

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 2448 (Ting)
Version: May 19, 2022
Hearing Date: June 21, 2022
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Civil rights: businesses: discrimination and harassment: customers: third parties

DIGEST

This bill requires large businesses in California to address harassment of their customers based on specified characteristics including race, ethnicity, gender, sexual orientation, disability, and national origin, among other things, by posting a sign with specified content, training employees, and having a policy to collect data related to incidents of such harassment on business premises.

EXECUTIVE SUMMARY

Incidents of harassment and violence directed at Asian-Americans, Pacific Islanders, and other people of color have increased disturbingly in recent years. Among other things, the targets of these attacks have reported being insulted, cursed at, spat upon, and assaulted while out patronizing business establishments of all kinds. Existing California law is clear that businesses themselves cannot discriminate against their customers on any arbitrary basis, including race, ethnicity, national origin, gender, and sexual orientation, among others. However, the law in this area does not appear to address whether a business has any duty to try to stop harassment or discrimination by customers against other customers. This bill steps into that void and requires that businesses post a sign with specific content, train their employees how to respond to customer-on-customer harassment, and report incidents of customer harassment to the Department of Fair Employment and Housing (DFEH) for inclusion in a statewide report.

The bill is sponsored by Stop AAPI Hate. Support comes from a large alliance of civil rights advocates and ethnic, racial, and heritage affinity groups. There is no known opposition. The bill passed off of the Assembly Floor by a vote of 68-0. If the bill passes out of this Committee, it will next be heard in the Senate Labor, Public Employment and Retirement Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Prohibits, pursuant to the Unruh Civil Rights Act, all business establishments of any kind whatsoever from discriminating against customers on the basis of the actual or perceived sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation, and on any other arbitrary basis. (Civ. Code § 51(b), (g); *In re Cox* (1970) 3 Cal.3d 205, 216.)
- 2) Establishes the DFEH to combat discrimination in housing and employment. Specifies that the DFEH has the power to receive, investigate, conciliate, mediate, and prosecute complaints alleging practices made unlawful by, among other things, the Unruh Civil Rights Act. (Gov. Code §§ 12900-12930.)

This bill:

- 1) Defines the following for the purposes of this bill:
 - a) “harassment” means words, gestures, or actions directed at a specific person on account of any characteristic listed or defined under the Unruh Civil Rights Act and other specified provisions of law, or 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 one or more of those characteristics; and
 - b) “discrimination and harassment” means discrimination and other conduct prohibited under the Unruh Civil Rights Act and other specified provisions of law.
- 2) Requires a business to address the harassment of customers on its premises by doing all of the following:
 - a) posting the sign developed pursuant to subsequent sections of this bill in a visible and conspicuous place, notifying customers of their rights at a business and how to report harassment;
 - b) ensuring that employees are trained in accordance with the subsequent provisions of this bill; and
 - c) having a policy regarding how the business collects and maintains data related to incidents of harassment by a third party, notifying employees of this policy, and submitting this data to DFEH upon DFEH’s request.
- 3) Requires DFEH to create a standardized form for businesses to report data pursuant to the provisions of this bill.
- 4) Requires DFEH to develop and publish on its internet website a sign that informs customers of their rights at a business and how to report incidents of harassment, including by a third party, to the business or the department.

- 5) Requires DFEH, by January 1, 2024, and January 1 of each year thereafter, to submit to the Legislature and Governor, and publish on its internet website, a report summarizing data on harassment at businesses in the state. Requires the report to include data related to harassment at businesses reported to DFEH by a member of the public, and data related to harassment at businesses collected by businesses pursuant to provisions of this bill. Requires the report to exclude any personally identifiable information of any individual. Permits the report to be combined with other reporting required of the department.
- 6) Prohibits the language of this bill from being construed to require an employee of a business to intervene in the harassment of customers on the business's premises by a third party.
- 7) Prohibits a business, or any person acting on behalf of the business, from retaliating against an employee for any actions taken, or not taken, pursuant to the sections of this bill.
- 8) Provides that an employee of a business is not personally liable for any violations of this section.
- 9) Directs DFEH, by no later than June 30, 2024, to develop or procure, and make available on its internet website, an online training courses for employees regarding discrimination and harassment at businesses.
- 10) Requires businesses, no later than January 1, 2025, to provide the training to all its employees in the state who interact with members of the public. After January 1, 2025, the business must provide training required by this bill once every two years to all its employees in the state who interact with members of the public, and must provide that training to new employees who interact with members of the public within six months from the date of their hire or promotion. For new employees who have received the training from a previous employer, the requirements set out by the bill will be considered met and the employee will be placed on a two-year training schedule.
- 11) Requires the training to take place during regularly scheduled work hours, on paid time, and at a time dedicated solely to the training.
- 12) Directs DFEH to establish a pilot program that recognizes businesses for creating safe and welcoming environments free from discrimination and harassment of customers, and to establish criteria that a business must meet in order to qualify for recognition under the program.

