 30 McAllister Street San Francisco, CA 94102	A157026
Solicitor General of California 1515 Clay St. Oakland, CA 94612 (for Attorney General of California)	Service Required by Cal. Rules of Court, rule 8.29

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 15, 2021



Tishon Smith-Bennett

EXHIBIT 1

included, or otherwise participating, in a water pollution control project directly funded by a public agency

For purposes of this section the "appropriate state control agency" shall be the State Water Resources Control Board for projects affecting water quality, the State Air Resources Board for projects affecting air quality, or the Resources Agency for a project affecting other than water quality or air quality. The authority shall reimburse the control agencies for their reasonable and necessary expenses in making the certification.

SEC. 12. No appropriation is made by this act, nor is any obligation created thereby under Section 2231 of the Revenue and Taxation Code, for the reimbursement of any local agency for any costs that may be incurred by it in carrying on any program or performing any service required to be carried on or performed by it by this act.

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

The South Coast Air Quality Management District assumed the operational responsibilities of the Southern California Air Pollution Control District on February 1, 1977. The provisions of this act are necessary to the operation of the south coast district and, therefore, must take effect immediately.

CHAPTER 1196

An act to add Article 9 (commencing with Section 19230) to Chapter 6 of Part 2 of Division 5 of Title 2 of, and to repeal Chapter 11 (commencing with Section 3550) of Division 4 of Title 1 of, the Government Code, relating to handicapped persons.

[Approved by Governor September 30, 1977 Filed with
Secretary of State October 1, 1977]

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

SECTION 1. Chapter 11 (commencing with Section 3550) of Division 4 of Title 1 of the Government Code is repealed.

SEC. 2. Article 9 (commencing with Section 19230) is added to Chapter 6 of Part 2 of Division 5 of Title 2 of the Government Code, to read:

Article 9. Hiring of Disabled Persons

19230 The Legislature hereby declares that:

(a) It is the policy of this state to encourage and enable disabled persons to participate fully in the social and economic life of the state

and to engage in remunerative employment.

(b) It is the policy of this state that qualified disabled persons shall be employed in the state service, the service of the political subdivisions of the state, in public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the nondisabled, unless it is shown that the particular disability is job related.

19231. As used in this article, "disabled person" means any person who (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) has a record of such impairment, or (3) is regarded as having such an impairment.

A disabled individual is "substantially limited" if he or she is likely to experience difficulty in securing, retaining, or advancing in employment because of a disability.

19232. Each state agency shall be responsible for establishing an effective affirmative action program to ensure disabled persons, who are capable of remunerative employment, access to positions in state service on an equal and competitive basis with the general population.

Each state agency shall develop and implement an affirmative action employment plan for disabled persons which shall include goals and timetables. Such goals and timetables shall be set annually for disabilities identified pursuant to guidelines established by the State Personnel Board, and shall be submitted to the board no later than June 1 of each year beginning in 1978, for review and approval or modification. Goals and timetables shall be made available to the public upon request.

19233. The State Personnel Board shall be responsible for the following:

(a) Outline specific actions to improve the representation of disabled persons in the state work force and to ensure equal and fair employment practices for disabled employees.

(b) Survey the number of disabled persons in each department by at least job category and salary range for the purpose of developing goals and timetables pursuant to Section 19232 and compare such numbers with the number of disabled people in the work force.

(c) Establish guidelines for state agencies and departments to set goals and timetables to improve the representation of the disabled in the state work force. Goals and timetables shall be set by at least job category.

19234. Each state agency shall annually review its hiring activities designed to achieve the employment objectives established pursuant to subdivision (c) of Section 19233 to determine if any category of disabled persons have been disproportionately excluded on a non-job-related basis from employment. If any category has been so excluded, the agency shall correct such underrepresentation.

19235. Each state agency shall establish a committee of disabled employees to advise the head of the agency on matters relating to the

formulation and implementation of the plan to overcome and correct any underrepresentation determined pursuant to Section 19234.

19236. The State Personnel Board shall provide technical assistance, statewide advocacy, coordination, and monitoring of plans to overcome any underrepresentation determined pursuant to Section 19234.

19237. On or before November 15 of each year, beginning in 1978, the State Personnel Board shall report to the Governor and the Legislature on the current activity, future plans, and past accomplishments of the overall employment program for the disabled in state government, including an evaluation of the achievement of annual employment objectives.

CHAPTER 1197

An act to add Section 1021.5 to the Code of Civil Procedure, relating to attorneys' fees.

[Approved by Governor September 30, 1977 Filed with
Secretary of State October 1, 1977]

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

SECTION 1. Section 1021.5 is added to the Code of Civil Procedure, to read:

1021.5. Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed therefor.

SEC. 2. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be any appropriation made by this act because duties, obligations, or responsibilities imposed on local governmental entities by this act are such that related costs are incurred as a part of their normal operating procedures.

EXHIBIT 2

[Home](#)[Bill Information](#)[California Law](#)[Publications](#)[Other Resources](#)[My Subscriptions](#)[My Favorites](#)**AB-1077 Disabled persons: discrimination.** (1991-1992)

SHARE THIS:

**Assembly Bill No. 1077**

CHAPTER 913

An act to amend Section 125.6 of the Business and Professions Code, to amend Sections 51, 51.5, 51.8, 52, 53, 54, 54.1, 54.2, 54.3, and 54.8 of the Civil Code, to amend Section 224 of the Code of Civil Procedure, to amend Sections 44100, 44101, 44337, and 44338 of the Education Code, to amend Sections 754 and 754.5 of the Evidence Code, to amend Sections 4450, 4500, 11135, 12920, 12921, 12926, 12931, 12940, 12944, 12993, 19230, 19231, 19232, 19233, 19234, 19235, 19237, and 19702 of, to add Section 12940.3 to, and to repeal Section 12994 of, the Government Code, to amend Section 19952 of the Health and Safety Code, to amend Section 1735 of the Labor Code, to amend Section 365.5 of the Penal Code, to amend Sections 2881 and 99155.5 of, and to add Section 2881.2 to, the Public Utilities Code, to amend Section 2557 of the Streets and Highways Code, and to amend Section 336 of the Vehicle Code, relating to disabled persons.

[Filed with Secretary of State September 25, 1992. Approved by Governor September 24, 1992.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1077, Bronzan. Disabled persons: discrimination.

(1) Under existing law, persons holding licenses under the provisions of the Business and Professions Code are subject to disciplinary action for refusing, or aiding or inciting another licensee to refuse, to perform the licensed services because of, among other things, a physical handicap of the prospective recipient. Existing law also creates an exception to the prohibition for healing arts practitioners where the licensed activity sought is beyond the practitioner's skill or could better be performed by another licensee.

This bill would revise these antidiscrimination provisions to make them applicable to persons with defined disabilities and to replace the above exemption with an exemption permitting nonservice to disabled individuals who pose a direct threat to the health or safety of others, as defined.

(2) Existing provisions of the Unruh Civil Rights Act and related provisions, with certain exceptions, prohibit various types of discrimination by business establishments and franchisors, and in written instruments relating to real property, including discrimination on the basis of blindness or other physical disability.

This bill would make a violation of the Americans with Disabilities Act of 1990 also a violation of the Unruh Civil Rights Act, and would expand the express coverage of that act and related provisions to include discrimination on account of any disability.

(3) Existing provisions of the Unruh Civil Rights Act and related provisions specify that persons providing property for compensation are not required to modify their property or provide a higher degree of care for

physically disabled persons than for persons who are not physically disabled.

This bill would delete those provisions.

(4) Existing law, with certain exceptions, guarantees physically disabled persons the full and free use of specified facilities for the public and guarantees them full and equal access to specified transportation, communication, lodging, places of public accommodation, amusement, or resort, and defined housing accommodations offered for rent, lease, or compensation.

This bill would extend these guarantees to all individuals with disabilities, as defined. The bill would define "full and equal access" for purposes of application of these requirements to transportation. The bill would modify a requirement in these provisions respecting rental of housing to persons with guide dogs, to expand the definition of "guide dog" to include guide dogs meeting definitional criteria of the federal law. The bill would also expand the scope of these provisions to include adoption agencies and private schools.

(5) Existing law gives specified blind, hearing-impaired, and physically handicapped persons a right to be accompanied by guide dogs, signal dogs, or service dogs without paying an extra charge therefor.

This bill would make these provisions applicable to individuals with a disability, as defined, rather than physically handicapped persons and would prohibit requiring a special security deposit for these dogs.

(6) Under existing law, in any judicial proceeding in which a party, witness, attorney, judicial employee, judge, or juror is hard of hearing, it is required that the hard-of-hearing person be supplied with an assistive listening system or that specified computer-aided transcription equipment be used, upon the person's request.

This bill would revise the above provisions to use the term "individual who is hearing impaired," as defined, and make these requirements additionally applicable to administrative hearings of public agencies and where other types of participants in the proceedings are hearing impaired, thereby imposing a state-mandated local program. The bill would expressly make these provisions applicable to traffic court, small claims court proceedings, and court-ordered alternative dispute resolution.

(7) Existing law requires parties to judicial actions who do not challenge an individual juror with a hearing, sight, or speech handicap, on the basis that the juror requires the services of a sign language interpreter, reader, or speech interpreter, to stipulate to the presence of the interpreter or reader in the jury room, and also requires the court in these cases to instruct the jury, as specified.

This bill would change the terminology describing these impairments and would impose a state-mandated local program by requiring the courts to appoint, and counties to compensate, defined service providers for these jurors. The bill would also expand the types of interpreters subject to these provisions to include oral-interpreters and deaf-blind interpreters.

(8) Existing law precludes using statements made by deaf or hard-of-hearing persons in response to questions from any person having a prosecutorial function against that person in a criminal or quasi-criminal investigation or proceeding, unless, among other things, the statement was either made knowingly, voluntarily, and intelligently and was accurately interpreted or the court makes a special finding that the statement was made knowingly, voluntarily, and intelligently.

This bill would revise these provisions to use the term "deaf or hearing impaired" and, as a condition of using such a statement against an individual who the court finds to be deaf or hearing impaired that was made without an interpreter, require the court to find that the person affirmatively indicated he or she did not use or could not have used an interpreter or that an interpreter was not required by the federal Americans with Disabilities Act of 1990. The bill would require, as a condition of using such a statement that is interpreted against an individual who is deaf or hearing impaired, that the questions to the person have been accurately interpreted. The bill would impose a state-mandated local program by requiring peace officers and others with a prosecutorial function to make good faith efforts without unnecessary delay to obtain an interpreter when interviewing a person who is an alleged victim or witness and who demonstrates or alleges deafness or hearing impairment, unless the person indicates that he or she does not need or cannot use an interpreter or it is determined that an interpreter is not otherwise required by the Americans with Disabilities Act of 1990 and federal regulations adopted thereunder.

(8.5) Under existing law, court interpreters for deaf or hard-of-hearing persons are required to be certified commencing July 1, 1992, in accordance with guidelines adopted by the Judicial Council. Existing law requires the Judicial Council to initially approve testing entities for this purpose by July 1, 1992.

This bill would make these provisions applicable to court interpreters for individuals who are deaf or hearing impaired. The bill would postpone these requirements until January 1, 1994, and would require the Judicial Council to approve the testing entities by July 1, 1993.

(9) Existing law specifies that the use of an interpreter to facilitate communications of a deaf or hard-of-hearing person does not waive an otherwise valid privilege applicable to the communication.

This bill would make those provisions applicable to communications by individuals who are deaf or hearing impaired.

(10) Existing law requires each school district to have an affirmative action employment program.

This bill would impose a state-mandated local program by changing the requirements for those programs.

(11) Existing law precludes denial of an elementary or secondary teaching credential, training for the purpose of becoming a teacher, or refusal by a school district to employ a teacher, on account of a defined physical handicap.

