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SB-1442 Discrimination: regulations and enforcement. (2015-2016)

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Senate Bill No. 1442

CHAPTER 870

An act to repeal Section 261 of the Education Code, and to amend Sections 11135, 11136, 11137, 11139, 12930, and 12935 of, to add Section 12957 to, to add Chapter 18 (commencing with Section 7400) and Chapter 18.1 (commencing with Section 7405) to Division 7 of Title 1 of, and to repeal Sections 11138, 11139.3, 11139.5, 11139.6, and 11139.7 of, the Government Code, relating to discrimination.

[Approved by Governor September 30, 2016. Filed with Secretary of State September 30, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1442, Liu. Discrimination: regulations and enforcement.

Existing law prohibits discrimination in employment, housing, and eligibility for government programs and benefits based upon specified personal characteristics. Under existing law, the Department of Fair Employment and Housing within the Business, Consumer Services, and Housing Agency is charged with enforcement of civil rights violations, including discrimination. Existing law requires the department and other state agencies that administer programs or activities funded by the state or that receive financial assistance from the state and that enter into contracts for services to be provided to the public, as specified, to promulgate regulations to prohibit discrimination.

This bill would reorganize various statutes regarding discrimination. The bill would also remove the requirement that those state agencies promulgate regulations to prohibit discrimination under these provisions and would require the investigation and enforcement of the above-described antidiscrimination provisions to be performed by the department. The bill would require that specified regulations implementing these provisions be transferred to the portion of the California Code of Regulations that is under the authority of the department and would authorize the department to add to, amend, or repeal the regulations, as necessary.

Existing law authorizes the provision of housing for homeless youth, as defined, and occupies the field of regulation of housing for homeless youth.

This bill would reorganize these provisions by making them part of the California Fair Employment and Housing Act. The bill would also make conforming changes.

This bill would incorporate additional changes to Section 12930 of the Government Code, proposed by AB 2707, to be operative only if AB 2707 and this bill are both chaptered and become effective on or before January 1, 2017, and this bill is chaptered last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 261 of the Education Code is repealed.

SEC. 2. Chapter 18 (commencing with Section 7400) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 18. Bidding and Outreach Programs

7400. (a) (1) The Legislature finds and declares that subdivision (a) of Section 31 of Article I of the California Constitution prohibits state and local government agencies from discriminating against or granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, and public contracting. The Legislature finds that this prohibition does not prevent governmental agencies from engaging in inclusive public sector outreach and recruitment programs that, as a component of general recruitment, may include, but not be limited to, focused outreach and recruitment of minority groups and women if any group is underrepresented in entry level positions of a public sector employer.

(2) The Legislature also finds and declares that increasing the number of businesses that participate in the bidding process in public contracting results in more vigorous competition, and thus assists state and local agencies in obtaining the desired quality of work at a lower cost.

(3) It is the intent of this section that all governmental agencies shall engage in general recruitment and outreach programs to all individuals, including persons who are economically disadvantaged.

(b) For purposes of this section, underrepresentation shall be determined by comparing the minority group or the number of women at the governmental agency with that group's representation in the current civilian labor force in the jurisdiction of the governmental agency.

(c) State government employment shall use current state civilian labor force data to implement this section.

(d) It is the intent of this section to allow public sector employers to conduct outreach efforts with a goal of supplementing word-of-mouth recruitment that should result in increasing diversity of the public sector workforce.

(e) The type of recruitment activities allowed would include, but not be limited to, placement of job announcements in the following media instruments:

(1) General circulation newspapers, general circulation publications, and general market radio and television stations, including electronic media.

(2) Local and regional community newspapers.

(3) Newspapers, publications, and radio and television stations that provide information in languages other than English and whose primary audience is residents of minority and low-income communities.

(4) Publications, including electronic media, that are distributed to the general market and to newspapers, publications, and radio and television stations whose primary audience is comprised of minority groups or women.

(5) Recruitment booths at job fairs or conferences oriented to both the general market and the economically disadvantaged as well as those events drawing a significant participation by minorities or women.

7401. (a) The Governor's Task Force on Diversity and Outreach, in its August 1, 2000, report, concluded that data on minority business participation is not currently available, and that lack of useful data on minority business participation in state contracting is an overarching issue to be addressed.

(b) In contracting for and procuring goods, services, information technology, construction, architecture, and engineering consulting, and other consulting services, state and local departments and agencies are authorized to engage in focused outreach activities in addition to general outreach, for purposes of increasing participation by California's small business sector and increasing diversity in the state's contracting and procurement activities.