COMMENTS

1. Evidence of the problem the bill is intended to address

Disturbingly, there is ample evidence of a large increase in hate-motivated harassment and violence over the past several years. The author points to the following reports, among other data, as evidence of the need for this bill:

- The sponsor of this bill reports receiving nearly 11,000 reports of hate incidents nationwide since March 2020, including over 4,100 reports from California. The vast majority of what has been reported does not meet the definition of a hate crime. Two-thirds of the reports include verbal harassment.¹
- In California, over a quarter of the hate incidents reported to the sponsor of this bill took place at a business. A majority of these incidents took place in service or retail establishments, such as grocery stores, restaurants, big box retailers, and their parking lots. In the majority of cases, customers reported being verbally harassed by another customer or passerby.²
- A late 2021 survey of AAPI individuals in Los Angeles, found that half of respondents experienced racial discrimination, with 40 percent reporting racial discrimination in a grocery store.³
- More than a third of Black Americans surveyed in 2021 responded that they personally were treated unfairly while shopping during the last 30 days, representing about a 10 percent increase beyond previously reported levels.⁴

2. Related legal duties of businesses

Business establishments in California already have certain legal duties in relation to discrimination and harassment. In relation to their customers, the Unruh Civil Rights Act prohibits businesses from discriminating against their customers for arbitrary reasons including race, ethnicity, national origin, gender, and sexual orientation, among

¹ Yellow Horse *et al.* *Stop AAPI Hate National Report* (3/19/20-12/31/21) <https://stopaapihate.org/wp-content/uploads/2022/03/22-SAH-NationalReport-3.1.22-v9.pdf> (as of Jun. 11, 2022) at p. 1.

² *California State Policy Recommendations to Address AAPI Hate: A Starting Point for Taking Action Stop AAPI Hate* (October 13, 2021) Stop AAPI Hate https://stopaapihate.org/wp-content/uploads/2022/01/SAH-State-Policy-Agenda-10.13.21-w_urls-2.pdf (as of June 11, 2022) at p. 2.

³ Chan. #VoicesofLA *AAPI Survey Results* (March 15, 2022) Pat Brown Institute for Public Affairs and California Community Foundation <https://calstatela.patbrowninstitute.org/wp-content/uploads/2022/03/AAPI-Survey-Slides-Released-March-15-2022.pdf> (as of June 11, 2022) at slide 14.

⁴ Jones and Lloyed. *Black Americans' Reports of Mistreatment Steady or Higher* (July 27, 2021) Gallup <https://news.gallup.com/poll/352580/black-americans-reports-mistreatment-steady-higher.aspx> (as of Jun. 11, 2022).

other things. (Civ. Code § 51.) In relation to their employees, the Fair Employment and Housing Act (FEHA) prohibits businesses from discriminating on account of a similar set of characteristics. (Gov. Code § 12940.)

In the context of employment discrimination, the law treats harassment as a form of discrimination when the harassment is based on the target's protected characteristics, when the harassing behavior is offensive or unwelcome to the target, and when the harassment reaches the point of becoming so severe or pervasive that a reasonable person would find that it creates a hostile environment. (*Meritor Savings Bank v. Vinson* (1986) 477 U.S. 57; *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121.)

Employment discrimination law applicable in California also specifies that a business' legal duty to protect its employees against discriminatory harassment extends to situations in which the source of the harassment is a third party, at least to the degree to which the employer has control or legal responsibility over the third party. (Gov. Code § 12940(j)(1).)

The employment discrimination law just described is well-worn. In contrast, the issue raised by this bill – what legal duty, if any, does a business have to prevent discriminatory harassment of a customer by a third party on the business premises – appears to be uncharted legal territory. It is easy to imagine that a court ruling on the matter would draw an analogy to the housing and employment discrimination context. If so, the law may already impose some duty on businesses to take action to prevent a customer from enduring discriminatory harassment at the hands of a third party, at least where the harassment is sufficiently severe or pervasive that a reasonable customer would perceive it as hostile and offensive and where the business has at least some control over the customer.

