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MEASURES ADOPTED IN 1979

1979-80 Regular Session

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GOVERNOR'S REORGANIZATION
PLAN NO. 1 of 1979

GOVERNOR'S REORGANIZATION
PLAN NO. 1 OF 1979

Received by Assembly June 21, 1979; received by Senate June 28, 1979.

Takes effect on January 20, 1980, by operation of Government Code Section 12080.5.

June 22, 1979

REFERRED TO COMMITTEE ON LABOR, EMPLOYMENT, AND CONSUMER
AFFAIRS

STATUTORY PROVISIONS

An act to amend Sections 11139.5, 11501, 11554, 19702.5, 19704, and 50085.5 of, and to add Part 2.8 (commencing with Section 12900) to Division 3 of Title 2 of, the Government Code, to repeal Part 5 (commencing with Section 35700) of Division 24 of the Health and Safety Code, to amend Sections 56, 1735, and 3096 of, and to repeal Part 4.5 (commencing with Section 1410) of Division 2 of, the Labor Code, relating to the reorganization of the executive branch of the California state government.

LEGISLATIVE COUNSEL'S DIGEST

Governor's Reorganization Plan No. 1.

(L.E.C.A.)

**General Subject: State government reorganization:
employment and housing discrimination.**

Under existing law, there is within the Department of Industrial Relations a Division of Fair Employment Practices, and, within the division, there is a State Fair Employment Practice Commission, whose responsibility it is, generally, to enforce (1) the "California Fair Employment Practice Act," relating to the prevention and elimination of discrimination

in employment; (2) certain provisions of law relating to the prevention and elimination of discrimination in housing contained in what is commonly referred to as the Rumford Fair Housing Act; (3) the provisions of the Unruh Civil Rights Act; and (4) the provisions of the Ralph Civil Rights Act of 1976.

Under existing law, the principal executive officer of the division and the seven members of the commission are appointed by the Governor, and the commissioners are also subject to confirmation by the Senate.

This bill would abolish the Division of Fair Employment Practices within the Department of Industrial Relations and would create a Department of Fair Employment and Housing within the State and Consumer Services Agency and a Fair Employment and Housing Commission within the department, which entities would succeed to the present functions and responsibilities of the division and commission. All employees engaged in transferred functions would become employees of the new entities.

The bill would also require that the appointee of the Governor to the position of Director of Employment and Fair Housing receive Senate confirmation.

Various other provisions of law would be conformed to reflect the new organization.

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

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

- 1 SECTION 1. Section 11139.5 of the Government Code
- 2 is amended to read:
- 3 11139.5. The Secretary of the Health and Welfare
- 4 Agency, with the advice and concurrence of the ~~Fair~~
- 5 ~~Employment Practices Commission~~ *Fair Employment*
- 6 *and Housing Commission* , shall establish standards for
- 7 determining which persons are protected by this article
- 8 and guidelines for determining what practices are
- 9 discriminatory. The secretary, with the cooperation of
- 10 the ~~Fair Employment Practices Commission~~ *Fair*
- 11 *Employment and Housing Commission* , shall assist state

1 agencies in coordinating their programs and activities
2 and shall consult with such agencies, as necessary, so that
3 consistent policies, practices, and procedures are adopted
4 with respect to the enforcement of the provisions of the
5 article.

6 SEC. 2. Section 11501 of the Government Code is
7 amended to read:

8 11501. (a) This chapter applies to any agency as
9 determined by the statutes relating to that agency.

