

ASSEMBLY BILL

No. 920

Introduced by Assembly Member Bryan
(Coauthor: Assembly Member Haney)

February 14, 2023

An act to amend Sections 11135 and 12926 of the Government Code, relating to discrimination.

LEGISLATIVE COUNSEL'S DIGEST

AB 920, as introduced, Bryan. Discrimination: housing status.

Existing law prohibits discrimination in any program or activity that is conducted, operated, or administered by the state, or by any state agency, that is funded directly by the state, or that receives any financial assistance from the state, based upon specified personal characteristics.

This bill would also prohibit discrimination based upon housing status, as defined.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 11135 of the Government Code is
2 amended to read:
3 11135. (a) No person in the State of California shall, on the
4 basis of sex, race, color, religion, ancestry, national origin, ethnic
5 group identification, age, mental disability, physical disability,
6 medical condition, genetic information, marital status, *housing*
7 *status*, or sexual orientation, be unlawfully denied full and equal
8 access to the benefits of, or be unlawfully subjected to

1 discrimination under, any program or activity that is conducted,
2 operated, or administered by the state or by any state agency, is
3 funded directly by the state, or receives any financial assistance
4 from the state. Notwithstanding Section 11000, this section applies
5 to the California State University.

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

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

17 (d) The protected bases used in this section include a perception
18 that a person has any of those characteristics or that the person is
19 associated with a person who has, or is perceived to have, any of
20 those characteristics.

21 SEC. 2. Section 12926 of the Government Code is amended
22 to read:

23 12926. As used in this part in connection with unlawful
24 practices, unless a different meaning clearly appears from the
25 context:

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

33 (b) “Age” refers to the chronological age of any individual who
34 has reached a 40th birthday.

35 (c) Except as provided by Section 12926.05, “employee” does
36 not include any individual employed by that person’s parent,
37 spouse, or child or any individual employed under a special license
38 in a nonprofit sheltered workshop or rehabilitation facility.

39 (d) “Employer” includes any person regularly employing five
40 or more persons, or any person acting as an agent of an employer,

1 directly or indirectly, the state or any political or civil subdivision
2 of the state, and cities, except as follows:

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

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

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

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

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

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

19 (C) The function may be highly specialized, so that the
20 incumbent in the position is hired based on expertise or the ability
21 to perform a particular function.

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

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

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

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

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

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

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

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

33 (g) (1) “Genetic information” means, with respect to any
34 individual, information about any of the following:

35 (A) The individual’s genetic tests.

36 (B) The genetic tests of family members of the individual.

37 (C) The manifestation of a disease or disorder in family members
38 of the individual.

39 (2) “Genetic information” includes any request for, or receipt
40 of, genetic services, or participation in clinical research that

1 includes genetic services, by an individual or any family member
2 of the individual.

3 (3) “Genetic information” does not include information about
4 the sex or age of any individual.

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

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

11 (1) Any health impairment related to or associated with a
12 diagnosis of cancer or a record or history of cancer.

13 (2) Genetic characteristics. For purposes of this section, “genetic
14 characteristics” means either of the following:

15 (A) Any scientifically or medically identifiable gene or
16 chromosome, or combination or alteration thereof, that is known
17 to be a cause of a disease or disorder in a person or that person’s
18 offspring, or that is determined to be associated with a statistically
19 increased risk of development of a disease or disorder, and that is
20 presently not associated with any symptoms of any disease or
21 disorder.

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

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

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

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

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

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

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

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

9 (4) Being regarded or treated by the employer or other entity
10 covered by this part as having, or having had, any mental condition
11 that makes achievement of a major life activity difficult.

12 (5) Being regarded or treated by the employer or other entity
13 covered by this part as having, or having had, a mental or
14 psychological disorder or condition that has no present disabling
15 effect, but that may become a mental disability as described in
16 paragraph (1) or (2).

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

21 (k) “Veteran or military status” means a member or veteran of
22 the United States Armed Forces, United States Armed Forces
23 Reserve, the United States National Guard, and the California
24 National Guard.

25 (l) “On the bases enumerated in this part” means or refers to
26 discrimination on the basis of one or more of the following: race,
27 religious creed, color, national origin, ancestry, physical disability,
28 mental disability, medical condition, genetic information, marital
29 status, sex, age, sexual orientation, reproductive health
30 decisionmaking, or veteran or military status.