(c) Outreach activities may include, but are not limited to, the following:

(1) Invitations to bid distributed by state and local departments and agencies to state and local small business and trade associations and chambers of commerce, including ethnic chambers of commerce, and other business and professional associations, including professional minority, women, and disabled veteran-owned businesses and professional groups and associations, as appropriate.

(2) Publication of advertising concerning state and local contracting and procurement opportunities in trade papers and other publications focusing on small business enterprises, including publications and newspapers in languages other than English

and those whose primary readership is minority, women, or disabled veteran-owned businesses.

(3) Outreach by small business advocates in each state or local government department or agency to state and local small business and trade associations and chambers of commerce, including ethnic chambers of commerce, and other business and professional associations, including professional minority, women, and disabled veteran-owned businesses and professional groups and associations, as appropriate.

SEC. 3. Chapter 18.1 (commencing with Section 7405) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 18.1. Electronic and Information Technology

7405. The Legislature finds and declares that the ability to utilize electronic or information technology is often an essential function for successful employment in the current work world.

(a) In order to improve accessibility of existing technology, and therefore increase the successful employment of individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, state governmental entities, in developing, procuring, maintaining, or using electronic or information technology, either indirectly or through the use of state funds by other entities, shall comply with the accessibility requirements of Section 508 of the federal Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations.

(b) Any entity that contracts with a state or local entity subject to Section 11135 for the provision of electronic or information technology or for the provision of related services shall agree to respond to, and resolve any complaint regarding accessibility of, its products or services that is brought to the attention of the entity.

SEC. 4. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. Notwithstanding Section 11000, this section applies to the California State University.

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

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

SEC. 5. Section 11136 of the Government Code is amended to read:

11136. Whenever a state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state has reasonable cause to believe that a contractor, grantee, or local agency has violated the provisions of Section 11135, Part 2.8 (commencing with Section 12900) of this code, Section 51, 51.5, 51.7, 54, 54.1, or 54.2 of the Civil Code, or any regulation adopted to implement these sections or Article 1 (commencing with Section 12960) of Chapter 7 of this code, the head of the state agency, or his or her designee, shall notify the contractor, grantee, or local agency of such violation and shall submit a complaint detailing the alleged violations to the Department of Fair Employment and Housing for investigation and determination pursuant to Article 1 (commencing with Section 12960) of Chapter 7 of this code.

SEC. 6. Section 11137 of the Government Code is amended to read:

11137. If it is determined that a contractor, grantee, or local agency has violated the provisions of this article, pursuant to the process described in Section 11136, the state agency that administers the program or activity involved shall take action to curtail state funding in whole or in part to such contractor, grantee, or local agency.

SEC. 7. Section 11138 of the Government Code is repealed.

SEC. 8. Section 11139 of the Government Code is amended to read:

11139. The prohibitions and sanctions imposed by this article are in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in a manner that would frustrate its purpose.

This article shall not be interpreted in a manner that would undermine lawful programs which benefit members of the protected bases described in Section 11135.

This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief, which shall be independent of any other rights and remedies.

SEC. 9. Section 11139.3 of the Government Code is repealed.

SEC. 10. Section 11139.5 of the Government Code is repealed.

SEC. 11. Section 11139.6 of the Government Code is repealed.

SEC. 12. Section 11139.7 of the Government Code is repealed.

SEC. 13. Section 12930 of the Government Code, as amended by Chapter 63 of the Statutes of 2016, is amended to read:

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

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

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

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

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

(e) To adopt, promulgate, amend, and rescind suitable procedural rules and regulations to carry out the investigation, prosecution, and dispute resolution functions and duties of the department pursuant to this part.

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

(2) To receive, investigate, conciliate, mediate, and prosecute complaints alleging a violation of Section 51, 51.5, 51.7, 54, 54.1, or 54.2 of the Civil Code. The remedies and procedures of this part shall be independent of any other remedy or procedure that might apply.

(3) To receive, investigate, conciliate, mediate, and prosecute complaints alleging, and to bring civil actions pursuant to Section 52.5 of the Civil Code for, a violation of Section 236.1 of the Penal Code. Damages awarded in any action brought by the department pursuant to Section 52.5 of the Civil Code shall be awarded to the person harmed by the violation of Section 236.1 of the Penal Code. Costs and attorney's fees awarded in any action brought by the department pursuant to Section 52.5 of the Civil Code shall be awarded to the department. The remedies and procedures of this part shall be independent of any other remedy or procedure that might apply.

(4) To receive, investigate, conciliate, mediate, and prosecute complaints alleging practices made unlawful pursuant to Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1, except for complaints relating to educational equity brought under Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code and investigated pursuant to the procedures set forth in Subchapter 5.1 of Title 5 of the California Code of Regulations, and not otherwise within the jurisdiction of the department.