This bill would instead make these prohibitions applicable with respect to defined disabilities.

(12) Existing law requires the State Architect to adopt regulations for access and usability of public facilities by the physically handicapped.

This bill would make these provisions applicable to access and usability by individuals with a disability and would preclude the regulations from imposing lower standards of usability and accessibility than specified regulations adopted under the Americans with Disabilities Act of 1990.

(13) Existing law requires local and quasi-public entities to require rapid transit equipment and structures to be built to provide easy access to handicapped persons. This requirement does not, however, apply to contracts for urban transit systems until the necessary equipment is available from not less than 2 manufacturers.

This bill would make these provisions applicable to access by individuals with a disability, would make these provisions applicable to fixed-route transit facilities, would expand application of the requirements to include the state, and would require all public transit facilities and operations to meet standards of Titles II and III of the Americans with Disabilities Act of 1990 and regulations adopted thereunder or higher standards of this state's law in effect on December 31, 1992, notwithstanding the above provisions or any other provision of law. The bill would delete the exemption for contracts for transit systems where the necessary equipment is not available from 2 or more manufacturers.

(14) Existing law prohibits discrimination on the basis of physical or mental disability in the receipt of benefits under any program funded directly or financially assisted by the state.

This bill would make that prohibition applicable to any disability as defined, rather than mental or physical disability, and would require these programs to meet or exceed specified protections and prohibitions in the Americans with Disabilities Act of 1990.

(15) Existing law in the California Fair Employment and Housing Act declares a state policy that persons are entitled to employment without discrimination on various bases, including physical handicap, and, with certain exceptions, prohibits employers and labor organizations from discriminating on that basis. Existing provisions of that act also specify that nothing in the act requires an employer to make any accommodation for a physically handicapped employee where it would produce undue hardship to the employer.

This bill would change these provisions to substitute a reference to physical and mental disabilities for the existing reference to physical handicap. The bill would define "mental disability" and "physical disability" for this purpose. However, the bill would limit the application of provisions of the act on unlawful employment practices by employers against individuals with a mental disability to employers with 15 or more employees, the state, and its municipalities and political subdivisions; application of these provisions to employers with 15 to 24, inclusive, employees would be delayed until July 15, 1994, and the bill would provide for a study to determine the desirability of including employers with 5 to 14, inclusive, employees under these provisions. The bill would add discrimination on the basis of familial status to the types of discrimination declared to be against public policy with respect to both employment and housing accommodations, and would add discrimination on the basis of familial status to provisions authorizing the Department of Fair Employment and Housing to provide assistance in resolving disputes, disagreements, or difficulties relating to specified discriminatory practices. It also would add discrimination on the basis of disability to the type of discrimination declared to be against public policy with

respect to housing accommodations. The bill would require employers and certain other entities to make specified reasonable accommodations for employees with physical or mental disabilities and would require an employer making certain preemployment inquiries concerning a prospective employee's fitness, or refusing to hire or discharging a disabled employee, to comply with the Americans with Disabilities Act of 1990.

The bill would specify that the definitions of "physical disability" and "mental disability" in the California Fair Employment and Housing Act are superseded by the definition of "disability" in the federal Americans with Disabilities Act of 1990 if broader civil rights protection would thereby be produced for persons with mental or physical disabilities or a medical condition. The bill would specify that the act's provisions are not superseded by provisions of other laws relating to workers' compensation and insurance, benefits for injured state employees not covered by workers' compensation, and retraining and rehabilitation benefits for injured public employees.

(16) Existing law prohibits licensing boards from discriminating, as specified, on the basis of a person's physical handicap.

This bill would instead prohibit that discrimination by licensing boards on the basis of a physical or mental disability and would require a licensing board to make defined reasonable accommodation to an individual's physical or mental disability or medical condition, as specified.

(17) Existing law in the state civil service prohibits discrimination against employees on the basis of non-job-related physical handicap.

This bill would instead prohibit discrimination against state civil service employees who are individuals with a disability, as defined. The bill would also revise accommodations required to be made for these employees.

(18) Existing law requires specified places of public amusement and resort to be equipped with wheelchair spaces and other seating and accommodations for persons with physical disabilities.

This bill would make compliance with these provisions subject to no lesser standards than prescribed in prescribed federal regulations.

(19) Existing law, with certain exceptions, prohibits discrimination in employment on public works projects on the basis of physical handicap.

This bill would instead prohibit this discrimination on the basis of physical or mental disability.

(20) Existing law prohibits any person from denying access to specified transportation and accommodations to any blind, deaf, or physically disabled person on account of the person being accompanied by a guide dog, signal dog, or service dog.

This bill would revise the definition of "guide dog" for purposes of these provisions.

(21) Existing law requires the Public Utilities Commission to design and implement a dual party relay system by which telephone service may be made available between deaf and hard-of-hearing persons and persons of normal hearing, as specified.

This bill would substitute the term "hearing impaired" for "hard-of-hearing" and require the commission to apply to the Federal Communications Commission for prescribed certification of this system and would revise existing requirements for an annual report by the commission on the fiscal status of this and related programs. The bill would require the commission to study whether there exist sufficient public pay phones with capability to serve deaf and severely hearing impaired persons.

(22) Existing law requires operators of dial-a-ride or paratransit services funded through the Mills-Alquist-Deddeh Act to provide specified services for defined handicapped persons.

This bill would require these services to be provided to individuals with disabilities, would make clarifying changes, and would make certain of these provisions subject to overriding requirements of the federal Americans with Disabilities Act of 1990. The bill would also revise the Vehicle Code definition of "general public paratransit vehicle."

(23) Existing law authorizes the formation of service authorities for freeway emergencies, which are empowered to establish a prescribed motorist aid system.

This bill would require these motorist aid systems to meet standards of Title II of the federal Americans with Disabilities Act of 1990.

(24) This bill would incorporate additional changes in Section 12926 of the Government Code, proposed by AB 311 or AB 1286, or both, to become operative only if AB 311 or AB 1286, or both, and this bill are chaptered and become effective on or before January 1, 1993, and this bill is chaptered last.

(25) This bill would incorporate additional changes in Section 12940 of the Government Code, proposed by AB 1286 or AB 2265, or both, to become operative only if AB 1286 or AB 2265, or both, and this bill are chaptered and become effective on or before January 1, 1993, and this bill is chaptered last.

(26) This bill would incorporate additional changes in Section 12993 of the Government Code, proposed by AB 311 or AB 1178, or both, to be operative only if AB 311 or AB 1178, or both, and this bill are chaptered and become effective January 1, 1993, and this bill is chaptered last. (27) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000, shall be made from the State Mandates Claims Fund.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature in enacting this act to strengthen California law in areas where it is weaker than the Americans with Disabilities Act of 1990 (Public Law 101-336) and to retain California law when it provides more protection for individuals with disabilities than the Americans with Disabilities Act of 1990.

SEC. 2. Section 125.6 of the Business and Professions Code is amended to read:

125.6. Every person who holds a license under the provisions of this code is subject to disciplinary action under the disciplinary provisions of this code applicable to such person if, because of the applicant's race, color, sex, religion, ancestry, disability, marital status, or national origin, he or she refuses to perform the licensed activity or aids or incites the refusal to perform such licensed activity by another licensee, or if, because of the applicant's race, color, sex, religion, ancestry, disability, marital status, or national origin, he or she makes any discrimination, or restriction in the performance of the licensed activity. Nothing in this section shall be interpreted to apply to discrimination by employers with regard to employees or prospective employees, nor shall this section authorize action against any club license issued pursuant to Article 4 (commencing with Section 23425) of Chapter 3 of Division 9 because of discriminatory membership policy. The presence of architectural barriers to an individual with physical disabilities which conform to applicable state or local building codes and regulations shall not constitute discrimination under this section.

Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to permit an individual to participate in, or benefit from, the licensed activity of the licensee where that individual poses a direct threat to the health or safety of others. For this purpose, the term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

"License," as used in this section, includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code.

"Applicant," as used in this section means a person applying for licensed services provided by a person licensed under this code.

"Disability" means any of the following with respect to an individual:

- (a) A physical or mental impairment that substantially limits one or more of the major life activities of the individual.
- (b) A record of such an impairment.
- (c) Being regarded as having such an impairment.

SEC. 3. Section 51 of the Civil Code is amended to read:

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

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

This section shall not be construed to confer any right or privilege on a person which is conditioned or limited by law or which is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, or disability.

Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever to any new or existing establishment, facility, building, improvement, or any other structure, or 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 provisions of the law.

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. 3.2. Section 51.5 of the Civil Code is amended to read:

51.5. No business establishment of any kind whatsoever shall discriminate against, boycott or blacklist, refuse to buy from, sell to, or trade with any person in this state because of the race, creed, religion, color, national origin, sex, or disability of the person or of the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers.

As used in this section "person" includes any person, firm, association, organization, partnership, business trust, corporation, or company.

Nothing in this section shall be construed to require any construction, alternation, repair, structural or otherwise, or modification of any sort whatsoever to any new or existing establishment, facility, building, improvement, or any other structure, or 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 provisions of the law.

SEC. 3.4. Section 51.8 of the Civil Code is amended to read:

51.8. No franchisor shall discriminate in the granting of franchises solely because of the race, color, religion, sex, national origin, or disability of the franchisee and the racial, ethnic, religious, national origin, or disability composition of a neighborhood or geographic area in which the franchise is located. Nothing in this section shall be interpreted to prohibit a franchisor from granting a franchise to prospective franchisees as part of a program or programs to make franchises available to persons lacking the capital, training, business experience, or other qualifications ordinarily required of franchisees, or any other affirmative action program adopted by the franchisor.

Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever to any new or existing establishment, facility, building, improvement, or any other structure, or 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 provisions of the law.

SEC. 3.6. Section 52 of the Civil Code is amended to read:

52. (a) Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51 or 51.5, is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than two hundred fifty dollars (\$250), and any attorney's fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51 or 51.5.

(b) Whoever denies the right provided by Section 51.7, or aids, incites, or conspires in that denial, is liable for each and every offense for the actual damages suffered by any person denied that right and, in addition, the following:

- (1) An amount to be determined by a jury, or a court sitting without a jury, for exemplary damages.
 - (2) A civil penalty of twenty-five thousand dollars (\$25,000) to be awarded to the person denied the right provided by Section 51.7.
 - (3) Attorney fees as may be determined by the court.
- (c) Whenever there is reasonable cause to believe that any person or group of persons is engaged in conduct of resistance to the full enjoyment of any of the rights hereby secured, and that conduct is of that nature and is intended to deny the full exercise of the rights herein described, the Attorney General, any district attorney or city attorney, or any person aggrieved by the conduct may bring a civil action in the appropriate court by filing with it a complaint. The complaint shall contain the following:
- (1) The signature of the officer, or, in his or her absence, the individual acting on behalf of the officer, or the signature of the person aggrieved.
 - (2) The facts pertaining to the conduct.
 - (3) A request for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for the conduct, as the complainant deems necessary to insure the full enjoyment of the rights herein described.
- (d) Whenever an action has been commenced in any court seeking relief from the denial of equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States on account of race, color, religion, sex, national origin, or disability, the Attorney General or any district attorney or city attorney for or in the name of the people of the State of California may intervene in the action upon timely application if the Attorney General or any district attorney or city attorney certifies that the case is of general public importance. In that action the people of the State of California shall be entitled to the same relief as if it had instituted the action.
- (e) Actions under this section shall be independent of any other remedies or procedures that may be available to an aggrieved party.
- (f) Any person claiming to be aggrieved by an alleged unlawful practice in violation of Section 51 or 51.7 may also file a verified complaint with the Department of Fair Employment and Housing pursuant to Section 12948 of the Government Code.
- (g) Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever to any new or existing establishment, facility, building, improvement, or any other structure, or 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.
- (h) For the purposes of this section, "actual damages" means special and general damages. This subdivision is declaratory of existing law.

