SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 1100 (Portantino)
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Fiscal: Yes
Urgency: No
ID

SUBJECT

Discrimination: driver's license and car ownership

DIGEST

This bill prohibits discrimination in employment and housing on the basis of an individual's lack of a driver's license or car ownership, with exceptions.

EXECUTIVE SUMMARY

Many Californians either cannot drive or choose not to drive cars. With the advent of a movement to make California cities more accessible to those who do not drive and promote alternative modes of transportation, and that a broad group of driving-age Californians do not have driver's licenses, SB 1100 aims to even the playing field in employment and housing for those who do not or choose not to drive. The author further asserts that it is common practice for employers and housing providers to require a driver's license for non-driving-related housing and employment, a practice that acts as a gatekeeping mechanism to access to the fundamental needs of employment and transportation for non-drivers. To address this, SB 1100 makes it an unlawful employment practice for an employer to include a statement in a job advertisement, posting, application, or other material that an applicant must have a driver's license, unless the employer reasonably expects driving to be one of the job functions for the position, and the employer reasonably believes that satisfying the job function using an alternative form of transportation would not be comparable in travel time or cost to the employer. SB 1100 defines alternative form of transportation as including a ride hailing service, a taxi, carpooling, bicycling, and walking. SB 1100 also makes it unlawful for an owner of a housing accommodation, appraiser, a bank or mortgage company, and other persons involved in the provision of housing, as defined, from discriminating against a person for a lack of a driver's license or car ownership. SB 1100 is sponsored by Streets for All, and supported by a coalition of environmental and community-based organizations. The committee has received no timely opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Makes it an unlawful employment practice for an employer with 15 or more employees to fail or refuse to hire, or to discharge, or otherwise discriminate against an individual with respect to their compensation, terms, conditions, or privileges of employment, on the basis of their race, color, religion, sex, or national origin. Makes it an unlawful employment practice to limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive them of employment opportunities or adversely affect their employment because of their race, color, religion, sex, or national origin. (42 U.S.C. § 2000e-2.)

2) Makes it an unlawful employment practice for an employer to fail or refuse to hire, discharge, or otherwise discriminate against an individual with respect to their compensation, terms, conditions, or privileges of employment, because of their age, and makes it an unlawful employment practice to limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive them of employment opportunities or adversely affect their employment because of their age. (29 U.S.C. § 623.)

3) Requires, pursuant to the Americans with Disabilities Act (ADA), that all state and local government employers and all private employers with 15 or more employees, provide reasonable accommodation to qualified employees or applicants with disabilities, as defined, unless to do so would cause the employer undue hardship. (42 U.S.C. §§ 12101-12117, 12201-12213.)

4) Defines a "qualified individual" as an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires. For the purposes of this title, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job. (42 U.S.C. § 12111(8).)

5) States that "reasonable accommodation" may include making existing facilities used by employees readily accessible to and usable by individuals with disabilities, job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities. (42 U.S.C. § 12111(9).)

6) Defines an "undue hardship" as an action requiring significant difficulty or expense, when considered in light of the following factors, among other things:
    a) the nature and cost of the accommodation needed under this Act;
    b) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
    c) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
    d) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity. (42 U.S.C. § 12111(10).)

7) Specifies that the ADA supersedes state law, except where state law provides greater protections for individuals with disabilities. (29 C.F.R. § 1630.1(c)(2).)

8) Makes it an unlawful employment practice, unless based upon a bona fide occupational qualification or security regulations, for an employer to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment, of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of the individual. (Gov. Code § 12940(a).)

9) Clarifies that (1), above, does not prohibit an employer from refusing to hire or discharging an employee with a physical disability, mental disability, or medical condition, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical mental disability, if the employee, because of a physical disability, mental disability, or medical condition, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. (Gov. Code § 12940(a)(1) and (2).)

10) Makes it an unlawful employment practice for an employer to fail to make reasonable accommodations for the known physical or mental disability of an applicant or employee but does not require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship, as defined, to its operation. (Gov. Code § 12940(m)(2).)

