

AMENDED IN ASSEMBLY MARCH 15, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 686

Introduced by Assembly Member Santiago

February 15, 2017

An act to amend Section 12955 of, and to add Section ~~12957~~ 12958 to, the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 686, as amended, Santiago. Housing discrimination: affirmatively further fair housing.

Existing federal law, the federal Fair Housing Act, requires, among other things, certain federal executive departments and agencies to administer their programs relating to housing and urban development in a manner affirmatively to further the purposes of the federal act. Existing federal law requires specified state and local agencies that contract with, or receive funding from, specified federal agencies to certify that it will affirmatively further fair housing by completing an assessment of fair housing and submitting that assessment to the United States Department of Housing and Urban Development.

Existing law, the California Fair Employment and Housing Act, generally prohibits housing discrimination with respect to the personal characteristics of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information. Existing law also prohibits the discrimination through public or private land use practices, decisions, and authorizations because of one of those personal characteristics. Existing law establishes the Department of Fair Employment and Housing in the ~~State and~~

~~Consumer Services Business, Consumer Services, and Housing Agency,~~ with the powers and duties to, among other things, receive, investigate, and conciliate complaints relating to housing discrimination.

This bill would require a public agency to administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and to not take any action that is ~~materially~~ inconsistent with this obligation. The bill would ~~provide that if~~ *make it unlawful under the California Fair Employment and Housing Act for a public agency fails to to fail to* meet its obligation to affirmatively further fair housing, ~~then and would provide that~~ failure would constitute housing discrimination under the ~~California Fair Employment and Housing Act.~~ *act.* The bill would require a public agency that completes *or revises* an assessment of fair housing pursuant to specified provisions of the federal Fair Housing Act *and its implementing regulations* to submit a copy of that assessment *or revised assessment* to the department. *The bill would require the department to post any assessment received pursuant to these provisions on its Internet Web site within a reasonable period of time.* The bill would define the term “public agency” to mean any state or local agency, regional transportation agency, or council of governments. By imposing additional duties upon a local government, this bill would impose a state-mandated local program.

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

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

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

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

- 1 SECTION 1. Section 12955 of the Government Code is
- 2 amended to read:
- 3 12955. It shall be unlawful:
- 4 (a) For the owner of any housing accommodation to discriminate
- 5 against or harass any person because of the race, color, religion,
- 6 sex, gender, gender identity, gender expression, sexual orientation,

1 marital status, national origin, ancestry, familial status, source of
2 income, disability, or genetic information of that person.

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

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

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

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

37 (f) For any owner of housing accommodations to harass, evict,
38 or otherwise discriminate against any person in the sale or rental
39 of housing accommodations when the owner's dominant purpose
40 is retaliation against a person who has opposed practices unlawful

1 under this section, informed law enforcement agencies of practices
2 believed unlawful under this section, has testified or assisted in
3 any proceeding under this part, or has aided or encouraged a person
4 to exercise or enjoy the rights secured by this part. Nothing herein
5 is intended to cause or permit the delay of an unlawful detainer
6 action.

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

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

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

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

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

35 (l) ~~(l)~~—To discriminate through public or private land use
36 practices, decisions, and authorizations because of race, color,
37 religion, sex, gender, gender identity, gender expression, sexual
38 orientation, familial status, marital status, disability, genetic
39 information, national origin, source of income, or ancestry.
40 Discrimination includes, but is not limited to, restrictive covenants,

1 zoning laws, denials of use permits, and other actions authorized
2 under the Planning and Zoning Law (Title 7 (commencing with
3 Section 65000)), that make housing opportunities unavailable.

4 ~~(2) Discrimination under this subdivision also includes the~~
5 ~~existence of a restrictive covenant, regardless of whether~~
6 ~~accompanied by a statement that the restrictive covenant is repealed~~
7 ~~or void.~~

8 ~~(3) Discrimination under this subdivision also includes the~~
9 ~~failure of a public agency to comply with its obligation to~~
10 ~~affirmatively further fair housing pursuant to Section 12957.~~

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

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

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

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

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

34 *(q) For a public agency to fail to comply with its obligation to*
35 *affirmatively further fair housing pursuant to Section 12958. A*
36 *public agency’s failure to affirmatively further fair housing shall*
37 *constitute a discriminatory housing practice.*