While the author and proponents of this bill presumably hope it would also help to curb customer-on-customer harassment that meets the standard described above, they are perhaps most interested in trying to enlist businesses' help in cutting down on the sorts of customer-on-customer incidents that probably would not be severe or pervasive enough to trigger any legal duty on the part of the business to take action under existing law, but that nonetheless operate to marginalize and oppress their targets in a way that should not be acceptable in a society that values equality and inclusion.

3. Business duties to try to address third party harassment of customers under this bill

This bill seeks to enlist the help of large California businesses – those with 100 or more employees – in the effort to eliminate the sort of discriminatorily-motivated slurs, mockery, belittling, abuse, threats, and assaults described in Comment 1. The bill starts out by setting forth an all-encompassing term for these things. The bill defines them all as forms of “harassment.” To civil rights law practitioners, the use of the term “harassment” in this way is somewhat confusing, given the very specific legal meaning of the term “harassment” in the context of other civil rights law. (*See* Comment 2,

above.) It is clear from the context that the author intends to cover a range of things that would not constitute unlawful harassment in other legal contexts, but to avoid any possible unintended consequences, it may be worth including a clause that says this explicitly.

The bill then sets forth what the businesses' duty would be to address this sort of harassment of customers by third parties on the businesses' premises. They would have to do three things.

First, large California businesses would have to post a sign – to be developed by DFEH – in a visible and conspicuous place informing customers of their rights at the business and how they can report incidents of harassment. Since the bill does not obligate businesses to take any action in response to a report of harassment and explicitly states that employees are not required to intervene in a situation involving harassment of a customer by a third party, the business' only obligation would be to take down the report. No other action is required. Being able to make a report about what has occurred will probably be welcome and cathartic to many customers. Furthermore, both customers and businesses will likely benefit from having a clear system for handling these incidents. On the other hand, at least some customers may be disappointed if their report does not result in some specific responsive action from the proprietor.

The sign is also supposed to explain to customers how they can report an incident of harassment directly to DFEH. In effect, the sign spreads public awareness about DFEH's role in defending customer's civil rights in California. The sign will probably cause DFEH to receive more complaints about scenarios in which the business or its employees have violated the Unruh Act by harassing customers in a discriminatory fashion. This is already well within DFEH's jurisdiction. At the same time, the sign may also create the expectation in customers that DFEH can investigate and respond to incidents of customer-on-customer harassment. As discussed in Comment 2, above, it is not clear if and when customer-on-customer harassment is a violation of any civil rights law in California, so navigating these customer expectations could at times prove challenging.

Second, beginning in 2025, large California businesses would have to ensure that their supervisors and employees receive training – also to be developed by DFEH – about discrimination and harassment law, the duties of businesses under those laws, how to identify and report discrimination and harassment to DFEH, and remedies available to victims. The bill also requires the training to include information about how to identify discrimination and harassment, including examples in which the perpetrator is a business or an employee, examples in which the perpetrator is a third party who is not the business or its employees, and examples that address the intersection of race and gender. The Legislature has tasked DFEH with developing civil rights-related trainings in the past. (*See* SB 1343, Mitchell, Ch. 956, Stats. 2018.) These trainings should ensure that employees know about the business' legal duty not to discriminate against

customers. The trainings should also improve upon employee's ability to recognize and respond appropriately to situations involving customer-on-customer harassment.

Finally, the bill requires large California businesses to have a policy in place for recording and reporting incidents of harassment to DFEH on a form. The intent behind this requirement seems to be to enable the state to better track how often incidents of harassment are taking place in large California businesses. Unfortunately, reporting on every incident of harassment that takes place in a large business may, sadly, prove to be an onerous task. At the same time, the resulting data may not prove as valuable as the author hopes. In spite of the training requirements, it is possible that reporting will not be consistent across businesses, in part because the bill's definition of harassment is broad and subjective. In any event, only a subset of California businesses would be involved. In the end, it seems likely that the outcome of this considerable effort would be the conclusion that many incidents of harassment and intolerance are taking place among consumers in California businesses. Yet that much is already known. It is well documented in the bill's findings and declarations.