11) Makes it an unlawful employment practices for an employer to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition. (Gov. Code § 12940(n).)

12) Defines "reasonable accommodation" to include either of the following:
    a) making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities; or
    b) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities. (Gov. Code § 12926(p).)

13) Defines "undue hardship" to mean an action requiring significant difficulty or expense, when considered in light of the following factors:
    a) the nature and cost of the accommodation needed;
    b) the overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility;
    c) the overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities;
    d) the type of operations, including the composition, structure, and functions of the workforce of the entity; and
    e) the geographic separateness or administrative or fiscal relationship of the facility or facilities. (Gov. Code § 12926(u).)

14) Makes it an unlawful employment practice for an employer or covered entity to discriminate against an individual because they hold or present a driver's license issued under Section 12801.9 of the Vehicle Code. (Gov. Code § 12926(u).)

This bill:

1) Makes it an unlawful employment practice for an employer to include a statement in a job advertisement, posting, application, or other material that an applicant must have a driver's license, unless:
    a) The employer reasonably expects driving to be one of the job functions for the position; and
    b) The employer reasonably believes that satisfying the job function through an alternative form of transportation would not be comparable in travel time or cost to the employer.

2) Includes a lack of a driver's license or car ownership as a prohibited basis for discrimination by an owner of any housing accommodation in the making of a variety of decisions or actions, including making any written or oral inquiry related to a person seeking to purchase, rent, or lease any housing accommodation, making, printing, or publishing any notice, statement, or advertisement with respect to the sale or rental of a housing accommodation that indicates any preference based on an person's lack of a driver's license or car ownership.

3) Includes a lack of a driver's license or car ownership as a prohibited basis for discrimination by an appraiser, bank, mortgage company, or other financial institution that provides financial assistance for the purchase, refinance, organization, or construction of any housing accommodation, and includes a lack of a driver's license or car ownership in various other prohibitions against discrimination in housing.

COMMENTS

1. Author's statement

According to the Author:

> California's diverse population includes a substantial number of non-drivers who rely on ride hails, public transportation, biking, and walking as their primary means of transportation. Despite this, the common practice to require a driver's license for non-driving-related housing and employment opportunities has become a gatekeeping mechanism that limits access to these fundamental needs. This practice not only overlooks the reality of many Californians' lives but also contradicts the state's goals to reduce greenhouse gas emissions by encouraging alternative transportation modes. Recognizing the adverse impact on equity, inclusivity, and environmental sustainability, there is a growing movement to reassess and reform policies that indirectly penalize non-drivers. The proposed policy aims to address this issue by making it unlawful for landlords and non-driving-related employers to require a driver's license, thus ensuring fairer access to housing and employment across the state. This initiative aligns with California's broader commitments to social justice, equity, and environmental stewardship.

2. A movement is growing to encourage non-passenger vehicle means of transportation

While driving and car ownership has become ubiquitous in California's contemporary suburban landscape, a movement toward more walkable, environmentally-friendly cities is fueling a push to decrease Californian's reliance on cars. In 2022, there were 27,112,595 licensed drivers in California, representing 86 percent of the driving-age

population of the state.[1] Many others in the state drive without have a license. This makes California the state with the largest population of drivers in the United States, accounting for 12 percent of all licensed drivers in the nation.[2]

Pollution from the prevalence of vehicles in California communities has significant harmful effects on the environment and Californians' health. Cars contribute to the creation of ground-level ozone, the main ingredient in smog, that can cause a variety of health problems, especially in children, the elderly, and those with asthma or other lung-related conditions.[3] Ozone can make it more difficult to breathe, and can cause shortness of breath, coughing or a sore or scratchy throat, inflamed and damaged airways, increased frequency of asthma attacks, greater susceptibility to infection in the lungs, and can cause chronic obstructive pulmonary disease.[4] In addition to ozone, vehicles produce the chemicals that form particulate matter, or particle pollution, that is associated with premature death by lung or heart disease, heart attacks, an irregular heartbeat, aggravated asthma, decreased lung function, and increased respiratory difficulties. Considering these serious health consequences, people who live, work, or go to school near significant vehicle traffic or roadways have an increased incidence and severity of health problems associated with air pollution. Low-income neighborhoods, communities of color and Native American communities living in urban areas are disproportionately exposed to air pollution and these adverse health outcomes.[5]