(A) Nothing in this part prevents the director or his or her authorized representative, in his or her discretion, from making, signing, and filing a complaint pursuant to Section 12960 or 12961 alleging practices made unlawful under Section 11135.

(B) Remedies available to the department in conciliating, mediating, and prosecuting complaints alleging these practices are the same as those available to the department in conciliating, mediating, and prosecuting complaints alleging violations of Article 1 (commencing with Section 12940) of Chapter 6.

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

- (1) To issue subpoenas to require the attendance and testimony of witnesses and the production of books, records, documents, and physical materials.
- (2) To administer oaths, examine witnesses under oath and take evidence, and take depositions and affidavits.
- (3) To issue written interrogatories.
- (4) To request the production for inspection and copying of books, records, documents, and physical materials.
- (5) To petition the superior courts to compel the appearance and testimony of witnesses, the production of books, records, documents, and physical materials, and the answering of interrogatories.

(h) To bring civil actions pursuant to Section 12965 or 12981 and to prosecute those civil actions before state and federal trial courts.

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

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

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

(l) To conduct mediations at any time after a complaint is filed pursuant to Section 12960, 12961, or 12980. The department may end mediation at any time.

(m) The following shall apply with respect to any accusation pending before the former Fair Employment and Housing Commission on or after January 1, 2013:

(1) If an accusation issued under former Section 12965 includes a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or both, or if an accusation is amended for the purpose of adding a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or both, with the consent of the party accused of engaging in unlawful practices, the department may withdraw an accusation and bring a civil action in superior court.

(2) If an accusation was issued under former Section 12981, with the consent of the aggrieved party filing the complaint an aggrieved person on whose behalf a complaint is filed, or the party accused of engaging in unlawful practices, the department may withdraw the accusation and bring a civil action in superior court.

(3) Where removal to court is not feasible, the department shall retain the services of the Office of Administrative Hearings to adjudicate the administrative action pursuant to Sections 11370.3 and 11502.

(n) On any Section 1094.5 Code of Civil Procedure challenge to a decision of the former Fair Employment and Housing Commission pending on or after January 1, 2013, the director or his or her designee shall consult with the Attorney General regarding the defense of that writ petition.

SEC. 13.5. Section 12930 of the Government Code, as amended by Chapter 63 of the Statutes of 2016, is amended to read:

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

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

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

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

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

(e) To adopt, promulgate, amend, and rescind suitable procedural rules and regulations to carry out the investigation, prosecution, and dispute resolution functions and duties of the department pursuant to this part.

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

(2) To receive, investigate, conciliate, mediate, and prosecute complaints alleging a violation of Section 51, 51.5, 51.7, 51.14, 54, 54.1, or 54.2 of the Civil Code. The remedies and procedures of this part shall be independent of any other remedy or procedure that might apply.

(3) To receive, investigate, conciliate, mediate, and prosecute complaints alleging, and to bring civil actions pursuant to Section 52.5 of the Civil Code for, a violation of Section 236.1 of the Penal Code. Damages awarded in any action brought by the department pursuant to Section 52.5 of the Civil Code shall be awarded to the person harmed by the violation of Section 236.1 of the Penal Code. Costs and attorney's fees awarded in any action brought by the department pursuant to Section 52.5 of the Civil Code shall be awarded to the department. The remedies and procedures of this part shall be independent of any other remedy or procedure that might apply.

(4) To receive, investigate, conciliate, mediate, and prosecute complaints alleging practices made unlawful pursuant to Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1, except for complaints relating to educational equity brought under Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code and investigated pursuant to the procedures set forth in Subchapter 5.1 of Title 5 of the California Code of Regulations, and not otherwise within the jurisdiction of the department.

(A) Nothing in this part prevents the director or his or her authorized representative, in his or her discretion, from making, signing, and filing a complaint pursuant to Section 12960 or 12961 alleging practices made unlawful under Section 11135.

(B) Remedies available to the department in conciliating, mediating, and prosecuting complaints alleging these practices are the same as those available to the department in conciliating, mediating, and prosecuting complaints alleging violations of Article 1 (commencing with Section 12940) of Chapter 6.

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

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

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

(3) To issue written interrogatories.

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

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

(h) To bring civil actions pursuant to Section 12965 or 12981 and to prosecute those civil actions before state and federal trial courts.

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

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

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

(l) To conduct mediations at any time after a complaint is filed pursuant to Section 12960, 12961, or 12980. The department may end mediation at any time.

(m) The following shall apply with respect to any accusation pending before the former Fair Employment and Housing Commission on or after January 1, 2013:

(1) If an accusation issued under former Section 12965 includes a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or both, or if an accusation is amended for the purpose of adding a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or both, with the consent of the party accused of engaging in unlawful practices, the department may withdraw an accusation and bring a civil action in superior court.