SEC. 3.8. Section 53 of the Civil Code is amended to read:

- 53.** (a) Every provision in a written instrument relating to real property which purports to forbid or restrict the conveyance, encumbrance, leasing, or mortgaging of that real property to any person of a specified sex, race, color, religion, ancestry, national origin, or disability, is void and every restriction or prohibition as to the use or occupation of real property because of the user's or occupier's sex, race, color, religion, ancestry, national origin, or disability is void.
- (b) Every restriction or prohibition, whether by way of covenant, condition upon use or occupation, or upon transfer of title to real property, which restriction or prohibition directly or indirectly limits the acquisition, use or occupation of that property because of the acquirer's, user's, or occupier's sex, race, color, religion, ancestry, national origin, or disability is void.
- (c) In any action to declare that a restriction or prohibition specified in subdivision (a) or (b) is void, the court shall take judicial notice of the recorded instrument or instruments containing the prohibitions or restrictions in the same manner that it takes judicial notice of the matters listed in Section 452 of the Evidence Code.

SEC. 4. Section 54 of the Civil Code is amended to read:

54. (a) Individuals with disabilities shall have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(b) "Disability," as used in this part, means any of the following with respect to an individual:

(1) A physical or mental impairment that substantially limits one or more of the major life activities of the individual.

(2) A record of such an impairment.

(3) Being regarded as having such an impairment.

SEC. 5. Section 54.1 of the Civil Code is amended to read:

54.1. (a) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

As used in this section, "telephone facilities" means tariff items and other equipment and services which have been approved by the Public Utilities Commission to be used by individuals with disabilities in a manner feasible and compatible with the existing telephone network proved by the telephone companies.

"Full and equal access," for purposes of this section in its application to transportation, means access that meets the standards of Titles II and III of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant thereto, except that, if the laws of this state prescribe higher standards, it shall mean access that meets those higher standards.

(b) (1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in this state, subject to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

(2) "Housing accommodations" means any real property, or portion thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more human beings, but shall not include any accommodations included within subdivision (a) or any single-family residence the occupants of which rent, lease, or furnish for compensation not more than one room therein.

(3) Nothing in this subdivision shall require any person renting, leasing, or providing for compensation real property to modify his or her property in any way or provide a higher degree of care for an individual with a disability than for an individual who is not disabled.

(4) Except as provided in paragraph (5) of this subdivision, nothing in this part shall require any person renting, leasing, or providing for compensation real property, if that person refuses to accept tenants who have dogs, to accept as a tenant an individual with a disability who has a dog.

(5) It shall be deemed a denial of equal access to housing accommodations within the meaning of this subdivision for any person, firm, or corporation to refuse to lease or rent housing accommodations to an individual who is blind or visually impaired on the basis that the individual uses the services of a guide dog, an individual who is deaf or hearing impaired on the basis that the individual uses the services of a signal dog, or to an individual with a physical disability on the basis that the individual uses the services of a service dog, or to refuse to permit such an individual who is blind or visually impaired to keep a guide dog, an individual who is deaf or hearing impaired to keep a signal dog, or an individual with a physical disability to keep a service dog on the premises.

Except in the normal performance of duty as a mobility or signal aid, nothing contained in this paragraph shall be construed to prevent the owner of a housing accommodation from establishing terms in a lease or rental agreement which reasonably regulate the presence of guide dogs, signal dogs, or service dogs on the premises

of a housing accommodation, nor shall this paragraph be construed to relieve a tenant from any liability otherwise imposed by law for real and personal property damages caused by such a dog when proof of same exists.

As used in this subdivision, "guide dog" means any guide dog which was trained by a person licensed under the provisions of Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code or as defined in the regulations implementing Title III of the Americans with Disabilities Act of 1990 (Public Law 101-336).

As used in this subdivision, "signal dog" means any dog trained to alert an individual who is deaf or hearing impaired to intruders or sounds.

As used in this subdivision, "service dog" means any dog individually trained to the individual with a physical disability's requirements including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items.

(6) It shall be deemed a denial of equal access to housing accommodations within the meaning of this subdivision for any person, firm, or corporation to refuse to lease or rent housing accommodations to an individual who is blind or visually impaired, an individual who is deaf or hearing impaired, or other individual with a disability on the basis that the individual with a disability is partially or wholly dependent upon the income of his or her spouse, if the spouse is a party to the lease or rental agreement. Nothing in this subdivision shall, however, prohibit a lessor or landlord from considering the aggregate financial status of an individual with a disability and his or her spouse.

(c) Persons licensed to train guide dogs for individuals who are visually impaired or blind pursuant to Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code or guide dogs as defined in the regulations implementing Title III of the Americans with Disabilities Act of 1990 (Public Law 101-336), and persons authorized to train signal dogs for individuals who are deaf or hearing impaired, and persons authorized to train service dogs for individuals with physical disabilities, may take dogs, for the purpose of training them as guide dogs, signal dogs, or service dogs in any of the places specified in subdivisions (a) and (b). These persons shall carry and display identification if issued as an authorization, upon request.

SEC. 6. Section 54.2 of the Civil Code is amended to read:

54.2. (a) Every individual with a disability shall have the right to be accompanied by a guide dog, signal dog, or service dog, especially trained for the purpose, in any of the places specified in Section 54.1 without being required to pay an extra charge or security deposit for the guide dog, signal dog, or service dog. However, the individual shall be liable for any damage done to the premises or facilities by his or her dog.

(b) Persons licensed to train guide dogs for individuals who are blind or visually impaired pursuant to Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code or as defined in regulations implementing Title III of the Americans with Disabilities Act of 1990 (Public Law 101-336), and persons authorized to train signal dogs for individuals who are deaf or hearing impaired, and service dogs for the individuals with physical disabilities may take dogs, for the purpose of training them as guide dogs, signal dogs, or service dogs in any of the places specified in Section 54.1 without being required to pay an extra charge or security deposit for the guide dog, signal dog, or service dog. However, the person shall be liable for any damage done to the premises or facilities by his or her dog.

These persons shall carry and display identification if issued as an authorization, upon request.

(c) As used in this section, the terms "guide dog," "signal dog," and "service dog" have the same meanings as specified in Section 54.1.

SEC. 7. Section 54.3 of the Civil Code is amended to read:

54.3. Any person or persons, firm or corporation who denies or interferes with admittance to or enjoyment of the public facilities as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for the actual damages and any amount as may be determined by a jury, or the court sitting without a jury, up to a maximum of three times the amount of actual damages but in no case less than two hundred fifty dollars (\$250), and such attorney's fees as may be determined by the court in addition thereto, suffered by any person denied any of the rights provided in Sections 54, 54.1, and 54.2.

SEC. 8. Section 54.8 of the Civil Code is amended to read:

54.8. (a) In any civil or criminal proceeding, including, but not limited to, traffic, small claims court, family court proceedings and services, and juvenile court proceedings, in any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, or in any administrative hearing of a public agency, where a party, witness, attorney, judicial employee, judge, juror, or other participant who is hearing impaired, the individual who is hearing impaired, upon his or her request, shall be provided with a functioning assistive listening system or a computer-aided transcription system. Any individual requiring this equipment shall give advance notice of his or her need to the appropriate court or agency at the time the hearing is set or not later than five days before the hearing.

(b) Assistive listening systems include, but are not limited to, special devices which transmit amplified speech by means of audio-induction loops, radio frequency systems (AM or FM), or infrared transmission. Personal receivers equipped with headphones for, or use with, hearing aids shall be available upon request by individuals who are hearing impaired.

(c) If a computer-aided transcription system is used, sufficient display terminals shall be provided to allow the individual who is hearing impaired to read the real time transcript of the proceeding without difficulty.

(d) A sign shall be posted in a prominent place indicating the availability of an assistive listening system or a computer-aided transcription system.

(e) Each county shall have at least one portable assistive listening system for use by any court within the county. The system shall be in a location jointly determined by the county board of supervisors and the judges. Notice of the availability of the system shall be posted with notice of trials.

(f) The Judicial Council shall develop and approve official forms for notice of the availability of assistive listening systems and computer-aided transcription systems for individuals who are hearing impaired. The Judicial Council shall also develop and maintain a system to record utilization by the courts of these assistive listening systems and computer-aided transcription systems.

(g) If the individual who is hearing impaired in question is a juror, the jury deliberation room shall be equipped with an assistive listening system or a computer-aided transcription system upon the request of the juror.

(h) A court reporter may be present in the jury deliberating room during a jury deliberation if the services of a court reporter for the purpose of operating a computer-aided transcription system are required for a juror who is hearing impaired.

(i) In any of the proceedings referred to in subdivision (a), or administrative hearing of a public agency, in which the individual who is hearing impaired is a party, witness, attorney, judicial employee, judge, juror, or other participant, and has requested use of an assistive listening system or computer-aided transcription system, the proceedings shall not commence until the system is in place and functioning.

(j) As used in this section, "individual who is hearing impaired" means an individual with a hearing loss, who, with sufficient amplification or a computer-aided transcription system, is able to fully participate in the proceeding.

(k) In no case shall this section be construed to prescribe a lesser standard of accessibility or usability than that provided by Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant to that act.

SEC. 9. Section 224 of the Code of Civil Procedure is amended to read:

224. (a) If a party does not cause the removal by challenge of an individual juror who is deaf, hearing impaired, blind, visually impaired, or speech impaired and who requires auxiliary services to facilitate communication, the party shall (1) stipulate to the presence of a service provider in the jury room during jury deliberations, and (2) prepare and deliver to the court proposed jury instructions to the service provider.

(b) As used in this section, "service provider" includes, but is not limited to, a person who is a sign language interpreter, oral interpreter, deaf-blind interpreter, reader, or speech interpreter. If auxiliary services are required during the course of jury deliberations, the court shall instruct the jury and the service provider that the service provider for the juror with a disability is not to participate in the jury's deliberations in any manner except to facilitate communication between the juror with a disability and other jurors.

(c) The court shall appoint an service provider whose services are needed by a juror with a disability to facilitate communication or participation. A sign language interpreter, oral interpreter, or deaf-blind interpreter appointed pursuant to this section shall be a qualified interpreter, as defined in subdivision (f) of Section 754 of the Evidence Code. Persons appointed by the court to serve as attendants under this subdivision shall be compensated in the same manner as provided in subdivision (i) of Section 754 of the Evidence Code.

SEC. 10. Section 44100 of the Education Code is amended to read:

44100. The Legislature finds and declares that:

(a) Generally, California school districts employ a disproportionately low number of racial and ethnic minority classified and certificated employees and a disproportionately low number of women and members of racial and ethnic minorities in administrative positions.

(b) It is educationally sound for the minority student attending a racially impacted school to have available to him the positive image provided by minority classified and certificated employees. It is likewise educationally sound for the child from the majority group to have positive experiences with minority people which can be provided, in part, by having minority classified and certificated employees at schools where the enrollment is largely made up of majority group students. It is also educationally important for students to observe that women as well as men can assume responsible and diverse roles in society.

(c) Past employment practices created artificial barriers and past efforts to promote additional action in the recruitment, employment, and promotion of women and minorities have not resulted in a substantial increase in employment opportunities for these persons.

(d) Lessons concerning democratic principles and the richness which racial diversity brings to our national heritage can be best taught by the presence of staffs of mixed races and ethnic groups working toward a common goal.

It is the intent of the Legislature to establish and maintain a policy of equal opportunity in employment for all persons and to prohibit discrimination based on race, sex, color, religion, age, disability, ancestry, or national origin in every aspect of personnel policy and practice in employment, development, advancement, and treatment of persons employed in the public school system, and to promote the total realization of equal employment opportunity through a continuing affirmative action employment program.