Cars are also a significant source of the greenhouse gases that cause global warming. That is because combustion-engine cars release carbon dioxide, which is a greenhouse gas, in the combustion of gasoline. According to the Environmental Protection Agency, the greenhouse gases emissions from transportation account for approximately 29 percent of the nation's total greenhouse gas emissions, making transportation-related emissions the largest contributor to greenhouse gases.[6] These gases are the primary cause of global warming, as they trap heat in the atmosphere and create a "greenhouse" effect in which the atmosphere and planet warms due to this trapped heat.

In light of these serious adverse impacts of vehicle emissions on health and the environment, there has been a movement in recent decades to redesign American cities

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[1] Office of Highway Policy Information, Highway Statistics 2022, Federal Highway Administration (Oct. 5, 2023), available at https://www.fhwa.dot.gov/policyinformation/statistics/2022/.
[2] *Id.*
[3] United States Environmental Protection Agency, Learn About How Mobile Source Pollution Affects Your Health (Jan. 3, 2024), available at https://www.epa.gov/mobile-source-pollution/learn-about-how-mobile-source-pollution-affects-your-health#:~:text=Aggravated%20asthma%2C,parks%20and%20wilderness%20areas%3B%20and.
[4] *Id.*
[5] *Id.*
[6] United States Environmental Protection Agency, Carbon Pollution from Transportation (May 11, 2023), available at https://www.epa.gov/transportation-air-pollution-and-climate-change/carbon-pollution-transportation.

to be less reliant on passenger vehicles and more inclusive of walking, bicycles, and public transportation.[7] In addition to a decrease in drivers through such a movement, there are also many individuals who do not have driver's licenses because they cannot drive. These individuals include those without the financial means to own or lease and maintain a car, and individuals with physical impairments like blindness that prevent them from being able to obtain a license to drive. In fact, people with disabilities are significantly less likely to drive than those without a disability, as data from the Bureau of Labor Statistics show 91.7 percent of individuals without a disability drive, while only 60.4 percent of individuals with a disability do.[8] Given these numbers, the total group of driving-age individuals without a driver's license in the United States numbers approximately 4,413,678.

3. Federal anti-discrimination laws

A variety of state and federal laws address discrimination in the employment and housing context. At the federal level, Title VII of the Civil Rights Act of 1964 and Section 1981 of the Civil Rights Act of 1866 prohibit discrimination against specified groups in the employment context. Section 1981 prohibits discrimination on the basis of race, color, and ethnicity in making and enforcing contracts, and applies to all private employers and labor organizations who discriminate against an employee or an independent contractor. (42 U.S.C. § 1981.) Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, and national origin, by public and private employers with more than 15 employees. (42 U.S.C. § 2000e-2(a); 2000e(b).) In addition to these two foundational anti-discrimination laws, two other important federal anti-discrimination laws are the Age Discrimination in Employment Act of 1967 (ADEA) and the Americans with Disabilities Acts (ADA). The ADEA prohibits discrimination in employment against people aged 40 or older on the basis of their age by an employer with 20 or more employees. (29 U.S.C. § 620 et seq.) The ADA prohibits discrimination by private employers with 15 or more employees against a qualified individual with a disability on the basis of their disability. (42 U.S.C. § 12101 et seq.)

Employment discrimination under caselaw can be proven in two different scenarios: where the employer's actions are of disparate intent, in which they single out and treat an employee differently because of their membership in a protected class; and disparate

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[7] *See*, Dylan Walsh, Reducing our reliance on cars: The shifting future of urban transportation, MIT Sloan School of Management (Dec. 13, 2017), available at https://mitsloan.mit.edu/ideas-made-to-matter/reducing-our-reliance-cars-shifting-future-urban-transportation; Gabby Birenbaum, How to end the American obsession with driving, VOX (Sept. 12, 2021), available at https://www.vox.com/22662963/end-driving-obsession-connectivity-zoning-parking; Susan Handy, White Paper: What California Gains from Reducing Car Dependence, National Center for Sustainable Transportation (Apr. 2020), available at https://escholarship.org/uc/item/0hk0h610.