38 ~~SEC. 2. Section 12957 is added to the Government Code, to~~
39 ~~read:~~

1 ~~12957. (a) A public agency shall administer its programs and~~
2 ~~activities relating to housing and community development in a~~
3 ~~manner to affirmatively further fair housing, and shall not take~~
4 ~~any action that is materially inconsistent with this obligation.~~
5 ~~(b) A public agency that completes an assessment of fair housing~~
6 ~~pursuant to Subpart A (commencing with Section 5.150) of Part~~
7 ~~5 of Subtitle A of Title 24 of the Code of Federal Regulations, as~~
8 ~~published on July 16, 2015, on page 42273 of the Federal Register,~~
9 ~~shall submit a copy of that assessment to the department.~~
10 ~~(c) For purposes of this section, the following terms have the~~
11 ~~following meanings:~~
12 ~~(1) “Affirmatively furthering fair housing” means taking~~
13 ~~meaningful actions, in addition to combating discrimination, that~~
14 ~~overcome patterns of segregation, promote fair housing choice,~~
15 ~~and foster inclusive communities free from barriers that restrict~~
16 ~~access to opportunity-based characteristics protected by this part;~~
17 ~~and that transform racially and ethnically concentrated areas of~~
18 ~~poverty into areas of opportunity, while protecting existing~~
19 ~~residents from displacement.~~
20 ~~(2) “Barriers that restrict access to opportunity” includes, but~~
21 ~~is not limited to, inadequate or poorly maintained affordable~~
22 ~~housing, segregated housing, housing that is inaccessible to persons~~
23 ~~with disabilities, zoning restrictions, development limitations, and~~
24 ~~other policies, regulations, or investment decisions that restrict~~
25 ~~access to high-quality education, transportation, jobs, health care,~~
26 ~~recreation, clean water and air, safe neighborhoods, and other~~
27 ~~important opportunities.~~
28 ~~(3) “Local agency” means a city or county, including a charter~~
29 ~~city or county, a special district, including a regional transportation~~
30 ~~agency, a joint powers authority, a public housing authority, or~~
31 ~~any other political subdivision of the state.~~
32 ~~(4) “Meaningful actions” means significant actions that are~~
33 ~~designed and can be reasonably expected to achieve a materially~~
34 ~~positive change that affirmatively furthers fair housing. Meaningful~~
35 ~~actions include, but are not limited to, the following activities:~~
36 ~~(A) Developing affordable housing, and removing barriers to~~
37 ~~the development and occupancy of affordable housing, in areas of~~
38 ~~high opportunity.~~

1 ~~(B) Strategically enhancing access to opportunity, including~~
2 ~~through targeted investment in neighborhood revitalization or~~
3 ~~stabilization, while protecting existing residents from displacement.~~

4 ~~(C) Preservation or rehabilitation of existing affordable housing.~~

5 ~~(D) Promoting greater housing choice within and outside of~~
6 ~~areas of concentrated poverty and greater access to areas of high~~
7 ~~opportunity.~~

8 ~~(E) Stabilizing and protecting low-income communities in areas~~
9 ~~in which housing costs are rising or displacement is occurring.~~

10 ~~(F) Improving community assets such as quality schools,~~
11 ~~employment, and transportation in underserved areas.~~

12 ~~(G) Improving environmental health in low-income~~
13 ~~communities.~~

14 ~~(5) “Programs and activities relating to housing and community~~
15 ~~development” means any action, inaction, policy, or program by~~
16 ~~the public agency that impacts where a person may live and the~~
17 ~~degree of access that person, based on where they live, has to~~
18 ~~opportunity, including education, jobs, health care, social services,~~
19 ~~and secure and safe and affordable living conditions. Actions,~~
20 ~~inactions, programs, and activities relating to housing and~~
21 ~~community development shall include, but are not limited to, the~~
22 ~~following:~~

23 ~~(A) The development or demolition of housing.~~

24 ~~(B) The enactment of local zoning or land use ordinances.~~

25 ~~(C) The denials of use permits.~~

26 ~~(D) Development agreements.~~

27 ~~(E) Any actions authorized under the Planning and Zoning Law~~
28 ~~(Title 7 (commencing with Section 65000)).~~

29 ~~(F) Land use or transportation planning.~~

30 ~~(G) Code enforcement.~~

31 ~~(H) Ordinances regulating tenancies.~~

32 ~~(I) Investment in transportation and infrastructure, including~~
33 ~~water and wastewater infrastructure.~~

34 ~~(6) “Public agency” means any state or local agency, regional~~
35 ~~transportation agency, or council of governments.~~

36 ~~(7) “State agency” means every state office, officer, department,~~
37 ~~division, bureau, board, and commission, including the California~~
38 ~~State University.~~

39 *SEC. 2. Section 12958 is added to the Government Code, to*
40 *read:*

1 12958. (a) Notwithstanding any other law, a public agency
2 shall administer its programs and activities relating to housing
3 and community development in a manner to affirmatively further
4 fair housing, and shall not take any action that is inconsistent with
5 this obligation.

6 (b) A public agency that completes or revises an assessment of
7 fair housing pursuant to Section 3608(d) and (e)(5) of Title 42 of
8 the United States Code, and any regulation implementing that
9 requirement, including Subpart A (commencing with Section 5.150)
10 of Part 5 of Subtitle A of Title 24 of the Code of Federal
11 Regulations, as published on July 16, 2015, on page 42272 of
12 Volume 80 of the Federal Register, shall submit a copy that
13 assessment or revised assessment to the department at the same
14 time that agency submits the assessment or the revised assessment
15 to the United States Department of Housing and Urban
16 Development. The department shall post the assessment on its
17 Internet Web site within a reasonable period of time.