The Legislature recognizes that it is not enough to proclaim that public employers do not discriminate in employment but that effort must also be made to build a community in which opportunity is equalized. It is the intent of the Legislature to require educational agencies to adopt and implement plans for increasing the numbers of women and minority persons at all levels of responsibility.

SEC. 11. Section 44101 of the Education Code is amended to read:

44101. For the purposes of this article:

(a) "Affirmative action employment program" means planned activities designed to seek, hire, and promote persons who are underrepresented in the work force compared to their number in the population, including individuals with disabilities, women, and persons of minority racial and ethnic backgrounds. It is a conscious, deliberate step taken by a hiring authority to assure equal employment opportunity for all staff, both certificated and classified. Such programs require the employer to make additional efforts to recruit, employ, and promote members of groups formerly excluded at the various levels of responsibility who are qualified or may become qualified through appropriate training or experience within a reasonable length of time. Such programs should be designed to remedy the exclusion, whatever its cause. Affirmative action requires imaginative, energetic, and sustained action by each employer to devise recruiting, training, and career advancement opportunities which will result in an equitable representation of women and minorities in relation to all employees of the employer.

(b) "Disability," means (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of such an impairment, or (3) being regarded as having such an impairment.

(c) "Goals and timetables" means projected new levels of employment of women and minority racial and ethnic groups to be attained on an annual schedule, given the expected turnover in the work force and the availability of persons who are qualified or may become qualified through appropriate training or experience within a

reasonable length of time. Goals are not quotas or rigid proportions. They should relate both to the qualitative and quantitative needs of the employer.

(d) "Public education agency" means the Department of Education, each office of the county superintendent of schools, and the governing board of each school district in California.

SEC. 12. Section 44337 of the Education Code is amended to read:

44337. No person otherwise qualified shall be denied the right to receive credentials from the commission, to receive training for the purpose of becoming a teacher, or to engage in practice teaching in any school, on the grounds he or she is an individual with a disability; nor shall any school district refuse to engage a teacher on such grounds, provided, that the teacher, with reasonable accommodations, is able to carry out the duties of the position for which he or she applies in the school district. "Disability," as used in this section, means (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of such an impairment, or (3) being regarded as having such an impairment.

SEC. 13. Section 44338 of the Education Code is amended to read:

44338. No person otherwise qualified shall be denied the right to receive credentials issued by the commission, to receive training for the purpose of becoming a teacher, or to engage in practice teaching in any school, on the ground he or she is a person with a disability; provided, that the person does not pose a direct threat of substantial harm to the health or safety of other individuals.

SEC. 14. Section 754 of the Evidence Code is amended to read:

754. (a) As used in this section, "individual who is deaf or hearing impaired" means an individual with a hearing loss so great as to prevent his or her understanding language spoken in a normal tone, but does not include an individual who is hearing impaired provided with, and able to fully participate in the proceedings through the use of, an assistive listening system or computer-aided transcription equipment provided pursuant to Section 54.8 of the Civil Code.

(b) In any civil or criminal action, including, but not limited to, any action involving a traffic or other infraction, any small claims court proceeding, any juvenile court proceeding, any family court proceeding or service, or any proceeding to determine the mental competency of a person, in any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, or any administrative hearing, where a party or witness is an individual who is deaf or hearing impaired and the individual who is deaf or hearing impaired is present and participating, the proceedings shall be interpreted in a language that the individual who is deaf or hearing impaired understands by a qualified interpreter appointed by the court or other appointing authority, or as agreed upon.

(c) For purposes of this section, "appointing authority" means a court, department, board, commission, agency, licensing or legislative body, or other body for proceedings requiring a qualified interpreter.

(d) For the purposes of this section, "interpreter" includes, but is not limited to, an oral interpreter, a sign language interpreter, or a deaf-blind interpreter, depending upon the needs of the individual who is deaf or hearing impaired.

(e) For purposes of this section, "intermediary interpreter" means an individual who is deaf or hearing impaired, or a hearing individual who is able to assist in providing an accurate interpretation between spoken English and sign language or between variants of sign language or between American Sign Language and other foreign languages by acting as an intermediary between the individual who is deaf or hearing impaired and the qualified interpreter.

(f) For purposes of this section, "qualified interpreter" means an interpreter who has been certified as competent to interpret court proceedings by a testing organization, agency, or educational institution approved by the Judicial Council as qualified to administer tests to court interpreters for individuals who are deaf or hearing impaired.

(g) In the event that the appointed interpreter is not familiar with the use of particular signs by the individual who is deaf or hearing impaired or his or her particular variant of sign language, the court or other appointing authority shall, in consultation with the individual who is deaf or hearing impaired or his or her representative, appoint an intermediary interpreter.

(h) Prior to July 1, 1992, the Judicial Council shall conduct a study to establish the guidelines pursuant to which it shall determine which testing organizations, agencies, or educational institutions will be approved to administer tests for certification of court interpreters for individuals who are deaf or hearing impaired. It is the intent of the Legislature that the study obtain the widest possible input from the public, including, but not limited to, educational institutions, the judiciary, linguists, members of the State Bar, court interpreters, members of professional interpreting organizations, and members of the deaf and hearing-impaired communities. After obtaining public comment and completing its study, the Judicial Council shall publish these guidelines and shall approve one or more entities to administer testing for court interpreters for individuals who are deaf or hearing impaired. Initial approval of testing entities by the Judicial Council shall occur prior to January 1, 1994.

Commencing July 1, 1994, court interpreters for individuals who are deaf or hearing impaired shall meet the qualifications specified in subdivision (f).

(i) Persons appointed to serve as interpreters under this section shall be paid, in addition to actual travel costs, the prevailing rate paid to persons employed by the court to provide other interpreter services unless such service is considered to be a part of the person's regular duties as an employee of the state, county, or other political subdivision of the state. Payment of the interpreter's fee shall be a charge against the county, or other political subdivision of the state, in which that action is pending. Payment of the interpreter's fee in administrative proceedings shall be a charge against the appointing board or authority.

(j) Whenever a peace officer or any other person having a law enforcement or prosecutorial function in any criminal or quasi-criminal investigation or proceeding questions or otherwise interviews an alleged victim or witness who demonstrates or alleges deafness or hearing impairment, a good faith effort to secure the services of an interpreter shall be made, without any unnecessary delay unless either the individual who is deaf or hearing impaired affirmatively indicates that he or she does not need or cannot use an interpreter, or an interpreter is not otherwise required by Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted thereunder.

(k) No statement, written or oral, made by an individual who the court finds is deaf or hearing impaired in reply to a question of a peace officer, or any other person having a law enforcement or prosecutorial function in any criminal or quasi-criminal investigation or proceeding, may be used against that individual who is deaf or hearing impaired unless the question was accurately interpreted and the statement was made knowingly, voluntarily, and intelligently and was accurately interpreted, or the court makes special findings that either the individual could not have used an interpreter or an interpreter was not otherwise required by Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted thereunder and that the statement was made knowingly, voluntarily, and intelligently.

(l) In obtaining services of an interpreter for purposes of subdivision (j) or (k), priority shall be given to first obtaining a qualified interpreter.

(m) Nothing in subdivision (j) or (k) shall be deemed to supersede the requirement of subdivision (b) for use of a qualified interpreter for individuals who are deaf or hearing impaired participating as parties or witnesses in a trial or hearing.

(n) In any action or proceeding in which an individual who is deaf or hearing impaired is a participant, the appointing authority shall not commence proceedings until the appointed interpreter is in full view of and spatially situated to assure proper communication with the participating individual who is deaf or hearing impaired.

(o) Each superior court shall maintain a current roster of qualified interpreters certified pursuant to subdivision (f).

SEC. 15. Section 754.5 of the Evidence Code is amended to read:

754.5. Whenever an otherwise valid privilege exists between an individual who is deaf or hearing impaired and another person, that privilege is not waived merely because an interpreter was used to facilitate their communication.

SEC. 16. Section 4450 of the Government Code is amended to read:

4450. (a) It is the purpose of this chapter to ensure that all buildings, structures, sidewalks, curbs, and related facilities, constructed in this state by the use of state, county, or municipal funds, or the funds of any political

subdivision of the state shall be accessible to and usable by individuals with disabilities. The State Architect shall adopt and submit proposed building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 of the Health and Safety Code and shall adopt other regulations for making buildings, structures, sidewalks, curbs, and related facilities accessible to and usable by individuals with disabilities. The regulations and building standards relating to access for individuals with disabilities shall be consistent with the standards for buildings and structures which are contained in pertinent provisions of the latest edition of the Uniform Building Code, as adopted by the International Conference of Building Officials, and these regulations and building standards shall contain such additional requirements relating to buildings, structures, sidewalks, curbs, and other related facilities as the State Architect determines are necessary to assure access and usability for individuals with disabilities. In developing and revising these additional requirements, the State Architect shall consult with the Department of Rehabilitation, the League of California Cities, the County Supervisors Association of California, and at least one private organization representing and comprised of individuals with disabilities.

(b) However, in no case shall the State Architect's regulations and building standards prescribe a lesser standard of accessibility or usability than provided by regulations of the federal Architectural and Transportation Barriers Compliance Board adopted to implement the Americans with Disabilities Act of 1990 (Public Law 101-336).

SEC. 17. Section 4500 of the Government Code is amended to read:

4500. (a) Notwithstanding the provisions of any statute, rule, regulation, decision, or pronouncement to the contrary, other than subdivision (b), every state agency, board, and department, every local governmental subdivision, every district, every public and quasi-public corporation, every local public agency and public service corporation, and every city, county, city and county and municipal corporation, whether incorporated or not and whether chartered or not, in awarding contracts for operations, equipment, or structures shall be obligated to require that all fixed-route transit equipment and public transit structures shall be so built that individuals with disabilities shall have ready access to, from and in such equipment and structures.

(b) Notwithstanding any other provision of law, public transit facilities and operations, whether operated by or under contract with a public entity, shall meet the applicable standards of Titles II and III of the federal Americans with Disabilities Act of 1990 (Public Law 101-336) and the federal regulations adopted pursuant thereto, subject to the exceptions provided in that act. However, if the laws of this state in effect on December 31, 1992, prescribe higher standards than the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant thereto, then those public transit facilities and operations shall meet the higher standards.

SEC. 18. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

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

(c) As used in this section, "disability" means any of the following with respect to an individual: (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of such an impairment, (3) being regarded as having such an impairment.

SEC. 19. 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, or age.

It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment for such reasons foments domestic strife and unrest, deprives the state of the fullest utilization of its capacities for development and advance, 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, marital status, national origin, , ancestry, familial status, or disability in housing accommodations is declared to be against public policy.

It is the purpose of this part to provide effective remedies which will eliminate such 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. 20. Section 12921 of the Government Code is amended to read:

12921. 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, or age is hereby recognized as and declared to be a civil right.

SEC. 21. 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) "Age" refers to the chronological age of any individual who has reached his or her 40th birthday.
- (b) "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.
- (c) "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 thereof and cities, except as follows:
 - (1) "Employer" does not include a religious association or corporation not organized for private profit.
 - (2) "Employer," for purposes of provisions defining unlawful employment practices related to mental disability, means any person regularly employing 15 or more persons, or any person directly or indirectly acting as an agent of such an employer, and also includes the state and municipalities and political subdivisions of the state.
- (d) "Employment agency" includes any person undertaking for compensation to procure employees or opportunities to work.
- (e) "Essential duties" means the fundamental job duties of the employment position the individual with a disability holds or desires. "Essential duties" 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.

(f) "Labor organization" includes any organization which 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.

(g) "Medical condition" includes, but is not limited to, any health impairment related to or associated with a diagnosis of cancer, for which a person has been rehabilitated or cured, based on competent medical evidence.