[8] Stephen Brumbaugh, Issue Brief: Travel Patterns of American Adults with Disabilities, Bureau of Transportation Statistics (Sept. 2018), available at https://www.bts.gov/travel-patterns-with-disabilities#:~:text=Over%20nine%2Dtenths%20(91.7%20percent,percent%20drive%20if%20they%20do.

impact, in which an employer applies a neutral policy on all employees that nonetheless has a discriminatory impact. To prove an intentional discrimination case, an employee must show that they are a member of a protected class (the protected classes for Title VII include race, color, religion, sex, and national origin), that they are qualified for the job for which they applied, that they were rejected despite their qualifications, and that after their rejection, the employer continued to seek applicants with the similar qualifications. (*McDonnell Douglas Corp. v. Green*, (1972) 41 U.S. 792). If the employee or job applicant proves these elements, they have made a prima facie case of discrimination, and the burden shifts to the employer to show that they had a lawful non-discriminatory reason for rejecting the employee. (*Id.*) However, an employer may also employ a neutral policy that nonetheless has a discriminatory effect. Such a case can also qualify as an unlawful employment practice under Title VII if the employee can demonstrate that the employer's employment practice causes a disparate impact on the basis of race, color, religion, sex, or national origin, and the employer cannot demonstrate that the practice is job related for the specific position in question and consistent with business necessity. (42 U.S.C. § 2000e-2(k).)

Under the ADA, a private employer may not discriminate against an individual with a disability who can perform all of the essential functions of the job, either with or without reasonable accommodations from the employer, because of their disability. (42 U.S.C. § 12112.) Such discrimination is prohibited in job application procedures, the hiring, advancement, or discharge of employees, compensation, training, or other terms or privileges of employment. If an employee or job applicant has a disability, they may request a reasonable accommodation to perform the job or apply for the position, and an employer cannot refuse the accommodation or take an adverse action against the employee unless the employer can show that such an accommodation would be an undue burden. (42 U.S.C.§ 12112(b)(5).) Discrimination under the ADA includes using qualification standards, employment tests, or other selection criteria that "screen out or tend to screen out an individual with a disability or a class of individuals with disabilities" unless the discriminatory standard or qualification is shown to be job-related and consistent with business necessity. (42 U.S.C. § 12112(b)(6).)

A multitude of cases alleging a violation of the ADA have dealt with employer actions and job requirements that discriminated against individuals who could not drive due to a disability. For example, in *Holbrook v. City of Alpharetta*, an employee for a police department who became partially blind and unable to drive sued his employer under the ADA after he was denied a promotion. (*Holbrook v. City of Alpharetta*, (1997) 112 F.3d 1522.) In that case, the court ultimately ruled against the employee on the grounds that the job functions he could not complete due to his disability were essential functions of the job, and there were no reasonable accommodations available. In *Shell v. Smith*, the seventh circuit court of appeals held that an employee with hearing and vision impairments who was terminated for not having a commercial driver's license could have a claim for discrimination under the ADA because a jury could find under the facts that driving was not an essential function of the job. (*Shell v. Smith* (2015) 789 F.3d

715.) Multiple other cases in various courts have also examined questions of whether driving is an essential function of the job such that an adverse action on the basis of being unable to drive or obtain a driver's license constitutes disability discrimination.[9]

4. California's Fair Employment and Housing Act

In addition to the extensive federal anti-discrimination laws, California maintains its own anti-discrimination law, the Fair Employment and Housing Act (FEHA). FEHA is more expansive than the federal anti-discrimination laws, as it prohibits discrimination on a larger number of protected groups, and covers more employers in its prohibitions. It prohibits discrimination on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decision-making, medical condition, genetic information, marital status, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status, unless the discrimination is based upon a bona fide occupational qualification or security regulations of the state or federal government. (Gov. Code § 12940.) Unlike the APA and Title VII, which cover employers with 15 or more employees, FEHA covers employers with five or more employees. (Gov. Code § 12926.) Like the ADA, however, FEHA also includes an exception to its provisions prohibiting discrimination on the basis of disability when the employee cannot complete, even with a reasonable accommodation, the essential duties of the job.

