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## ACR-172 Historical state anti-LGBT laws. (2017-2018)

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### Assembly Concurrent Resolution No. 172

#### CHAPTER 104

Relative to lesbian, gay, bisexual, and transgender individuals.

[ Filed with Secretary of State June 26, 2018. ]

#### LEGISLATIVE COUNSEL'S DIGEST

ACR 172, Low. Historical state anti-LGBT laws.

This measure would apologize for the enactment of past discriminatory laws and constitutional provisions that resulted in the persecution and oppression of lesbian, gay, bisexual, and transgender individuals and their communities. The measure would also express the Legislature's commitment to taking the steps needed to be a fully inclusive state and preserving the rights of all people.

Fiscal Committee: no

WHEREAS, Historically, California, like other states of this nation, charged people with crimes due to their sexuality and gender identity; and

WHEREAS, Although laws criminalizing sexual conduct were established in statute and judicial interpretation, these laws were rarely enforced against consenting adults in private and within a heterosexual marital relationship, but rather served as a basis for criminalizing homosexuality and legitimizing discrimination against lesbian, gay, bisexual, and transgender (LGBT) people; and

WHEREAS, As early as 1850, in the territory of California, a common law statute with historical roots in English law was established providing for the illegalization of sodomy and setting the penalty at five years to life; and

WHEREAS, The 1872 California Criminal Code contained a similar prohibition; and

WHEREAS, From the late 1800s onward, California jurisdictions also widely employed vagrancy, disorderly conduct, and indecent exposure laws to prosecute same-sex intimacy and behavior outside of gender norms; and

WHEREAS, Public indecency statutes and "unlawful masquerade" laws were applied to permit police to harass and sometimes arrest people who were considered deviant or gender-bending; and

WHEREAS, In 1909, state law allowed for the sterilization of convicted and imprisoned sex offenders if they showed recidivism in prison towards being a "moral or sexual pervert," including those offenders committed for sodomy and oral sex acts; and

WHEREAS, In 1915, Section 288a of the Penal Code was enacted, making specific oral sex acts felonies and punishable by a maximum of 15 years in prison; and

WHEREAS, In 1921, a statute banned "any act ... which openly outrages public decency"; and

WHEREAS, In 1939, California enacted a "sexual psychopath" law, which was used to commit numerous LGBT people for involuntary psychiatric incarceration and gruesome medical treatments; and

WHEREAS, In 1947, California enacted a statewide registration for sex offenders. Before laws criminalizing specified acts between same-sex couples were repealed and enforcement of laws often used against LGBT people evolved, LGBT individuals convicted of these offenses were forced to register as sex offenders; and

WHEREAS, Eventually reform efforts began to extend some protections to LGBT people by expanding privacy rights and decriminalizing private consensual activity between adults; and

WHEREAS, However, state law enacted in 1977 defined marriage as "between one man and one woman." Proposition 22 was enacted by California voters in March 2000 to prevent marriage between same-sex couples; and

WHEREAS, In May 2008, the California Supreme Court struck down Proposition 22 but the ruling was superseded when Proposition 8 passed that same year, reinstating a bar on same-sex marriages; and

WHEREAS, The granting of same-sex marriages ultimately began again in California in 2013 following the United States Supreme Court decision in *Hollingsworth v. Perry*, which restored the effect of a federal district court ruling that overturned Proposition 8 as unconstitutional; and

WHEREAS, It is only right that this state formally apologize for the enactment and enforcement of laws used to persecute and oppress LGBT individuals and their communities; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature apologizes for the enactment of past discriminatory laws and constitutional provisions that resulted in the persecution and oppression of LGBT individuals and their communities, and which forced them to live in fear of unjust prosecutions and public shaming. The Legislature apologizes for these acts and reaffirms its commitment to preserving the rights of all people; and be it further

Resolved, That even though the Legislature is apologizing for the previous laws enacted in California, the Legislature is committed to taking the steps needed to be a fully inclusive state and preserving the rights of all people. No apology can make up for the years of discrimination; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.