(h) "Mental disability" includes any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. However, "mental disability" does not include conditions excluded from the federal definition of "disability" pursuant to Section 511 of the Americans with Disabilities Act of 1990 (42 U.S.C., Sec. 12211). Additionally, for purposes of this part, the unlawful use of controlled substances or other drugs shall not be deemed, in and of itself, to constitute a mental disability.

(i) "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, or age.

(j) "Physical disability" includes impairment of sight, hearing, or speech, or impairment of physical ability because of amputation or loss of function or coordination, or any other health impairment which requires special education or related services. It is the intent of the Legislature that the definition of "physical disability" in this subdivision shall have the same meaning as the term "physical handicap" formerly defined by this subdivision and construed in *American National Ins. Co. v. Fair Employment & Housing Com.*, 32 Cal. 3d 603. However, "physical disability" does not include conditions excluded from the federal definition of "disability" pursuant to Section 511 of the Americans with Disabilities Act of 1990 (42 U.S.C., Sec. 12211). Additionally, for purposes of this part, the unlawful use of controlled substances or other drugs shall not be deemed, in and of itself, to constitute a physical disability.

(k) "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.

(l) "Religious creed," "religion," "religious observance," "religious belief," and "creed" include all aspects of religious belief, observance, and practice.

(m) "Sex" includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.

(n) "Undue hardship" means an action requiring significant difficulty or expense, when considered in light of all 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 or 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 work force of the entity, and (5) the geographic separateness, administrative, or fiscal relationship of the facility or facilities.

Notwithstanding subdivision (h) 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 (h) or (j), 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 (h) and (j).

SEC. 21.1. 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 back pay, 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 thereof and cities, except as follows:

(1) "Employer" does not include a religious association or corporation not organized for private profit.

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

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

(f) "Essential duties" means the fundamental job duties of the employment position the individual with a disability holds or desires. "Essential duties" 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 which 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" includes, but is not limited to, any health impairment related to or associated with a diagnosis of cancer, for which a person has been rehabilitated or cured, based on competent medical evidence.

(i) "Mental disability" includes any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. However, "mental disability" does not include conditions excluded from the federal definition of "disability" pursuant to Section 511 of the Americans

with Disabilities Act of 1990 (42 U.S.C., Sec. 12211). Additionally, for purposes of this part, the unlawful use of controlled substances or other drugs shall not be deemed, in and of itself, to constitute a mental disability.

(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, or age.

(k) "Physical disability" includes impairment of sight, hearing, or speech, or impairment of physical ability because of amputation or loss of function or coordination, or any other health impairment which requires special education or related services. It is the intent of the Legislature that the definition of "physical disability" in this subdivision shall have the same meaning as the term "physical handicap" formerly defined by this subdivision and construed in *American National Ins. Co. v. Fair Employment & Housing Com.*, 32 Cal. 3d 603. However, "physical disability" does not include conditions excluded from the federal definition of "disability" pursuant to Section 511 of the Americans with Disabilities Act of 1990 (42 U.S.C., Sec. 12211). Additionally, for purposes of this part, the unlawful use of controlled substances or other drugs shall not be deemed, in and of itself, to constitute a physical disability.

(l) "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.

(m) "Religious creed," "religion," "religious observance," "religious belief," and "creed" include all aspects of religious belief, observance, and practice.

(n) "Sex" includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.

(o) "Undue hardship" means an action requiring significant difficulty or expense, when considered in light of all 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 or 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 work force of the entity.

(5) The geographic separateness, administrative, or fiscal relationship of the facility or facilities.

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).

SEC. 21.2. 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) "Age" refers to the chronological age of any individual who has reached his or her 40th birthday.

(b) "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.

(c) "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 thereof and cities, except as follows:

(1) "Employer" does not include a religious association or corporation not organized for private profit.

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

(d) "Employment agency" includes any person undertaking for compensation to procure employees or opportunities to work.

(e) "Essential duties" means the fundamental job duties of the employment position the individual with a disability holds or desires. "Essential duties" 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.

(f) "Labor organization" includes any organization which 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.

(g) "Medical condition" includes, but is not limited to, any health impairment related to or associated with a diagnosis of cancer, for which a person has been rehabilitated or cured, based on competent medical evidence.

(h) "Mental disability" includes any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. However, "mental disability" does not include conditions excluded from the federal definition of "disability" pursuant to Section 511 of the Americans with Disabilities Act of 1990 (42 U.S.C., Sec. 12211). Additionally, for purposes of this part, the unlawful use of controlled substances or other drugs shall not be deemed, in and of itself, to constitute a mental disability.

(i) "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, or age.

(j) "Physical handicap" 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 an individual's ability to participate in major life activities.

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

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

(4) Being regarded 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).

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

(k) "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.

(l) "Religious creed," "religion," "religious observance," "religious belief," and "creed" include all aspects of religious belief, observance, and practice.

(m) "Sex" includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.

(n) "Undue hardship" means an action requiring significant difficulty or expense, when considered in light of all 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 or 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 work force of the entity.

(5) The geographic separateness, administrative, or fiscal relationship of the facility or facilities.

Notwithstanding subdivisions (h) and (j), 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 (h) or (j), 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 (h) and (j).

SEC. 21.3. 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 back pay, 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 thereof and cities, except as follows:

(1) "Employer" does not include a religious association or corporation not organized for private profit.

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

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

(f) "Essential duties" means the fundamental job duties of the employment position the individual with a disability holds or desires. "Essential duties" 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 which 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" includes, but is not limited to, any health impairment related to or associated with a diagnosis of cancer, for which a person has been rehabilitated or cured, based on competent medical evidence.

(i) "Mental disability" includes any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. However, "mental disability" does not include conditions excluded from the federal definition of "disability" pursuant to Section 511 of the Americans with Disabilities Act of 1990 (42 U.S.C., Sec. 12211). Additionally, for purposes of this part, the unlawful use of controlled substances or other drugs shall not be deemed, in and of itself, to constitute a mental disability.

(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, or age.

(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 an individual's ability to participate in major life activities.

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

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

(4) Being regarded 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).

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

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

(m) "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.

(n) "Religious creed," "religion," "religious observance," "religious belief," and "creed" include all aspects of religious belief, observance, and practice.

(o) "Sex" includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.

(p) "Undue hardship" means an action requiring significant difficulty or expense, when considered in light of all 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 or 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.

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).

SEC. 22. 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, familial status, or age which impair the rights of persons in such 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 such 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. 23. 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, or sex 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) Nothing in this part shall 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 which would not endanger his or her health or safety or the health and safety of others even with reasonable accommodations.

(2) Nothing in this part shall 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 which 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 which 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 either (i) 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, or (ii) 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.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex 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, or sex 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, or sex of the person discriminated against.

(d) For any employer or employment agency, unless specifically acting in accordance with federal equal employment opportunity guidelines and 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, marital status, or sex, or any intent to make any such limitation, specification or discrimination. Except as provided in the Americans with Disabilities Act of 1990 (Public Law 101-336) and the regulations adopted pursuant thereto, nothing in this subdivision shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, or request for information regarding, the physical fitness, medical condition, physical condition or medical history of applicants if that inquiry or request for information is directly related and pertinent to the position the applicant is applying for or directly related to a determination of whether the applicant would endanger his or her health or the safety or health and safety of others.

(e) 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 which prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(f) 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.

(g) 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.

(h) 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, or age, to harass an employee or applicant. Harassment of an employee or applicant 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 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. The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment. For purposes of this subdivision only, "employer" means any person regularly employing one or more persons, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision thereof, and cities. However, "employer" does not include a religious association or corporation not organized for private profit. For other types of discrimination as enumerated in subdivision (a), an employer remains as defined in subdivision (c) of Section 12926. Nothing contained in this subdivision shall be construed to apply the definition of employer found in this subdivision to subdivision (a).

(i) 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.

(j) 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 which 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 such as a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

(k) 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.

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

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

(2) Commencing July 26, 1994, for all other employers specified in paragraph (2) of subdivision (c) of Section 12926.

SEC. 23.1. 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, or sex 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) Nothing in this part shall 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 and safety of others even with reasonable accommodations.

(2) Nothing in this part shall 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 which 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 which 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.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex 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, or sex 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, or sex of the person discriminated against.

(d) For any employer or employment agency, unless specifically acting in accordance with federal equal employment opportunity guidelines and 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, marital status, or sex, or any intent to make any such limitation, specification or discrimination. Except as provided in the Americans with Disabilities Act of 1990 (Public Law 101-336) and the regulations adopted pursuant thereto, nothing in this subdivision shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, or a request for information regarding, the physical fitness, medical condition, physical condition or medical history of applicants if that inquiry or request for information is directly related and pertinent to the position the applicant is applying for or directly related to a determination of whether the applicant would endanger his or her health or safety or the health or safety of others.

(e) 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 which prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(f) 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.

(g) 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.

(h) (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, or age, to harass an employee or applicant. Harassment of an employee or applicant 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 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) This subdivision is declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision thereof, and cities.

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

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

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

(i) 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.

(j) 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 which 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 such as a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

(k) 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.

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

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

(2) Commencing July 26, 1994, for all other employers specified in paragraph (2) of the subdivision of Section 12926 which defines "employer."

SEC. 23.2. 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, or sex 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) Nothing in this part shall 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 which would not endanger his or her health or safety or the health and safety of others even with reasonable accommodations.

(2) Nothing in this part shall 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 which 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 which 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 either (i) 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, or (ii) 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.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex 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, or sex 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, or sex of the person discriminated against.

(d) For any employer or employment agency, unless specifically acting in accordance with federal equal employment opportunity guidelines and 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, marital status, or sex, or any intent to make any such limitation, specification or discrimination. Except as provided in the Americans with Disabilities Act of 1990 (Public Law 101-336) and the regulations adopted pursuant thereto, nothing in this subdivision shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, or a request for information regarding, the physical fitness, medical condition, physical condition or medical history of applicants if that inquiry or request for information is directly related and pertinent to the position the applicant is applying for or directly related to a determination of whether the applicant would endanger his or her health or safety or the health or safety of others.

(e) 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 which prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(f) 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.

(g) 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.

(h) 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, or age, to harass an employee or applicant. Harassment of an employee or applicant 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 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. For purposes of this section, hostile work environment sexual harassment is established where there is unwelcome sexual conduct that a reasonable person of the same gender as the complainant would consider sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment. The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment and the standard provided for the establishment of hostile work environment sexual harassment. For purposes of this subdivision only, "employer" means any person regularly employing one or more persons, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision thereof, and cities. However, "employer" does not include a religious association or corporation not organized for private profit. For other types of discrimination as enumerated in

subdivision (a), an employer remains as defined in subdivision (c) of Section 12926. Nothing contained in this subdivision shall be construed to apply the definition of employer found in this subdivision to subdivision (a).

(i) 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.

(j) 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 which 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 such as a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

(k) 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.

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

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

(2) Commencing July 26, 1994, for all other employers specified in paragraph (2) of the subdivision of Section 12926 which defines "employer."

SEC. 23.3. 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, or sex 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) Nothing in this part shall 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 and safety of others even with reasonable accommodations.

(2) Nothing in this part shall 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 which 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 which 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.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex 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, or sex 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, or sex of the person discriminated against.

(d) For any employer or employment agency, unless specifically acting in accordance with federal equal employment opportunity guidelines and 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, marital status, or sex, or any intent to make any such limitation, specification or discrimination. Except as provided in the Americans with Disabilities Act of 1990 (Public Law 101-336) and the regulations adopted pursuant thereto, nothing in this subdivision shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, or a request for information regarding, the physical fitness, medical condition, physical condition or medical history of applicants if that inquiry or request for information is directly related and pertinent to the position the applicant is applying for or directly related to a determination of whether the applicant would endanger his or her health or safety or the health or safety of others.