Viewed from the proponent's perspective, however, the value of the reporting component goes well beyond simply documenting the general fact that consumer-on-consumer harassment is taking place. Obtaining reports from across many business will improve the quality of the information available, they point out. Moreover, the act of taking the report - of listening to the consumer who has been harassed and taking the incident seriously - has important value in affirming that whatever took place was wrong. As sponsor of the bill, Stop AAPI hate explains that many of the targets of consumer harassment over the past several years have stated that the difficulty of getting anyone to listen to what happened to them and to take it seriously was as demoralizing as the harassment itself. For these reasons, the proponents contend that the reporting component is a critical aspect of the bill. The lengthy list of affinity groups of all kinds supporting the bill strongly supports this contention.

4. Certificate program for good actors

Separate from the signage, training, and reporting requirements that this bill imposes on large California businesses, the bill also establishes a new certification program within DFEH. Under this program, DFEH would give recognition to businesses that adopt policies and practices designed to create safe and welcoming environments free from discrimination and harassment of customers. DFEH would be tasked with developing the details of the certification program, but the bill explains that it would include elements like offering employees additional training, informing the public of their civil rights in relation to the business, and outlining a code of conduct for patrons of the business that encourages respectful and civil behavior.

This aspect of the bill operates as a carrot: businesses receiving the certificate could, of course, display it as a point of pride and a way of gaining favor with customers.

As the state's promoter of civil rights, DFEH makes sense as the agency to carry out this certification program. On the other hand, because DFEH's role includes prosecuting civil rights violations, it may be wise to include a provision in the bill indicating that receipt of a certificate from DFEH under the program would not provide the employer with any particular immunity or defense against an enforcement action by DFEH.

5. Proposed amendments

The author proposes to offer a series of amendments in Committee. These amendments would:

- expand upon the findings and declarations that show increasing levels of discriminatory harassment impacting the daily lives of Californians;
- clarify that businesses are only required to make a good faith effort to determine which incidents constitute harassment and report them;
- clarify that DFEH should report aggregate data without identifying individual businesses, but that DFEH may break the data down by geography and business type;
- specify that the bill does not alter a business' duty of care towards its customers;
- ensure that the DFEH trainings include information about how to contact DFEH with questions; and
- authorize DFEH to receive, investigate, and prosecute reports of violations of the bill, meaning failure to put up the required sign, failure to provide the required training, or failure to take a report of harassment from a customer.

A mock-up of the amendments in context is attached to this analysis.

However, due to scheduling constraints, these amendments will not be taken in this Committee, but rather in the Senate Labor, Public Employment and Retirement Committee where the bill is headed next, assuming it passes out of this Committee.

6. Arguments in support of the bill

According to the author:

California has seen a rise in hate against Asian Americans and Pacific Islanders (AAPI) during the COVID-19 pandemic, from brutal attacks against elderly Asian Americans to the ongoing verbal harassment of AAPI women. Many AAPIs continue to fear being in public spaces, and many hate incidents occur at retailers and other businesses. More needs to be done to ensure that individuals can go into the public without fearing for their safety or that they will be discriminated against. AB 2448 will require workers at businesses that interface with the public to be trained on how to spot, report, and respond to incidents of discrimination and

harassment in order for victims to get the support they need when these unfortunate incidents occur.

As sponsor of the bill, Stop AAPI Hate writes:

This bill will promote the safety and well-being of customers at businesses by expanding civil rights protections and recognizing businesses that foster safe and welcoming environments. AAPIs are not alone in experiencing this harassment and discrimination. Black customers have long reported unfair treatment while shopping, according to more than two decades of Gallup polling. Black, Asian, and Hispanic adults have reported heightened racialized harassment during the pandemic at rates higher than white adults.

In support, the AAPI Equity Alliance writes:

Everybody should be able to go to the grocery store, pharmacy, and other businesses without fear of harassment and discrimination because of their race, gender, or other personal characteristics. This bill will promote safe and welcoming businesses for all by requiring California's leading civil rights agency, the Department of Fair Employment and Housing (DFEH), to develop model training, which large businesses will use to train employees on how to recognize, report, and properly respond to discrimination and harassment against customers, and model signage, which large businesses will post to notify customers of their rights to be free from harassment and discrimination.

SUPPORT

Stop AAPI Hate (Sponsor)

AAPI Equity Alliance

Anti-Defamation League

Apex Express

Asian Americans in Action

Asian Pacific Islander Forward Movement

Asian Youth Center

California Association of Human Relations Organizations

California Healthy Nail Salon Collaborative

Cambodia Town Inc.