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

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

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

- 1 (B) Limits a major life activity. For purposes of this section:
- 2 (i) “Limits” shall be determined without regard to mitigating
- 3 measures such as medications, assistive devices, prosthetics, or
- 4 reasonable accommodations, unless the mitigating measure itself
- 5 limits a major life activity.
- 6 (ii) A physiological disease, disorder, condition, cosmetic
- 7 disfigurement, or anatomical loss limits a major life activity if it
- 8 makes the achievement of the major life activity difficult.
- 9 (iii) “Major life activities” shall be broadly construed and
- 10 includes physical, mental, and social activities and working.
- 11 (2) Any other health impairment not described in paragraph (1)
- 12 that requires special education or related services.
- 13 (3) Having a record or history of a disease, disorder, condition,
- 14 cosmetic disfigurement, anatomical loss, or health impairment
- 15 described in paragraph (1) or (2), which is known to the employer
- 16 or other entity covered by this part.
- 17 (4) Being regarded or treated by the employer or other entity
- 18 covered by this part as having, or having had, any physical
- 19 condition that makes achievement of a major life activity difficult.
- 20 (5) Being regarded or treated by the employer or other entity
- 21 covered by this part as having, or having had, a disease, disorder,
- 22 condition, cosmetic disfigurement, anatomical loss, or health
- 23 impairment that has no present disabling effect but may become
- 24 a physical disability as described in paragraph (1) or (2).
- 25 (6) “Physical disability” does not include sexual behavior
- 26 disorders, compulsive gambling, kleptomania, pyromania, or
- 27 psychoactive substance use disorders resulting from the current
- 28 unlawful use of controlled substances or other drugs.
- 29 (n) Notwithstanding subdivisions (j) and (m), if the definition
- 30 of “disability” used in the federal Americans with Disabilities Act
- 31 of 1990 (Public Law 101-336) would result in broader protection
- 32 of the civil rights of individuals with a mental disability or physical
- 33 disability, as defined in subdivision (j) or (m), or would include
- 34 any medical condition not included within those definitions, then
- 35 that broader protection or coverage shall be deemed incorporated
- 36 by reference into, and shall prevail over conflicting provisions of,
- 37 the definitions in subdivisions (j) and (m).
- 38 (o) “Race, religious creed, color, national origin, ancestry,
- 39 physical disability, mental disability, medical condition, genetic
- 40 information, marital status, sex, age, sexual orientation,

1 reproductive health decisionmaking, or veteran or military status”
2 includes a perception that the person has any of those
3 characteristics or that the person is associated with a person who
4 has, or is perceived to have, any of those characteristics.

5 (p) “Reasonable accommodation” may include either of the
6 following:

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

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

15 (q) “Religious creed,” “religion,” “religious observance,”
16 “religious belief,” and “creed” include all aspects of religious
17 belief, observance, and practice, including religious dress and
18 grooming practices. “Religious dress practice” shall be construed
19 broadly to include the wearing or carrying of religious clothing,
20 head or face coverings, jewelry, artifacts, and any other item that
21 is part of an individual observing a religious creed. “Religious
22 grooming practice” shall be construed broadly to include all forms
23 of head, facial, and body hair that are part of an individual
24 observing a religious creed.

25 (r) (1) “Sex” includes, but is not limited to, the following:

26 (A) Pregnancy or medical conditions related to pregnancy.

27 (B) Childbirth or medical conditions related to childbirth.

28 (C) Breastfeeding or medical conditions related to breastfeeding.

29 (2) “Sex” also includes, but is not limited to, a person’s gender.
30 “Gender” means sex, and includes a person’s gender identity and
31 gender expression. “Gender expression” means a person’s
32 gender-related appearance and behavior whether or not
33 stereotypically associated with the person’s assigned sex at birth.

34 (s) “Sexual orientation” means heterosexuality, homosexuality,
35 and bisexuality.

36 (t) “Supervisor” means any individual having the authority, in
37 the interest of the employer, to hire, transfer, suspend, lay off,
38 recall, promote, discharge, assign, reward, or discipline other
39 employees, or the responsibility to direct them, or to adjust their
40 grievances, or effectively to recommend that action, if, in

1 connection with the foregoing, the exercise of that authority is not
2 of a merely routine or clerical nature, but requires the use of
3 independent judgment.

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

7 (1) The nature and cost of the accommodation needed.

8 (2) The overall financial resources of the facilities involved in
9 the provision of the reasonable accommodations, the number of
10 persons employed at the facility, and the effect on expenses and
11 resources or the impact otherwise of these accommodations upon
12 the operation of the facility.

13 (3) The overall financial resources of the covered entity, the
14 overall size of the business of a covered entity with respect to the
15 number of employees, and the number, type, and location of its
16 facilities.

17 (4) The type of operations, including the composition, structure,
18 and functions of the workforce of the entity.

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

21 (v) “National origin” discrimination includes, but is not limited
22 to, discrimination on the basis of possessing a driver’s license or
23 identification card granted under Section 12801.9 of the Vehicle
24 Code.

25 (w) “Race” is inclusive of traits historically associated with
26 race, including, but not limited to, hair texture and protective
27 hairstyles.

28 (x) “Protective hairstyles” includes, but is not limited to, such
29 hairstyles as braids, locks, and twists.

30 (y) “Reproductive health decisionmaking” includes, but is not
31 limited to, a decision to use or access a particular drug, device,
32 product, or medical service for reproductive health. This
33 subdivision and other provisions in this part relating to
34 “reproductive health decisionmaking” shall not be construed to
35 mean that subdivision (r) of this section and other provisions in
36 this part related to “sex” do not include reproductive health
37 decisionmaking.

38 (z) “*Housing status*” refers to the status of experiencing
39 homelessness, as defined in paragraph (2) of subdivision (a) of
40 Section 50675.15 of the Health and Safety Code.

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- 2 REVISIONS:
- 3 Heading—Line 2.
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