In 2014, California passed AB 1660, to add prohibitions under FEHA against discrimination on the basis that an individual has a California AB 60 driver's license. (AB 1660 (Alejo) Ch. 452, Stats. 2014.) AB 60 driver's licenses are California driver's licenses available to individuals who cannot obtain a standard California driver's license because they cannot submit proof that their presence in the United States is authorized under federal immigration law. Because these driver's licenses may indicate an individual's immigration status, AB 1660 specified that employers and providers of housing cannot discriminate against applicants or employees who have AB 60 licenses. However, AB 1660 was specific to AB 60 licenses, and did not prohibit discrimination on the basis of lacking any driver's license at all.

[9] *See*, *Larson v. United Foods West Inc.* (2013) 518 Fed. Appx. 589 (employee's ADA claim failed because being qualified under Department of Transportation regulations for commercial drivers was an essential function of the job, and a six-month leave was not a reasonable accommodation); *EEOC v. LHC Group, Inc.* (2014) 773 F.3d 688 (home-health nurse was terminated due to her disability from epileptic seizures because driving was an essential function of the job); *Bosarge v. Mobile Area Water & Sewer Serv.* (2022) U.S. LEXIS 2046 (summary judgement against auto service worker with multiple sclerosis claiming ADA violation appropriate because driving was an essential function of the job).

5. This bill proposes to make discrimination on the basis of non-possession of a driver's license unlawful

SB 1100 aims to specify that employers and landlords cannot discriminate against those who do not have a driver's license or own a car. It does so by adding a section to provisions relating to FEHA that makes it an unlawful employment practice for an employer to include a statement in a job advertisement, posting, application, or other material that an applicant for the job must have a driver's license, unless two conditions are met. The two conditions sufficient for an exception to SB 1100's prohibition require that the employer reasonably expects driving to be one of the job functions for the position, and that the employer reasonably believes that satisfying this job function using an alternative form of transportation would not be comparable in travel time or cost to the employer. For the purposes of this exception, SB 1100 defines an "alternative form of transportation" as including: using a ride hailing service; using a taxi; carpooling; bicycling; and walking.

SB 1100 also makes various amendments to FEHA's provisions relating to discrimination in housing, extending its various anti-discrimination provisions to cover individuals without a driver's license or who do not own a car. Through these amendments, SB 1100 prohibits an owner of a housing accommodation from discriminating against or harassing any person, because of their lack of a driver's license or car ownership. It prohibits an owner of a housing accommodation from making or causing to be made any written or oral inquiry regarding a lack of a driver's license or car ownership to any person seeking to purchase, rent, or lease any housing accommodation. SB 1100 also prohibits any person from making, printing, or publishing any notice, statement or advertisement regarding the sale or rent of a housing accommodation that indicates any preference or limitation or discrimination on the basis of not having a driver's license or car ownership.

SB 1100 also extends FEHA's provisions against discrimination in the provision of protections in the buying, financing, or selling of real estate to those without a driver's license or who do not own a car. These provisions prohibit a bank, mortgage company, or other financial institution that provides financial assistance for the purchase, refinance, organization, or construction of any housing accommodation to discriminate against a person or group of persons, and prohibit any person or organization or entity that engages in real estate transactions to discriminate against any person in making available a transaction, or in the terms and conditions of the transaction. These amendments also extend protections for those without a driver's license or a car that they own from discrimination by persons or entities that perform residential real estate appraisals, or discrimination through public or private land use practices, decisions, and authorizations. Lastly, it extends prohibitions against discrimination by the denial of access to, or membership or participation in, a multiple listing service, real estate brokerage organization, or other service.