Center for Asian Americans in Action

Center for the Pacific Asian Family

Chinatown Service Center

Chinese for Affirmative Action

Empowering Pacific Islander Communities
Equal Justice Society
Hmong Innovating Politics
Khmer Girls in Action
Korean American Coalition
Korean American Family Services
La Raza Community Resource Center
Little Tokyo Service Center
Linda Ly's Private Practice
Los Angeles County Board of Supervisors
National Asian Pacific American Families Against Substance Abuse
North East Medical Services
Orange County Asian and Pacific Islander Community Alliance
Pacific Asian Counseling Services
Saahas for Cause
Self-Help for the Elderly
South Asian Network
Southeast Asia Resource Action Center
Southeast Asian Community Center
Thai Community Development Center

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 1161 (Min, 2022) seeks to promote safe ridership on public transit systems statewide by requiring the top ten public transit operators by ridership in the state to: (1) recognize street harassment as a safety concern; (2) gather and analyze ridership data regarding street harassment; and (3) develop a plan to reduce street harassment experienced by riders based on this data and community consultation. SB 1161 is currently pending consideration before the Senate Transportation Committee.

Prior Legislation: AB 2549 (Bonta, 2022) would have sought to address street harassment of women and other vulnerable communities in California through: (1) a multi-year and statewide public education campaign to raise awareness about street harassment as a public problem; (2) research into the extent and impact of street harassment as a public health issue in the state; and (3) a definition of street harassment as a way to identify, educate others about, and end street harassment without taking a punitive, criminal approach. AB 2549 died in the Assembly Appropriations Committee.

PRIOR VOTES:

Assembly Floor (Ayes 68, Noes 0)

Assembly Appropriations Committee (Ayes 14, Noes 0)

Assembly Labor and Employment Committee (Ayes 6, Noes 0)

Assembly Judiciary Committee (Ayes 9, Noes 0)

Amended Mock-up for 2021-2022 AB-2448 (Ting (A))

Mock-up based on Version Number 95 - Amended Assembly 5/19/22

Introduced by Assembly Member Ting
(Coauthors: Assembly Members Mike Fong, **Haney**, Low, Muratsuchi, and Santiago)
(Coauthor: Senator Min)

February 17, 2022

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

SECTION 1. The Legislature finds and declares all of the following:

(a) All persons in the state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in businesses, regardless of their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status.

(b) Discrimination and harassment on any of these bases, by any person, interferes with a person's ability to exercise this right. This interference has grave consequences for a person's freedom of movement, physical and mental health and well-being, and ability to care for themselves and their families.

(c) Since the start of the COVID-19 pandemic, the Stop AAPI Hate coalition has received more than 4,100 reports of hate incidents against Asian Americans and Pacific Islanders (AAPIs) in California. More than one-quarter of the incidents occurred in businesses like retail and service establishments. Many incidents involved the racialized, and often gender-based, verbal harassment of AAPI customers by other customers.

(d) AAPIs experiencing racism are more stressed by hate than the pandemic, and have reported heightened food insecurity due to fears of leaving home to buy food.

(e) AAPIs are not alone in experiencing racialized harassment in businesses. For example, Black customers have long reported unfair treatment while shopping, according to more than two decades of Gallup polling. Nearly 40 percent of Black customers and one-quarter of Hispanic adults reported experiencing race-based discrimination in a store where they were shopping, according to a 2020 survey by the Kaiser Family Foundation and ESPN's The Undeclared. A 2019 -2020 study commissioned by Sephora on racial bias in retail found that two in five shoppers personally experienced unfair treatment based on their race or skin color.

(f) Bias-motivated harassment at businesses is not limited to race or ethnicity. Three-quarters of women in California reported experiencing sexual harassment in a public space, including a

store, restaurant, movie theater, or gym, in a May 2019 study by the Center on Gender Equity and Health at the University of California San Diego School of Medicine. More than one-half of LGBTQ respondents in a 2020 Center for American Progress study said they experienced harassment or discrimination in a public place, including a store. Nearly one-third of transgender respondents in the 2015 U.S. Transgender Survey reported being discriminated against, verbally harassed, or physically attacked in retail stores, restaurants, hotels, or movie theaters.

(g) Nor are AAPIs the only community experiencing increased harassment during the COVID-19 pandemic. A survey by Pew Research Center reveals that 4 in 10 Black and Asian adults, and one-quarter of Hispanic adults, report adverse experiences due to their race or ethnicity since the pandemic began, compared to 13 percent of White adults. Asian and Black adults are more likely to say they have been the subject of slurs or jokes or feared being physically attacked or threatened due to their race or ethnicity. According to the American Jewish Committee, one in four American Jews were the targets of antisemitic incidents, including physical attacks, remarks in person, or remarks online, in 2021, and the Anti-Defamation League reported a substantial increase in antisemitic harassment across California in 2021, at that same year, which was a year that also saw an all-time high in the number of antisemitic incidents across the country.