(e) 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 which prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(f) 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.

(g) 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.

(h) (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, or age, to harass an employee or applicant. Harassment of an employee or applicant 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 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. For purposes of this section, hostile work environment sexual harassment is established where there is unwelcome sexual conduct that a reasonable person of the same gender as the complainant would consider sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment.

(2) This subdivision is declaratory of existing law, except for the new duties imposed on employers with regard to harassment and the standard provided for the establishment of hostile work environment sexual harassment.

(3) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision thereof, and cities.

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

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

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

(i) 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.

(j) 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 which 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 such as a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

(k) 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.

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

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

(2) Commencing July 26, 1994, for all other employers specified in paragraph (2) of the subdivision of Section 12926 which defines "employer."

SEC. 23.5. Section 12940.3 is added to the Government Code, to read:

12940.3. Prior to January 1, 1996, a study or survey of the costs, including litigation and reasonable accommodation expenses and other impacts on California employers of 15 or more employees, resulting from compliance with Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336), shall be undertaken jointly by the California Chamber of Commerce, the Department of Fair Employment and Housing, Protection and Advocacy, Inc., and the State Department of Rehabilitation. The study shall also include an analysis of the benefits of the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336) to persons with disabilities. The results of the study shall be submitted to the Commission on Special Education for their review and recommendations. The study shall provide a basis for a recommendation to the Legislature and the Governor concerning whether the hardships imposed upon businesses outweigh the benefits to persons with disabilities when the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336) are extended to California employers of 5 to 14, inclusive, employees by amending the Fair Employment and Housing Act to include people with mental disabilities as a protected class. In conducting the study and making a recommendation, the parties shall consider whether the additional requirements or consequences of being

subject to the additional requirements will impose a significant hardship on employers of 5 to 14, inclusive, employees.

It is the intent to the Legislature that if, at the conclusion of the study and report to the Legislature, it is determined that employers of between 5 and 14 employees would not have a significant hardship in implementing the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336), legislation should be introduced to require that employers with between 5 and 14 employees are covered by the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336).

The Legislature intends that all employers, including employers of 5 to 14, inclusive, employees, voluntarily comply with the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336) so that persons with mental disabilities can participate fully in the employment opportunities provided to all Californians. However, it is the intent of the Legislature that existing employment discrimination provisions covering employers of 5 to 14, inclusive, employees shall not be altered by amendments to this part that become effective on January 1, 1993.

SEC. 24. 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 which has an adverse impact on any class by virtue of its race, creed, color, national origin or ancestry, sex, age, medical condition, or physical disability, mental disability, unless such 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 such 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 such examination or by a license issued in reliance on such 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, or age, 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 such 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 such applications.

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

SEC. 25. Section 12993 of the Government Code is amended to read:

12993. (a) The provisions of this part shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this part shall be deemed to repeal any of the provisions of the Civil Rights Law or of any

other law of this state relating to discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age.

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

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

SEC. 25.1. Section 12993 of the Government Code is amended to read:

12993. (a) The provisions of this part shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this part shall be deemed to repeal any of the provisions of the Civil Rights Law or of any other law of this state relating to discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age.

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

(c) While it is the intention of the Legislature to occupy the field of regulation of discrimination in employment and housing encompassed by the provisions of this part, exclusive of all other laws banning discrimination in employment and housing by any city, city and county, county, or other political subdivision of the state, nothing contained in this part shall be construed, in any manner or way, to limit or restrict the application of Section 51 or 51.7 of the Civil Code.

SEC. 25.2. Section 12993 of the Government Code is amended to read:

12993. (a) This part shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this part shall be deemed to repeal any of the provisions of the Civil Rights Law or of any other law of this state relating to discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age.

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

(c) While it is the intention of the Legislature to occupy the field of regulation of discrimination in employment and housing encompassed by the provisions of this part, exclusive of all other laws banning discrimination in employment and housing by any city, city and county, county, or other political subdivision of the state, nothing contained in this part shall be construed, in any manner or way, to limit or restrict the application of Section 51 of the Civil Code or to prohibit a city, city and county, county, or other political subdivision of this state from providing or maintaining greater protections for the classes of persons protected by the provisions of this part covering housing discrimination.

(d) This part shall be constructed to supplement other state and local fair housing laws.

SEC. 25.3. Section 12993 of the Government Code is amended to read:

12993. (a) This part shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this part shall be deemed to repeal any of the provisions of the Civil Rights Law or of any other law of this state relating to discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age.

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

(c) While it is the intention of the Legislature to occupy the field of regulation of discrimination in employment and housing encompassed by the provisions of this part, exclusive of all other laws banning discrimination in employment and housing by any city, city and county, county, or other political subdivision of the state, nothing contained in this part shall be construed, in any manner or way, to limit or restrict the application of Section 51 or 51.7 of the Civil Code or to prohibit a city, city and county, county, or other political subdivision of this state from providing or maintaining greater protections for the classes of persons protected by the provisions of this part covering housing discrimination.

(d) This part shall be construed to supplement other state and local fair housing laws.

SEC. 26. Section 12994 of the Government Code is repealed.

SEC. 27. Section 19230 of the Government Code is amended to read:

19230. The Legislature hereby declares that:

(a) It is the policy of this state to encourage and enable individuals with a disability to participate fully in the social and economic life of the state and to engage in remunerative employment.

(b) It is the policy of this state that qualified individuals with a disability shall be employed in the state service, the service of the political subdivisions of the state, in public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the nondisabled, unless it is shown that the particular disability is job related.

(c) It is the policy of this state that a department, agency, or commission shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee who is an individual with a disability, unless the hiring authority can demonstrate that the accommodation would impose an undue hardship on the operation of its program. A department shall not deny any employment opportunity to a qualified applicant or employee who is an individual with a disability if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the applicant or employee.

SEC. 28. Section 19231 of the Government Code is amended to read:

19231. (a) As used in this article, the following definitions apply:

(1) "Individual with a disability" means any individual who (A) has a physical or mental impairment which substantially limits one or more of that individual's major life activities, (B) has a record of the impairment, or (C) is regarded as having such an impairment.

An individual with a disability is "substantially limited" if he or she is likely to experience difficulty in securing, retaining, or advancing in employment because of a disability.

(2) "Reasonable accommodation" means both of the following:

(A) Making facilities used by employees readily accessible to and usable by disabled persons.

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

(b) Undue hardship on the operation of a department's program shall be judged on all of the following:

(1) The overall size of the department's program with respect to the number of employees, the number and type of facilities, and the size of the department's budget.

(2) The type of departmental operation, including composition and structure of the department work force.

(3) The nature and cost of the accommodation needed.

SEC. 29. Section 19232 of the Government Code is amended to read:

19232. Each state agency shall be responsible for establishing an effective affirmative action program to ensure individuals with a disability, who are capable of remunerative employment, access to positions in state service on an equal and competitive basis with the general population.

Each state agency shall develop and implement an affirmative action employment plan for individuals with a disability, which shall include goals and timetables. These goals and timetables shall be set annually for disabilities identified pursuant to guidelines established by the State Personnel Board, and shall be submitted to the board no later than June 1 of each year beginning in 1978, for review and approval or modification. Goals and timetables shall be made available to the public upon request.

SEC. 30. Section 19233 of the Government Code is amended to read:

19233. The State Personnel Board shall be responsible for the following:

(a) Outline specific actions to improve the representation of individuals with a disability in the state work force and to ensure equal and fair employment practices for employees who are individuals with a disability.

(b) Survey the number of individuals with a disability in each department by at least job category and salary range for the purpose of developing goals and timetables pursuant to Section 19232 and compare those numbers with the number of individuals with a disability in the work force.

(c) Establish guidelines for state agencies and departments to set goals and timetables to improve the representation of individuals with a disability in the state work force. Goals and timetables shall be set by at least job category.

SEC. 31. Section 19234 of the Government Code is amended to read:

19234. Each state agency shall annually review its hiring activities designed to achieve the employment objectives established pursuant to subdivision (c) of Section 19233 to determine if any category of individuals with a disability have been disproportionately excluded on a non-job-related basis from employment. If any category has been so excluded, the agency shall correct that underrepresentation.

SEC. 32. Section 19235 of the Government Code is amended to read:

19235. Each state agency shall establish a committee of employees who are individuals with a disability to advise the head of the agency on matters relating to the formulation and implementation of the plan to overcome and correct any underrepresentation determined pursuant to Section 19234.

SEC. 33. Section 19237 of the Government Code is amended to read:

19237. On or before November 15 of each year, beginning in 1978, the State Personnel Board shall report to the Governor and the Legislature on the current activity, future plans, and past accomplishments of the overall employment program for individuals with a disability in state government, including an evaluation of the achievement of annual employment objectives.

SEC. 34. Section 19702 of the Government Code is amended to read:

19702. (a) A person shall not be discriminated against under this part because of sex, race, religious creed, color, national origin, ancestry, marital status, physical disability, or mental disability. A person shall not be retaliated against because he or she has opposed any practice made an unlawful employment practice, or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. For purposes of this article, "discrimination" includes harassment. This subdivision is declaratory of existing law.

(b) As used in this section, "physical disability" includes, but is not limited to, impairment of sight, hearing, or speech, or impairment of physical ability because of amputation or loss of function or coordination, or any other health impairment which requires special education or related services.

(c) As used in this section, "mental disability" includes, but is not limited to, any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(d) Notwithstanding subdivisions (b) and (c), 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 (b) or (c), then that broader protection shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (b) and (c). The definitions of subdivisions (b) and (c) shall not be deemed to refer to or include conditions excluded from the federal definition of "disability" pursuant to Section 511 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12211).

(e) If the board finds that a person has engaged in discrimination under this part, and it appears that this practice consisted of acts described in Section 243.4, 261, 286, 288, 288a, or 289 of the Penal Code, the board, with the consent of the complainant, shall provide the local district attorney's office with a copy of its decision and order.

(f) If the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement or upgrading of employees, with or without backpay, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order shall include a requirement of reporting the manner of compliance.

(g) Any person claiming discrimination within the state civil service may submit a complaint which shall be in writing and set forth the particulars of the alleged discrimination, the name of the appointing authority, the persons alleged to have committed the unlawful discrimination, and any other information that may be required by the board. The complaint shall be filed with the appointing authority or, in accordance with board rules, with the board itself.

(h) Complaints shall be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this section, except that this period may be extended for not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in adverse actions or rejections on probation shall be filed in accordance with Sections 19175 and 19575.

(i) When an employee of the appointing authority refuses, or threatens to refuse, to cooperate in the investigation of a complaint of discrimination, the appointing authority may seek assistance from the board. The board may provide for direct investigation or hearing of the complaint, the use of subpoenas, or any other action which will effect the purposes of this section.

SEC. 35. Section 19952 of the Health and Safety Code is amended to read:

19952. (a) Any person, or public or private firm, organization, or corporation, who owns or manages places of public amusement and resort including theaters, concert halls, and stadiums shall provide seating or accommodations for physically disabled persons in a variety of locations within the facility, to the extent that such variety can be provided while meeting fire and panic safety requirements of the State Fire Marshal, so as to provide such persons a choice of admission prices otherwise available to members of the general public.

(b) Readily removable seats may be installed in wheelchair spaces when the spaces are not required to accommodate wheelchair users.

(c) The requirements of this section shall apply with respect to publicly and privately owned facilities or structures for the purposes specified in subdivision (a) for which a building permit or a building plan for new construction has been issued on or after January 1, 1985.

(d) In no case shall this section be construed to prescribe a lesser standard of accessibility or usability than provided by regulations of the federal Architectural and Transportation Barriers Compliance Board adopted to implement the Americans with Disabilities Act of 1990 (Public Law 101-336).