6. The need for SB 1100

The author states that the goal of SB 1100 is to ensure fairer access to housing and employment, and to align anti-discrimination laws with California's social justice, equity, and environmental goals. Considering the growing movement towards alternative forms of transportation, and that a broad group of driving-age Californians do not have driver's licenses, the author asserts that SB 1100 will even the playing field in employment and housing for those who do not or choose not to drive. The author further asserts that it is common practice for employers and housing providers to require a driver's license for non-driving-related housing and employment, a practice that acts as a gatekeeping mechanism to access to the fundamental needs of employment and transportation for non-drivers.

While rates vary by occupation, data does show that 30 percent of all jobs in the United States require driving.[10] Reports find that requiring driver's licenses for employment disproportionately affect people of color.[11] Moreover, such requirements may be disproportionately affecting disabled individuals, as they are far less likely than non-disabled individuals to drive or live in a household with a vehicle.[12] In fact, the data may already bare this inequitable impact out, as only 20.2 percent adults with disabilities work full or part time.[13] SB 1100 would achieve its goal of fairer access to housing and employment through prohibiting discrimination in the employment context, unless an employer meets an exception, against an applicant or employee who does not have a driver's license, and through prohibiting discrimination in the housing context in a wide variety of acts against those who do not have a driver's license or do not own a car.

In anti-discrimination law, as previously summarized, SB 1100's employment prohibitions are not entirely new. It is already unlawful to discriminate against an employee or job applicant based on a disability, and employer requirements relating to driving or driver's licenses have been challenged on this basis. While the caselaw certainly makes clear that such cases do not necessarily succeed, they also demonstrate how many such cases rest on a determination of whether driving is an essential function of the job. Here, SB 1100 prohibits discrimination on the basis of a lack of a driver's license outright, and does not require that an employer's rules that require driver's licenses or driving be tied an underlying protected class like race, disability, or national origin. It would simply act to prohibit an employer from requiring a driver's license

[10] Bureau of Labor Statistics, 30 percent of civilian jobs require some driving in 2016, The Economics Daily (Apr. 9, 2024), available at https://www.bls.gov/opub/ted/2017/30-percent-of-civilian-jobs-require-some-driving-in-2016.htm.
[11] Alana Semuels, No Driver's License, No Job, The Atlantic (Jun. 15, 2016), available at https://www.theatlantic.com/business/archive/2016/06/no-drivers-license-no-job/486653/.
[12] Brumbaugh, *supra* note 7.
[13] *Id.*

outright, making not having a driver's license a protected class, unless the employer can meet the exception.

The exception in SB 1100 is also similar to current exceptions in anti-discrimination law, as its basic premise is that the job requires driving and no alternative that could accommodate an applicant's lack of a driver's license exists. However, there are certain differences should be noted. The ADA and FEHA's exception requires that an employer show that a task the employee cannot do due to their disability is an essential function of the job, and that there is no reasonable accommodation that can ensure the applicant can complete the essential functions of the job. Alternatively, an employer under the ADA can argue that a reasonable accommodation would unduly burden the employer such that they should not be required to do it and should not be held liable for not providing it.

However, SB 1100's exception is a simpler, two-part test: did the employer reasonably expect driving to be one of the job functions for the position; and did the employer reasonably believe that an alternative form of transportation for completing the job function requiring driving would not be comparable in travel time or cost to the employer. This exception does not require that driving be an essential function of the job, and its comparable test for an alternative means of transportation is less stringent that the unduly burdensome test required under ADA law. Moreover, it places the employer at the center of the exception, as it is based on the employer's expectations. By so doing, the focus of any exception would be what the employer expected and believed, and whether their expectations and beliefs were reasonable. This may operate to provide an employer with significant deference to their decisions, as the inquiry in any legal case would not be on the specific requirements of the job as much as on whether the employer's expectations of the job were reasonable.

Thus, SB 1100 adds protections from discrimination to FEHA for non-drivers, and it creates a new standard for determining exceptions to its rule. While there is some overlap between current anti-discrimination law and SB 1100, its provisions would create a new protected class, and would create a specific, permissive exception for that class.