(2) If an accusation was issued under former Section 12981, with the consent of the aggrieved party filing the complaint an aggrieved person on whose behalf a complaint is filed, or the party accused of engaging in unlawful practices, the department may withdraw the accusation and bring a civil action in superior court.

(3) Where removal to court is not feasible, the department shall retain the services of the Office of Administrative Hearings to adjudicate the administrative action pursuant to Sections 11370.3 and 11502.

(n) On any Section 1094.5 Code of Civil Procedure challenge to a decision of the former Fair Employment and Housing Commission pending on or after January 1, 2013, the director or his or her designee shall consult with the Attorney General regarding the defense of that writ petition.

SEC. 14. Section 12935 of the Government Code is amended to read:

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

(a) To adopt, promulgate, amend, and rescind suitable rules, regulations, and standards that do either of the following:

(1) Interpret, implement, and apply all provisions of this part, Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1 of Division 3 of Title 2 of this code, and Sections 51, 51.5, 51.7, 54, 54.1, and 54.2 of the Civil Code.

(A) As of January 1, 2017, Chapter 1 (commencing with Section 98000), Chapter 2 (commencing with Section 98100), and Chapter 3 (commencing with Section 98200) of Division 8 of Title 22 of the California Code of Regulations shall be transferred from the portion of the California Code of Regulations that is under the authority of the California Health and Human Services Agency to the portion of the California Code of Regulations that is under the authority of the department, and upon transfer shall be deemed adopted by the council.

(B) The council shall, within existing resources and pursuant to Chapter 3.5 (commencing with Section 11340), adopt additional regulations, as necessary, and amend or repeal, as necessary, regulations transferred to the department from the California Health and Human Services Agency relating to Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1.

(2) Carry out all other functions and duties of the council pursuant to this part.

(b) To meet at any place within the state and function in any office of the department.

(c) To create or provide technical assistance to any advisory agencies and conciliation councils, local or otherwise, as in its judgment will aid in effectuating the purposes of this part, and to empower them to study the problems of discrimination in all or specific fields of human relationships or in particular instances of employment discrimination on the bases enumerated in this part or in specific instances of housing discrimination on the bases enumerated in this part and to foster, through community effort or otherwise, good will, cooperation, and conciliation among the groups and elements of the population of the state and to make recommendations to the Fair Employment and Housing Council for the development of policies and procedures in general except for procedural rules and regulations that carry out the investigation, prosecution, and dispute resolution functions and duties of the department. These advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay.

(d) To hold hearings, issue publications, results of inquiries and research, and reports to the Governor and the Legislature that, in its judgment, will tend to aid in effectuating the purpose of this part, promote good will, cooperation and conciliation, and minimize or eliminate unlawful discrimination, or advance civil rights in the State of California.

SEC. 15. Section 12957 is added to the Government Code, to read:

12957. (a) It is the policy of this state and the purpose of this section to facilitate and support the development and operation of housing for homeless youth.

(b) The provision of housing for homeless youth is hereby authorized and shall not be considered unlawful age discrimination, notwithstanding any other provision of law, including, but not limited to, Sections 51, 51.2, and 51.10 of the Civil Code, Sections 11135, 12920, and 12955 of this code, Chapter 11.5 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code, and local housing or age discrimination ordinances.

(c) This section shall not be construed to permit discrimination against families with children.

(d) This section shall occupy the field of regulation of housing for homeless youth by any local public entity, including, but not limited to, a city, county, and city and county.

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

(1) "At risk of becoming homeless" means facing eviction or termination of one's current housing situation.

(2) "Homeless youth" means either of the following:

(A) A person who is not older than 24 years of age, and meets one of the following conditions:

(i) Is homeless or at risk of becoming homeless.

(ii) Is no longer eligible for foster care on the basis of age.

(iii) Has run away from home.

(B) A person who is younger than 18 years of age, who is emancipated pursuant to Part 6 (commencing with Section 7000) of Division 11 of the Family Code, and who is homeless or at risk of becoming homeless.

(3) "Housing for homeless youth" means emergency, transitional, or permanent housing tied to supportive services that assist homeless youth in stabilizing their lives and developing the skills and resources they need to make a successful transition to independent, self-sufficient adulthood.

SEC. 16. Section 13.5 of this bill incorporates amendments to Section 12930 of the Government Code proposed by both this bill and Assembly Bill 2707. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2017, (2) each bill amends Section 12930 of the Government Code, and (3) this bill is enacted after Assembly Bill 2707, in which case Section 13 of this bill shall not become operative.