SEC. 36. Section 1735 of the Labor Code is amended to read:

1735. No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter.

SEC. 37. Section 365.5 of the Penal Code is amended to read:

365.5. (a) Any blind person, deaf person, or physically disabled person who is a passenger on any common carrier, airplane, motor vehicle, railway train, motorbus, streetcar, boat, or any other public conveyance or mode of transportation operating within this state, shall be entitled to have with him or her a specially trained guide dog, signal dog, or service dog.

(b) No blind person, deaf person, or physically disabled person and his or her specially trained guide dog, signal dog, or service dog shall be denied admittance to hotels, restaurants, lodging places, places of public accommodation, amusement, or resort or other places to which the general public is invited within this state because of that guide dog, signal dog, or service dog.

(c) Any person, firm, association, or corporation, or the agent of any person, firm, association, or corporation, who prevents a blind person, deaf person, or physically disabled person from exercising the rights specified in this section is guilty of an infraction, punishable by a fine not exceeding two hundred fifty dollars (\$250).

(d) As used in this section, "guide dog" means any guide dog or seeing-eye dog which was trained by a person licensed under Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code or which meets the definitional criteria under federal regulations adopted to implement Title III of the Americans with Disabilities Act of 1990 (Public Law 101-336).

(e) As used in this section, "signal dog" means any dog trained to alert a deaf person, or a person whose hearing is impaired, to intruders or sounds.

(f) As used in this section "service dog" means any dog individually trained to do work or perform tasks to meet the requirements of a physically disabled person, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items.

(g) Nothing in this section is intended to affect any civil remedies available for a violation of this section.

SEC. 38. Section 2881 of the Public Utilities Code is amended to read:

2881. (a) The commission shall design and implement a program whereby each telephone corporation shall provide a telecommunications device capable of servicing the needs of individuals who are deaf or hearing impaired, together with a single party line, at no charge additional to the basic exchange rate, to any subscriber who is certified as an individual who is deaf or hearing impaired by a licensed physician, audiologist, or a qualified state agency and to any subscriber which is an organization representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (e).

(b) The commission shall also design and implement a program whereby each telephone corporation shall provide a dual-party relay system, using third-party intervention to connect individuals who are deaf or hearing impaired and offices of organizations representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (e), with persons of normal hearing by way of intercommunications devices for individuals who are deaf or hearing impaired and the telephone system, making available reasonable access of all phases of public telephone service to telephone subscribers who are deaf or hearing impaired. In order to make a dual-party relay system which will meet the requirements of individuals who are deaf or hearing impaired available at a reasonable cost, the commission shall initiate an investigation, conduct public hearings to determine the most cost-effective method of providing dual-party relay service to the deaf or hearing impaired when using a telecommunications device, and solicit the advice, counsel, and physical assistance of statewide nonprofit consumer organizations of the deaf, during the development and implementation of the system. The commission shall phase in this program, on a geographical basis, over a three-year period ending on January 1, 1987. The commission shall apply for certification of this program under rules adopted by the Federal Communications Commission pursuant to Section 401 of the Americans with Disabilities Act of 1990 (Public Law 101-336).

(c) The commission shall also design and implement a program whereby specialized or supplemental telephone communications equipment may be provided to subscribers who are certified to be disabled at no charge additional to the basic exchange rate. The certification, including a statement of medical need for specialized telephone communications equipment, shall be provided by a licensed physician and surgeon acting within the scope of his or her license or by a qualified state agency, as determined by the commission. The commission shall, in this connection, study the feasibility of, and implement if determined to be feasible, personal income criteria, in addition to the medical certification of disability, for determining a subscriber's eligibility under this subdivision.

(d) The commission shall establish a rate recovery mechanism through a surcharge not to exceed one-half of 1 percent uniformly applied to a subscriber's intrastate telephone service, other than one-way radio paging service and universal telephone service, both within a service area and between service areas, to allow telephone corporations to recover costs as they are incurred under this section. The surcharge shall be in effect until January 1, 1995. The commission shall require that the programs implemented under this section be identified on subscribers' bills as "communication devices funds for deaf and disabled" and shall establish a fund and require separate accounting for each of the programs implemented under this section.

(e) The commission shall determine and specify those statewide organizations representing the deaf or hearing impaired which shall receive a telecommunications device pursuant to subdivision (a) or a dual-party relay system pursuant to subdivision (b), or both, and in which offices the equipment shall be installed in the case of an organization having more than one office. The commission shall direct the telephone corporations subject to its jurisdiction to comply with its determinations and specifications in this regard.

(f) The commission shall annually review the surcharge level and the balances in the funds established pursuant to subdivision (d). Until January 1, 1995, the commission shall be authorized to make, within the limits set by subdivision (d), any necessary adjustments to the surcharge to ensure that the programs supported thereby are adequately funded and that the fund balances are not excessive. A fund balance which is projected to exceed six months' worth of projected expenses at the end of the fiscal year is excessive.

(g) The commission shall prepare and submit to the Legislature, on or before December 31, 1988, and annually thereafter, a report on the fiscal status of the programs established and funded pursuant to this section and Sections 2881.1 and 2881.2. The report shall include a statement of the surcharge level established pursuant to subdivision (d) and revenues produced by the surcharge, an accounting of program expenses, and an evaluation of options for controlling those expenses and increasing program efficiency, including, but not limited to, all of the following proposals:

- (1) The establishment of a means test for persons to qualify for program equipment or free or reduced charges for the use of telecommunication services.
- (2) If and to the extent not prohibited under Section 401 of the Americans with Disabilities Act of 1990 (Public Law 101-336), the imposition of limits or other restrictions on maximum usage levels for the relay service, which shall include the development of a program to provide basic communications requirements to all relay users at discounted rates, including discounted toll call rates, and, for usage in excess of those basic requirements, at rates which recover the full costs of service.
- (3) More efficient means for obtaining and distributing equipment to qualified subscribers.
- (4) The establishment of quality standards for increasing the efficiency of the relay system.

SEC. 39. Section 2881.2 is added to the Public Utilities Code, to read:

2881.2. (a) The commission shall conduct a one-time study to determine whether the number and location of public pay telephones equipped with telecommunications devices capable of servicing the needs of individuals who are deaf, hearing impaired, or speech impaired, as required under the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted thereunder, are adequate to meet the needs of individuals who are deaf, severely hearing impaired, or speech impaired. The commission shall include its findings in the report required by subdivision (g) of Section 2881 to be submitted to the Legislature on or before December 31, 1993.

(b) The commission shall study the feasibility of reasonable toll call discounts for public pay telephone calls made using telecommunications devices capable of servicing the needs of individuals who are deaf, severely

hearing impaired, or speech impaired and shall include its findings in the report required by subdivision (g) of Section 2881 to be submitted to the Legislature on or before December 31, 1993.

SEC. 40. Section 99155.5 of the Public Utilities Code is amended to read:

99155.5. (a) The Legislature intends that dial-a-ride and paratransit services be accessible to handicapped persons, as defined in Section 99206.5. It is intended that transportation service be provided for employment, education, medical, and personal reasons. Transportation for individuals with disabilities is a necessity, and allows these persons to fully participate in our society.

The Legislature finds and declares that the term "paratransit," as used in the Americans with Disabilities Act of 1990 (Public Law 101-336), refers to transportation services with specific criteria of quality and quantity, and which are required to be made available to limited classes of persons based on eligibility categories; this is often referred to as "ADA paratransit" or "complementary paratransit." The Legislature finds and declares that the terms "paratransit" and "dial-a-ride," as used in the laws of this state, apply to a broader range of transportation services and that not all individuals with disabilities under the laws of this state are eligible for "ADA paratransit" under the federal law.

(b) Each transit operator, profit or nonprofit, which provides, or contracts for the provision of, dial-a-ride or paratransit service for individuals with disabilities and which receives public funding pursuant to the Mills-Alquist-Deddeh Act (Chapter 4 (commencing with Section 99200)) for that service shall provide the service without regard to either of the following:

(1) Whether the person is a member of a household which owns a motor vehicle.

(2) The place of residence of the person who requests transportation service within the service area of the provider. To the extent that they are eligible for the specified service requested, all persons requesting transportation service in the service area of the provider shall be provided service on the same terms and at the same price that service is provided to other persons residing within the service area of the provider.

(c) Subdivision (b) does not preclude a provider from offering a subscription service, and does not require a reduction in the amount the provider charges other public or private agencies.

(d) Except as required by the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant thereto or by higher standards prescribed by the laws of this state, nothing in this section requires any transit operator which provides service to individuals with disabilities in a manner consistent with subdivision (b) to make those services available outside the operator's established operating service area, or requires the operator to make the presentation of identification a condition to using the service.

(e) A transit operator shall honor any current identification card which is valid for the type of transportation service or discount requested and which has been issued to an individual with disabilities by another transit operator.

(f) Any person who believes an operator has violated Section 99155 or 99155.5 may file a report of the alleged violation with the transportation planning agency or county transportation commission. Any individual with disabilities may request the Attorney General to resolve any dispute as to compliance with Section 99155 or this section.

SEC. 41. Section 2557 of the Streets and Highways Code is amended to read:

2557. (a) Except as provided in subdivisions (c) and (d), the moneys received by each authority pursuant to subdivision (b) of Section 9250.10 of the Vehicle Code shall be used for the implementation, maintenance, and operation of a motorist aid system of call boxes, including the lease or lease-purchase of facilities and equipment for the system, on the portions of the California Freeway and Expressway System and a county expressway system, and on state highway routes that connect segments of these systems, which are located within the county in which the authority is established and over which the Department of the California Highway Patrol or an agency designated by that department has law enforcement responsibility. The Department of Transportation and the Department of the California Highway Patrol shall each review and approve plans for implementation of a motorist aid system proposed for any state highway route and shall be reimbursed by the service authority for all costs incurred.

(b) An authority or any other public entity may construct and maintain, and lease or lease-purchase on terms and conditions it deems appropriate, the facilities of a motorist aid system or it may contract with a private person or entity to do so.

(c) If leases or lease-purchase agreements are entered into pursuant to subdivision (a), or if revenue bonds are issued and sold pursuant to Section 2558, the moneys received by each authority pursuant to subdivision (b) of Section 9250.10 of the Vehicle Code shall be used to the extent necessary to make lease payments or to pay the principal of, and interest on, the amount of bonded indebtedness outstanding, as the case may be. Facilities and equipment acquired through the expenditure of proceeds from the sale of those bonds shall have a useful life at least equal to the term of the bonds.

(d) (1) Any money received by an authority pursuant to subdivision (b) of Section 9250.10 of the Vehicle Code which exceeds the amount needed for full implementation and ongoing costs to maintain and operate the motorist aid system of call boxes, installed pursuant to subdivision (a), may be used for purposes of paragraph (2) and for additional motorist aid services or support, including, but not limited to, the following safety-related projects:

(A) Changeable message signs.

(B) Lighting for call boxes.

(C) Support for traffic operations centers.

(D) Contracting for removal of disabled vehicles from the traveled portion of the right-of-way.

(2) Any amendment to an existing plan for a motorist aid system adopted by an authority for any state highway route shall, prior to implementation, be submitted to the Department of Transportation and the Department of the California Highway Patrol for review and approval and shall not be implemented until so reviewed and approved. The authority shall reimburse each department for the costs of that review.

(e) A motorist aid system constructed, maintained, or operated pursuant to this section shall meet the applicable standards of Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant thereto.

SEC. 42. Section 336 of the Vehicle Code is amended to read:

336. "General public paratransit vehicle" means any motor vehicle designed for carrying no more than 19 persons and the driver, and which provides local transportation to the general public under the exclusive jurisdiction of a publicly owned and operated transit system through one of the following modes: dial-a-ride, subscription service, or route-deviated bus service. Vehicles used in the exclusive transportation of handicapped persons as defined in Section 99206.5 of the Public Utilities Code, or of persons 55 years of age or older, including any persons necessary to provide assistance to these passengers, are not general public paratransit vehicles.