10 (b) The enumerated agencies referred to in Section
11 11500 are:

12 Accountancy, State Board of
13 Aging, State Department of
14 Air Resources Board, State
15 Alcohol and Drug Abuse, State Department of
16 Alcoholic Beverage Control, Department of
17 Architectural Examiners, California State Board of
18 Attorney General
19 Automotive Repair, Bureau of
20 Barber Examiners, State Board of
21 Behavioral Science Examiners, Board of
22 Cancer Advisory Council
23 Cemetery Board
24 Chiropractic Examiners, Board of
25 Collection and Investigative Services, Bureau of
26 Community Colleges, Board of Governors of the
27 California
28 Conservation, Department of
29 Consumer Affairs, Director of
30 Contractors, Registrar of
31 Corporations, Commissioner of
32 Cosmetology, State Board of
33 Dental Examiners of California, Board of
34 Developmental Services, State Department of
35 Education, State Board of
36 Employment Agencies, Bureau of
37 Engineers, State Board of Registration for Professional
38 Fabric Care, State Board of
39 ~~Fair Employment Practice Commission, State~~
40 *Fair Employment and Housing Commission*

- 1 Fair Political Practices Commission
- 2 Fire Marshal, State
- 3 Fire Services, State Board of
- 4 Fish and Game Commission
- 5 Food and Agriculture, Director of
- 6 Forestry, Department of
- 7 Funeral Directors and Embalmers, State Board of
- 8 Geologists and Geophysicists, State Board of
- 9 Registration for
- 10 Guide Dogs for the Blind, State Board of
- 11 Health Services, State Department of
- 12 Home Furnishings, Bureau of
- 13 Horse Racing Board, California
- 14 Insurance Commissioner
- 15 Labor Commissioner
- 16 Landscape Architects, State Board of
- 17 Medical Quality Assurance, Board of, Medical Quality
- 18 Review Committees and Examining Committees
- 19 Mental Health, State Department of
- 20 Motor Vehicles, Department of
- 21 Navigation and Ocean Development, Department of
- 22 Nursing, Board of Registered
- 23 Nursing Home Administrators, Board of Examiners of
- 24 Optometry, State Board of
- 25 Osteopathic Examiners of the State of California, Board
- 26 of
- 27 Pharmacy, California State Board of
- 28 Public Employees' Retirement System, Board of
- 29 Administration of the
- 30 Real Estate, Department of
- 31 Repair Services, Bureau of
- 32 Resources Agency, Secretary of the
- 33 San Francisco, San Pablo and Suisun, Board of Pilot
- 34 Commissioners for the Bays of
- 35 Savings and Loan Commissioner
- 36 School Districts
- 37 Shorthand Reporters Board, Certified
- 38 Social Services, State Department of
- 39 Statewide Health Planning and Development, Office
- 40 of

1 Structural Pest Control Board
2 Tax Preparer Program, Administrator
3 Teacher Preparation and Licensing, Commission for
4 Teachers' Retirement System, State
5 Transportation, Department of, acting pursuant to the
6 State Aeronautics Act
7 Veterinary Medicine, Board of Examiners in
8 Vocational Nurse and Psychiatric Technician
9 Examiners of the State of California, Board of
10 Water Resources, Department of
11 SEC. 3. Section 11554 of the Government Code, is
12 amended to read:

13 11554. An annual salary of twenty-seven thousand five
14 hundred dollars (\$27,500) shall be paid to each of the
15 following:

- 16 (a) Director of Conservation
- 17 (b) Director of Fish and Game
- 18 (c) Executive Officer, Franchise Tax Board
- 19 (d) Director of Parks and Recreation
- 20 (e) Director of Rehabilitation
- 21 (f) Director of Veterans Affairs
- 22 (g) Director of Professional and Vocational Standards
- 23 (h) Members of the Unemployment Insurance
24 Appeals Board
- 25 (i) State Architect
- 26 (j) Director of Forestry
- 27 (k) *Director of Fair Employment and Housing.*

28 SEC. 4. Part 2.8 (commencing with Section 12900) is
29 added to Division 3 of Title 2 of the Government Code,
30 to read:

31
32 **PART 2.8. DEPARTMENT OF FAIR EMPLOYMENT**
33 **AND HOUSING**

34
35 **CHAPTER 1. GENERAL PROVISIONS**

36
37 12900. This part may be known and referred to as the
38 "California Fair Employment and Housing Act."