(h) Existing law prohibits businesses from discriminating against customers because of a protected characteristic. Existing law also requires businesses, as employers, to maintain worksites free from prohibited discrimination and harassment, including by nonemployees.

(i) Existing law does not explicitly require businesses to protect customers from fellow customers or other third parties engaging in harassment because of a protected characteristic.

(j) The Legislature affirms that all customers, regardless of their race or other protected characteristics, should be free to shop for and buy groceries, medicine, and other goods and services without being targeted for their personal characteristics.

(k) It is the intent of the Legislature to provide additional protections for the civil rights of customers in businesses where bias-motivated harassment takes place, and to protect a person's right to full and equal accommodations, advantages, facilities, privileges, and services in businesses.

SEC. 2. Section 51.15 is added to the Civil Code, to read:

51.15. (a) For purposes of this section:

(1) "Harassment" means words, gestures, or actions directed at a specific person without the consent of the person on account of any characteristics listed or defined in subdivision (b) or (e) of Section 51, or 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, one or more of those characteristics.

(2) "Business" means any private enterprise with a physical presence in the state that is open to members of the public and has a total of 100 or more employees working in the state, including,

but not limited to, restaurants, grocery stores, retail stores, gas stations, banks, and gymnasiums.

(3) "Premises" means both of the following:

(A) Any area inside a building that is under the business's possession, management, or control.

(B) Any other area outside of a building that is under the business's possession, management, or control, including, but not limited to, outdoor eating areas and parking lots.

(4) "Department" refers to the Department of Fair Employment and Housing.

(b) It is the intent of the Legislature that all persons within the jurisdiction of this state have the right to be free from harassment at a business because of a characteristic listed or defined in the Unruh Civil Rights Act, or 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, one or more of those characteristics.

(c) A business shall address the harassment of customers on its premises, including harassment by a third party who is not affiliated with the business, by doing all of the following:

(1) Posting the sign made available pursuant to subdivision (e) in a visible and conspicuous place notifying customers of their rights at a business and how to report harassment.

(2) Ensuring that employees are trained in accordance with Section 51.16.

(3) Having a policy regarding how the business collects and maintains data related to incidents of harassment by a third party who is not affiliated with the business, collecting and maintaining the data in accordance with this policy, notifying employees of this policy, and submitting this data to the department upon the department's request.

(d) The department shall create a standardized form for businesses to report the data pursuant to paragraph (3) of subdivision (c). The form shall specify that employees are to make good faith determinations as to whether an incident qualifies as harassment for the purposes of reporting the data.

(e) The department shall develop and publish on its internet website a sign that informs customers of their rights at a business and how to report incidents of harassment, including by a third party, to the business or the department.

(f) ~~(1) Notwithstanding Section 10231.5 of the Government Code, On or before~~ January 1, 2024, and on or before January 1 of each year thereafter, the department shall annually submit to the Legislature and the Governor, and shall publish on its internet website, a report summarizing aggregate data on harassment at businesses in the state, which may be disaggregated by categories such as type of business or geographic area. The report shall include data related to harassment at businesses reported to the department by a member of the public, and data related to harassment at businesses collected by businesses pursuant to paragraph (3) of subdivision (c). ~~The report shall exclude any personally identifiable~~

~~information of any individual. The report shall be reasonably calculated to prevent the association of data with an individual business or person.~~ The report may be combined with other reporting required of the department.

(2g) A report to be submitted pursuant to this subdivision ~~(f)~~ shall be submitted in compliance with Section 9795 of the Government Code.

(gh) (1) This section shall not be construed to require an employee of a business to intervene in the harassment of customers on the business's premises by a third party.

(2) This section shall not be construed to authorize a business, or any person acting on behalf of the business, ~~shall not~~ retaliate against an employee for any actions taken, or not taken, pursuant to this section.

(3) An employee of a business is not personally liable for any violations of this section.

(hi) This section shall not be construed to override or supersede a business establishment's duties as required by this part, the Labor Code, or the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code). This section shall not be construed to override or supersede a business establishment's applicable duties of care under existing law.