7. SB 1100 would be enforced by the Civil Rights Department (CRD)

When an employer or a housing provider violates SB 1100's provisions, an applicant would be able to seek redress through the CRD, as the CRD is tasked with the enforcement of FEHA. First, the applicant would have to file a complaint with CRD, and CRD would then investigate the alleged violation. (Gov. Code §§ 12960, 12963.) A job or housing applicant would have three years from the date of a violation of SB 1100's provisions to file a complaint with CRD. (Gov. Code. §§ 12960(e)(5); 12989.1.) As part of an investigation, CRD has the authority to request a variety of documents and evidence from the parties involved, including the authority to issue subpoenas

requiring the testimony of witnesses or the production of documents and records. (Gov. Code § 12963.2.) If CRD concludes from its investigation that a violation of SB 1100's provisions occurred, it must then attempt to resolve the dispute through a conference or conciliation with the parties. If such a conference does not result in a resolution of the dispute and an elimination of the unlawful employment practice or housing discrimination, CRD may bring a civil action in court on behalf of the aggrieved applicant. (Gov. Code § 12965) If CRD ultimately decides not to pursue a civil action within 150 days of the filing of a complaint, CRD must issue to the complainant a "right-to-sue" notice allowing the complainant to pursue remedies in court themselves. (Gov. Code § 12965.) If an applicant for employment or housing wins in court, they may receive actual damages, punitive damages, and any other relief the court deems necessary, along with reasonable attorney's fees. Through this process, SB 1100's protections could be enforced through court by the CRD, or by the aggrieved applicant if the CRD decides not to enforce the applicant's rights itself.

8. Arguments in support

According to Streets For All, the sponsor of SB 1100:

> SB 1100 will prohibit employers from listing the possession of a driver's license and/or vehicle ownership as a preferred or required qualification. SB 1100 will also prohibit landlords from discriminating against existing or prospective tenants who do not have a driver's license and/or do not own a vehicle.
>
> In most cases, possessing a driver's license or owning a car is not directly related to an individual's ability to perform their job duties effectively, and focusing on this aspect of a candidate's personal life is irrelevant to their qualifications and capabilities.
>
> Basing hiring decisions on whether or not a candidate has a driver's license or owns a vehicle can perpetuate broader systemic biases and assumptions about who is considered a "desirable" or "reliable" employee. This can contribute to discrimination against marginalized communities and reinforce socioeconomic disparities while also perpetuating car dependency, as people are made to feel that they must own a vehicle in order to gain employment.
>
> Discriminating against individuals without driver's licenses or vehicles disproportionately affects certain groups including: people with disabilities, low-income individuals, and those living in urban areas with access to public transportation who choose not to drive or own a vehicle. Such discrimination perpetuates existing inequalities and further disadvantages these groups in the job market. Prohibiting discrimination based on possession of a driver's license and/or vehicle ownership will encourage employers to focus on relevant job qualifications and skills when making hiring decisions. It promotes inclusive

hiring practices that consider a larger, more diverse pool of candidates and values individuals for their abilities rather than arbitrary criteria unrelated to job performance.

SUPPORT

Streets for All (sponsor)
Active San Gabriel Valley
BikeLA
Car-Lite Long Beach
Center for Community Action and Environmental Justice
East Bay for Everyone
Everybody's Long Beach
Long Beach Bike Co Op
Los Angeles Walks
Marin County Bicycle Coalition
Pedal Movement
People for Housing OC
San Francisco Bay Physicians for Social Responsibility
Safe Routes Partnership
Transbay Coalition
YIMBY Action
Youth Climate Strike Los Angeles

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 731 (Ashby, 2023) would have made it an unlawful employment practice for an employer to fail to provide an employee working from home at least 30 days' notice before requiring they return to work in person, and to provide specified information in such notice, including an employee's right to request continuing remote work as a reasonable accommodation for disability. SB 731 was vetoed by Governor Newsom on the grounds that the 30-day notice requirement would be impractical.

AB 1660 (Alejo, Ch. 452, Stats. 2014) specified that discrimination on the basis of national origin includes discrimination on the basis of a specified California driver's license that may indicate the individual's immigration status.

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