18 (c) For purposes of this section, the following terms have the
19 following meanings:

20 (1) “Affirmatively furthering fair housing” means taking
21 meaningful actions, in addition to combating discrimination, that
22 overcome patterns of segregation, address disparities in housing
23 needs and in access to opportunity, promote fair housing choice,
24 and foster inclusive communities free from barriers that restrict
25 access to opportunity based on characteristics protected by this
26 part; and that transform racially and ethnically concentrated areas
27 of poverty into areas of opportunity, while protecting existing
28 residents from displacement.

29 (2) “Barriers that restrict access to opportunity” means barriers
30 that are specific to the type of neighborhood or jurisdiction, such
31 as whether it is an area of high opportunity, a gentrifying
32 neighborhood, or a segregated area of concentrated poverty, but
33 may include inadequate supply of affordable housing or poorly
34 maintained affordable housing, segregated housing, housing that
35 is inaccessible to persons with disabilities, zoning restrictions,
36 development limitations, and other actions, inactions, policies,
37 regulations, programs, practices, decisions or investments that
38 restrict access to high-quality education, transportation, jobs,
39 health care, recreation, clean water and air, safe neighborhoods,

1 *social services, cultural institutions, and other opportunities based*
2 *on characteristics protected by this part.*

3 (3) *“Local agency” means a city or county, including a charter*
4 *city or county, a city and county, a special district, a redevelopment*
5 *successor agency, a joint powers authority, a public housing*
6 *authority created pursuant to the Housing Authorities Law*
7 *(Chapter 1 (Commencing with Section 34200) of Part 2 of Division*
8 *24 of the Health and Safety Code), a public housing agency, as*
9 *defined in the United States Housing Act of 1937 (codified at 42*
10 *U.S.C. Sec. 1437 and following), as amended, or any political*
11 *subdivision of the state not otherwise listed.*

12 (4) *“Meaningful actions” means significant actions that are*
13 *designed and can be reasonably expected to achieve a materially*
14 *positive change that affirmatively furthers fair housing. Meaningful*
15 *actions must eliminate or materially ameliorate within a reasonable*
16 *period of time the impact of significant barriers that restrict access*
17 *to opportunity, and must be commensurate with the scale of those*
18 *barriers. Meaningful actions may include the following activities:*

19 (A) *Developing affordable housing, and removing barriers to*
20 *the development and occupancy of affordable housing, in areas*
21 *of high opportunity.*

22 (B) *Strategically enhancing access to opportunity, including*
23 *through targeted investment in neighborhood revitalization or*
24 *stabilization, while protecting existing residents from displacement.*

25 (C) *Preservation or rehabilitation of existing affordable housing.*

26 (D) *Promoting greater housing choice within and outside of*
27 *areas of concentrated poverty and greater access to areas of high*
28 *opportunity.*

29 (E) *Stabilizing and protecting low-income communities in areas*
30 *in which housing costs are rising or displacement is occurring,*
31 *including by developing affordable housing.*

32 (F) *Improving community assets such as quality schools,*
33 *employment, cultural institutions, social services, and*
34 *transportation in underserved areas.*

35 (G) *Improving environmental health in low-income communities.*

36 (5) *“Programs and activities relating to housing and community*
37 *development” means any action, inaction, policy, regulation,*
38 *program, practice, decision, activity, or investment by the public*
39 *agency that impacts where a person may live and the degree of*
40 *access that person, based on where they live, has to opportunity,*

1 *including education, jobs, health care, social services, and secure*
2 *and safe and affordable living conditions. Actions, inactions,*
3 *policies, regulations, programs, practices, decisions, activities, or*
4 *investments relating to housing and community development*
5 *include the following:*

- 6 (A) *The development or demolition of housing.*
- 7 (B) *The enactment of local zoning or land use ordinances.*
- 8 (C) *Use permits.*
- 9 (D) *Development agreements.*
- 10 (E) *Any actions authorized under the Planning and Zoning Law*
11 *(Title 7 (commencing with Section 65000)).*
- 12 (F) *Land use or transportation planning.*
- 13 (G) *Code enforcement.*
- 14 (H) *Ordinances regulating tenancies.*
- 15 (I) *Investment in transportation and infrastructure, including*
16 *water and wastewater infrastructure.*
- 17 (J) *Public housing authority or public housing agency policies,*
18 *practices, and planning.*
- 19 (6) *“Public agency” means any state or local agency, regional*
20 *transportation agency, or council of governments.*
- 21 (7) *“State agency” means every state office, officer, department,*
22 *division, bureau, board, and commission, including the California*
23 *State University.*

24 SEC. 3. If the Commission on State Mandates determines that
25 this act contains costs mandated by the state, reimbursement to
26 local agencies and school districts for those costs shall be made
27 pursuant to Part 7 (commencing with Section 17500) of Division
28 4 of Title 2 of the Government Code.