SEC. 3. Section 51.16 is added to the Civil Code, to read:

51.16. (a) For purposes of this section:

(1) "Discrimination and harassment" means discrimination and other conduct prohibited under Sections 51, 51.5, and 51.7, and harassment as defined in Section 51.15.

(2) "Business" has the same meaning as defined in Section 51.15.

(3) "Department" refers to the Department of Fair Employment and Housing.

(b) (1) No later than June 30, 2024, the department shall develop or procure, and make available on its internet website, an online training course for employees of businesses regarding discrimination and harassment at businesses, that is at least one hour in length but no longer than two hours.

(2) The training shall include, but not be limited to, the following information:

(A) Summaries of federal and state statutes relating to discrimination against and harassment of customers at businesses, including, but not limited to, Sections 51, 51.5, 51.7, and 51.15, ~~the any~~ duties of a business pursuant to these sections, how to identify and report those acts to the department, and remedies available to victims.

(B) How to identify discrimination and harassment, including examples in which the perpetrator is a business or an employee, examples in which the perpetrator is a third party

who is not the business or its employees, and examples that address the intersection of race and gender.

(C) How to contact the department with questions related to the training.

(3) The training shall include an interactive feature that requires a viewer to respond to a question periodically in order for the course to continue to play.

(4) The department shall provide a method for employees who have completed the training to save electronically and print a certificate of completion, which shall be portable across employers.

(c) (1) No later than January 1, 2025, a business shall provide the training made available pursuant to subdivision (b) to all its employees in the state who interact with members of the public.

(2) After January 1, 2025, the business shall provide the training required by this section as follows:

(A) Subject to subparagraph (B), once every two years to all its employees in the state who interact with members of the public.

(B) Six months from the date of an employee's hire or promotion, unless the employee has received the training from a previous employer pursuant to this section within the two years preceding their hire.

(d) The training required by this section shall take place during regularly scheduled work hours, on paid time, and at a time dedicated solely to the training.

(e) The department may seek an order requiring a business to comply with this section.

(f) The department may adopt rules, regulations, or standards to implement this section, and, if the department elects to do so, the rules, regulations, or standards shall be initiated no later than January 1, 2024.

(g) A business's failure to comply with this section may be relevant to, but shall not alone create liability for, violating Section 51, 51.5, or 51.7.

(h) It is the intent of the Legislature that the training required by this section establishes a minimum threshold and should not discourage or relieve any employer from providing for longer, more frequent, or more elaborate training regarding discrimination and harassment.

SEC. 4. Section 51.17 is added to the Civil Code, to read:

51.17. (a) For purposes of this section:

(1) "Discrimination and harassment" has the same meaning as defined in Section 51.16.

(2) "Business" has the same meaning as defined in Section 51.15.

(3) "Department" refers to the Department of Fair Employment and Housing.

(b) (1) ~~By~~ On or before January 1, 2025, the department shall establish a pilot program that recognizes businesses for creating safe and welcoming environments free from discrimination and harassment of customers.

(2) To qualify for recognition under the pilot program, a business shall meet the criteria set out by the department, which may include, but not be limited to, the following:

(A) Demonstrating compliance with Sections 51, 51.5, 51.7, 51.15, and 51.16.

(B) Offering additional training to educate and inform employees or build skills.

(C) Informing the public of their rights to be free from discrimination and harassment and how to report violations.

(D) Outlining a code of conduct for the public that encourages respectful and civil behavior.

(E) Any other actions designed to prevent and respond to discrimination and harassment regardless of the identity of the perpetrator.

(3) The department shall provide a certificate to qualifying businesses that may be prominently displayed on site, and publish on its internet website a database of businesses receiving that certificate.

(4) ~~By~~ On or before January 1, 2028, the department shall ~~develop criteria to~~ evaluate whether that recognition is effective, including, at a minimum, whether it affects customer behavior, incentivizes compliance among businesses with Sections 51, 51.5, ~~51.7~~, 51.15, and 51.16, or reduces the incidence of discrimination and harassment at businesses.

(c) This section shall remain in effect only until July 1, 2028, and as of that date is repealed.

SEC. 5. Section 12930 of the Government Code is amended to read:

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

(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, 51.9, 51.15, 51.16, 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.

(5) To receive, investigate, conciliate, mediate, and prosecute complaints alleging practices made unlawful pursuant to Section 1197.5 of the Labor Code. The department shall, in coordination with the Division of Labor Standards Enforcement within the Department of Industrial Relations, adopt procedures to ensure that the departments coordinate activities to enforce Section 1197.5 of the Labor Code.