However, transportation of attendants, companions, or both traveling together with those individuals with disabilities who are determined to be eligible for complementary paratransit services in accordance with Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant thereto, shall not be sufficient to qualify a vehicle as a general public paratransit vehicle.

SEC. 43. Notwithstanding Section 17610 of the Government Code, 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 44. (a) Section 21.1 of this bill incorporates amendments to Section 12926 of the Government Code proposed by both this bill and AB 311. It shall only become operative if (1) both bills are enacted and become effective January 1, 1993, (2) each bill amends Section 12926 of the Government Code, and (3) AB 1286 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 311, in which case Sections 21, 21.2, and 21.3 of this bill shall not become operative.

(b) Section 21.2 of this bill incorporates amendments to Section 12926 of the Government Code proposed by both this bill and AB 1286. It shall only become operative if (1) both bills are enacted and become effective January 1, 1993, (2) each bill amends Section 12926 of the Government Code, (3) AB 311 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1286, in which case Sections 21, 21.1, and 21.3 of this bill shall not become operative.

(c) Section 21.3 of this bill incorporates amendments to Section 12926 of the Government Code proposed by this bill, AB 311, and AB 1286. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1993, (2) all three bills amend Section 12926 of the Government Code, and (3) this bill is enacted after AB 311 and AB 1286, in which case Sections 21, 21.1, and 21.2 of this bill shall not become operative.

SEC. 45. (a) Section 23.1 of this bill incorporates amendments to Section 12940 of the Government Code proposed by both this bill and AB 1286. It shall only become operative if (1) both bills are enacted and become effective January 1, 1993, (2) each bill amends Section 12940 of the Government Code, and (3) AB 2265 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1286, in which case Sections 23, 23.2, and 23.3 of this bill shall not become operative.

(b) Section 23.2 of this bill incorporates amendments to Section 12940 of the Government Code proposed by both this bill and AB 2265. It shall only become operative if (1) both bills are enacted and become effective January 1, 1993, (2) each bill amends Section 12940 of the Government Code, (3) AB 1286 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2265 in which case Sections 23, 23.1, and 23.3 of this bill shall not become operative.

(c) Section 23.3 of this bill incorporates amendments to Section 12940 of the Government Code proposed by this bill, AB 1286, and AB 2265. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1993, (2) all three bills amend Section 12940 of the Government Code, and (3) this bill is enacted after AB 1286 and AB 2265, in which case Sections 23, 23.1, and 23.2 of this bill shall not become operative.

SEC. 46. (a) Section 25.1 of this bill incorporates amendments to Section 12993 of the Government Code proposed by both this bill and AB 311. It shall only become operative if (1) both bills are enacted and become effective January 1, 1993, (2) each bill amends Section 12993 of the Government Code, and (3) AB 1178 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 311, in which case Sections 25, 25.2, and 25.3 of this bill shall not become operative.

(b) Section 25.2 of this bill incorporates amendments to Section 12993 of the Government Code proposed by both this bill and AB 1178. It shall only become operative if (1) both bills are enacted and become effective January 1, 1993, (2) each bill amends Section 12993 of the Government Code, (3) AB 311 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1178 in which case Sections 25, 25.1, and 25.3 of this bill shall not become operative.

(c) Section 25.3 of this bill incorporates amendments to Section 12993 of the Government Code proposed by this bill, AB 311, and AB 1178. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1993, (2) all three bills amend Section 12993 of the Government Code, and (3) this bill is enacted after AB 311 and AB 1178, in which case Sections 25, 25.1, and 25.2 of this bill shall not become operative.

EXHIBIT 3

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**Assembly Bill No. 2222**

CHAPTER 1049

An act to amend Sections 51, 51.5, and 54 of the Civil Code, and to amend Sections 12926, 12940, 12955.3, and 19231 of, and to add Section 12926.1 to, the Government Code, relating to civil rights.

[Filed with Secretary of State September 30, 2000. Approved by Governor September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2222, Kuehl. Civil rights: disability.

Under the California Fair Employment and Housing Act it is an unlawful employment practice for an employer or employment agency to refuse to hire or employ a person or otherwise discriminate because of specified personal characteristics, including a mental or physical disability or medical condition. The act defines mental disability for its purposes to include any mental or psychological disorder, as specified, and defines physical disability to include, among other things, any physiological disease, disorder, condition, disfigurement, or loss that affects specified body systems and limits an individual's ability to participate in major life activities. The act defines "medical condition" to include any health impairment related to or associated with a diagnosis of cancer for which a person has been rehabilitated or cured.

This bill would revise these definitions of mental and physical disability and medical condition. The bill would apply these revised definitions to provisions prohibiting discrimination in public accommodations, business transactions, access to public places, and employment in the state civil service system.

This bill would also make it an unlawful employment practice, with specified exceptions, for an employer or employment agency to make any medical, psychological, or disability-related inquiry of any job applicant or, with regard to an employee, to make such an inquiry unless it is job-related and consistent with business necessity. The bill would also make it an unlawful employment practice for an employer or other entity covered by the act to fail to engage in a timely, good faith, interactive process to determine effective reasonable accommodations, if any, at the request of an employee or applicant with a known disability.

Existing law requires state agencies to implement affirmative action employment programs for persons with disabilities and, with certain exceptions, declares it to be the policy of the state to make reasonable accommodation, as defined, to the known physical and mental limitations of an otherwise qualified applicant or employee who is an individual with a disability.

This bill would delete the definition of "reasonable accommodation" set forth in these provisions.

The bill would also make legislative findings and declarations.

This bill would incorporate the changes in Section 12926 of the Government Code proposed by both this bill and AB 2142, if this bill and AB 2142 are both chaptered and this bill is chaptered last. This bill would incorporate the changes in Section 12940 of the Government Code proposed by both this bill and AB 1856 if this bill and AB 1856 are both chaptered and this bill is chaptered last.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known and may be cited as the Prudence Kay Poppink Act.

SEC. 2. 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, or medical condition 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, or medical condition.

(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 Section 12926 of the Government Code.

(2) "Medical condition" has the same meaning as defined in subdivision (h) 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. 3. Section 51.5 of the Civil Code is amended to read:

51.5. (a) No business establishment of any kind whatsoever shall discriminate against, boycott or blacklist, or refuse to buy from, contract with, sell to, or trade with any person in this state because of the race, creed, religion, color, national origin, sex, disability, or medical condition of the person or of the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers, because the person is perceived to have one or more of those characteristics, or because the person is associated with a person who has, or is perceived to have, any of those characteristics.

(b) As used in this section, "person" includes any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company.

(c) This section shall not 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 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.

(d) For purposes of this section:

(1) "Disability" means any mental or physical disability as defined in Section 12926 of the Government Code.

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

SEC. 4. Section 54 of the Civil Code is amended to read:

54. (a) Individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places.

(b) For purposes of this section:

(1) "Disability" means any mental or physical disability as defined in Section 12926 of the Government Code.

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

(c) A violation of the right of an individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section.

SEC. 5. 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.

(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, and (5) the geographic separateness, administrative, or fiscal relationship of the facility or facilities.

SEC. 5.5. 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 P.L. 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, as defined in Section 422.76 of the Penal Code, except that the references in that definition to the "victim" and "defendant" shall, for purposes of this part, be deemed to refer respectively to the victim of a discriminatory act prohibited by this part and the person engaging in that prohibited conduct.

(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, and (5) the geographic separateness, administrative, or fiscal relationship of the facility or facilities.

SEC. 6. Section 12926.1 is added to the Government Code, to read:

12926.1. The Legislature finds and declares as follows:

(a) The law of this state in the area of disabilities provides protections independent from those in the federal Americans with Disabilities Act of 1990 (Public Law 101-336). Although the federal act provides a floor of protection, this state's law has always, even prior to passage of the federal act, afforded additional protections.

(b) The law of this state contains broad definitions of physical disability, mental disability, and medical condition. It is the intent of the Legislature that the definitions of physical disability and mental disability be construed so that applicants and employees are protected from discrimination due to an actual or perceived physical or mental impairment that is disabling, potentially disabling, or perceived as disabling or potentially disabling.

(c) Physical and mental disabilities include, but are not limited to, chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, clinical depression, bipolar disorder, multiple sclerosis, and heart disease. In addition, the Legislature has determined that the definitions of "physical disability" and "mental disability" under the law of this state require a "limitation" upon a major life activity, but do not require, as does the Americans with Disabilities Act of 1990, a "substantial limitation." This distinction is intended to result in broader coverage under the law of this state than under that federal act. Under the law of this state, whether a condition limits a major life activity shall be determined without respect to any mitigating measures, unless the mitigating measure itself limits a major life activity, regardless of federal law under the Americans with Disabilities Act of 1990. Further, under the law of this state, "working" is a major life activity, regardless of whether the actual or perceived working limitation implicates a particular employment or a class or broad range of employments.

(d) Notwithstanding any interpretation of law in *Cassista v. Community Foods* (1993) 5 Cal.4th 1050, the Legislature intends (1) for state law to be independent of the Americans with Disabilities Act of 1990, (2) to require a "limitation" rather than a "substantial limitation" of a major life activity, and (3) by enacting paragraph (4) of subdivision (i) and paragraph (4) of subdivision (k) of Section 12926, to provide protection when an individual is erroneously or mistakenly believed to have any physical or mental condition that limits a major life activity.

(e) The Legislature affirms the importance of the interactive process between the applicant or employee and the employer in determining a reasonable accommodation, as this requirement has been articulated by the Equal Employment Opportunity Commission in its interpretive guidance of the Americans with Disabilities Act of 1990.

SEC. 7. 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, 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.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, 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, 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, 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, or sexual orientation, or any intent to make any such limitation, specification or discrimination.

(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, 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 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) (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.

(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.

(4) 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. 7.5. 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, 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.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, 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, 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, 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, or sexual orientation, or any intent to make any such limitation, specification or discrimination.

(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, 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 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.

(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. 8. Section 12955.3 of the Government Code is amended to read:

12955.3. For purposes of this part, "disability" includes, but is not limited to, any physical or mental disability as defined in Section 12926.

SEC. 9. Section 19231 of the Government Code is amended to read:

19231. As used in this article, "individual with a disability" means any individual who has a physical or mental disability as defined in Section 12926.

SEC. 10. Section 5.5 of this bill incorporates amendments to Section 12926 of the Government Code proposed by both this bill and Assembly Bill 2142. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 12926 of the Government Code, and (3) this bill is enacted after Assembly Bill 2142, in which case Section 5 of this bill shall not become operative.

SEC. 11. Section 7.5 of this bill incorporates amendments to Section 12940 of the Government Code proposed by both this bill and Assembly Bill 1856. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 12940 of the Government Code, and (3) this bill is enacted after Assembly Bill 1856, in which case Section 7 of this bill shall not become operative.

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **B. (BRENNON) v. S.C. (WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT)**

Case Number: **S266254**

Lower Court Case Number: **A157026**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **jkim@legallaidatwork.org**
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Title(s) of papers e-served:

Filing Type	Document Title
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REQUEST FOR JUDICIAL NOTICE	REQUEST FOR JUDICIAL NOTICE AS PROPOSED AMICI CURIAE IN SUPPORT OF PLAINTIFF AND APPELLANT BRENNON B.; DECLARATION OF ALEXIS ALVAREZ; PROPOSED ORDER

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

9/15/2021

Date

/s/Jinny Kim

Signature

Kim, Jinny (208953)

Last Name, First Name (PNum)

Legal Aid At work

Law Firm