(A) Nothing in this part prevents the director or the director's authorized representative, in that person's 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 of this code, or Title VII of the Civil Rights Act of 1964 (Public Law 88-352; 42 U.S.C. Sec. 2000 et seq.), as amended, the federal Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. 12101, et seq.), as amended, or the federal Fair Housing Act (42 U.S.C. Sec. 3601 et seq.), 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 goodwill 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, veteran or military status, 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 a challenge, pursuant to Section 1094.5 of the Code of Civil Procedure, to a decision of the former Fair Employment and Housing Commission pending on or after January 1, 2013, the director or the director's designee shall consult with the Attorney General regarding the defense of that writ petition.

~~SEC. 5.~~

SEC. 6. 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, Sections 51, 51.5, 51.7, 51.15, 51.16, 51.17, 54, 54.1, and 54.2 of the Civil Code, and Section 1197.5 of the Labor 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. 7. Section 12960 of the Government Code is amended to read:

12960. (a) This article governs the procedure for the prevention and elimination of practices made unlawful pursuant to Article 1 (commencing with Section 12940) of Chapter 6.

(b) For purposes of this section, filing a complaint means filing an intake form with the department and the operative date of the verified complaint relates back to the filing of the intake form.

(c) Any person claiming to be aggrieved by an alleged unlawful practice may file with the department a verified complaint, in writing, that shall state the name and address of the person, employer, labor organization, or employment agency alleged to have committed the unlawful practice complained of, and that shall set forth the particulars thereof and contain other information as may be required by the department. The director or the director's authorized representative may in like manner, on that person's own motion, make, sign, and file a complaint.

(d) Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with this part may file with the department a verified complaint asking for assistance by conciliation or other remedial action.

(e) (1) A complaint alleging a violation of Section 51, 51.5, 51.7, 51.15, 51.16, 54, 54.1, or 54.2 of the Civil Code shall not be filed pursuant to this article after the expiration of one year from the date that the alleged unlawful practice or refusal to cooperate occurred.

(2) A complaint alleging a violation of Section 52.5 of the Civil Code shall not be filed pursuant to this article after the expiration of the applicable period of time for commencing a civil action pursuant to that section.

(3) A complaint alleging a violation of Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1 shall not be filed pursuant to this article after the expiration of three years from the date that the alleged unlawful practice occurred or refusal to cooperate occurred.

(4) A complaint alleging a violation of Section 1197.5 of the Labor Code shall not be filed pursuant to this article after the expiration of the applicable period of time for commencing a civil action pursuant to that section.

(5) A complaint alleging a violation of Section 51.9 of the Civil Code or any other violation of Article 1 (commencing with Section 12940) of Chapter 6 shall not be filed after the expiration of three years from the date upon which the unlawful practice or refusal to cooperate occurred.

(6) Notwithstanding paragraphs (1) through (5), inclusive, the filing periods set forth by this section may be extended as follows:

(A) For a period of time not to exceed 90 days following the expiration of the applicable filing deadline, if a person allegedly aggrieved by an unlawful practice first obtained knowledge of the facts of the alleged unlawful practice during the 90 days following the expiration of the applicable filing deadline.

(B) For a period of time not to exceed one year following a rebutted presumption of the identity of the person's employer under Section 12928, in order to allow a person allegedly aggrieved by an unlawful practice to make a substitute identification of the actual employer.

(C) For a period of time, not to exceed one year from the date the person aggrieved by an alleged violation of Section 51.7 of the Civil Code becomes aware of the identity of a person liable for the alleged violation, but in no case exceeding three years from the date of the alleged violation if during that period the aggrieved person is unaware of the identity of any person liable for the alleged violation.

(D) For a period of time not to exceed one year from the date that a person allegedly aggrieved by an unlawful practice attains the age of majority.

(E) For the periods of time specified in Section 52.5 of the Civil Code for complaints alleging a violation of that section.

(f) (1) Notwithstanding any tolling or limitations period under any other law, the time for a complainant to file a civil action under a statute referenced in this section shall be tolled during the period commencing with the filing of a complaint with the department for an alleged violation of that statute until either of the following:

(A) The department files a civil action for the alleged violation under this part.

(B) One year after the department issues written notice to a complainant that it has closed its investigation without electing to file a civil action for the alleged violation.

(2) The tolling provided under this subdivision shall apply retroactively.

(3) This subdivision is not intended to revive claims that have already lapsed.