39 12901. There is in the state government, in the State
40 and Consumer Services Agency, the Department of Fair

1 Employment and Housing. The department is under the
2 direction of an executive officer known as the Director of
3 Fair Employment and Housing, who is appointed by the
4 Governor, subject to confirmation by the Senate, and
5 who holds office at the pleasure of the Governor. The
6 annual salary of the director is provided for by Chapter
7 6 (commencing with Section 11550) of Part 1 of Division
8 3 of Title 2 of this code.

9 12902. The provisions of Chapter 2 (commencing with
10 Section 11150) of Part 1 of Division 3 of Title 2 of this code
11 apply to the director and the director is the head of a
12 department within the meaning of such chapter.

13 12903. There is in the Department of Fair Employment
14 and Housing the Fair Employment and Housing
15 Commission. Such commission shall consist of seven
16 members, to be known as commissioners, who shall be
17 appointed by the Governor, by and with the advice and
18 consent of the Senate, and one of whom shall be
19 designated as chairman by the Governor. The term of
20 office of each member of the commission shall be for four
21 years. The members of the Fair Employment Practice
22 Commission on the effective date of this section shall
23 become the members of the Fair Employment and
24 Housing Commission and shall serve the balance of the
25 term they would have served on the Fair Employment
26 Practice Commission.

27 12904. Any member chosen to fill a vacancy on the
28 commission occurring otherwise than by expiration of
29 term shall be appointed for the unexpired term of the
30 member whom he or she is to succeed. Three members
31 of the commission shall constitute a quorum for the
32 purpose of conducting the business thereof.

33 12905. Each member of the commission shall serve
34 without compensation but shall receive fifty dollars (\$50)
35 for each day actually spent in the performance of his or
36 her duties under this part and shall also be entitled to his
37 or her expenses actually and necessarily incurred in the
38 performance of his or her duties.

39 12906. Any member of the commission may be
40 removed by the Governor for inefficiency, for neglect of

1 duty, misconduct or malfeasance in office, after being
2 given a written statement of the charges and an
3 opportunity to be heard thereon.

4

5 **CHAPTER 2. SUCCESSION TO FUNCTIONS AND**
6 **RESPONSIBILITIES**

7

8 12910. (a) The Department of Fair Employment and
9 Housing and the Fair Employment and Housing
10 Commission succeed to, and are vested with, all of the
11 powers, duties, purposes, responsibilities, and jurisdiction
12 of the Division of Fair Employment Practices and the
13 State Fair Employment Practices Commission,
14 respectively, in the Department of Industrial Relations,
15 which are hereby abolished.

16 (b) All powers, duties, and responsibilities of the Chief
17 of the Division of Fair Employment Practices are hereby
18 transferred to the Director of Fair Employment and
19 Housing.

20 (c) Any regulation or other action made, prescribed,
21 issued, granted, or performed by the abolished Division
22 of Fair Employment Practices or the State Fair
23 Employment Practice Commission in the administration
24 of a function transferred pursuant to subdivision (a) shall
25 remain in effect and shall be deemed to be a regulation
26 or action of the Department of Fair Employment and
27 Housing or the Fair Employment and Housing
28 Commission, respectively.

29 12911. All persons serving in the state civil service,
30 other than temporary employees, in the State Fair
31 Employment Practice Commission and the Division of
32 Fair Employment Practices in the Department of
33 Industrial Relations, and engaged in the performance of
34 a function transferred to the Fair Employment and
35 Housing Commission and the Department of Fair
36 Employment and Housing shall, in accordance with
37 Sections 12080.3 and 19370 of the Government Code,
38 remain in the state civil service and are hereby
39 transferred to the Fair Employment and Housing
40 Commission and the Department of Fair Employment

1 and Housing, respectively. The status, positions, and
2 rights of such persons shall not be affected by their
3 transfer and shall continue to be retained by them
4 pursuant to the State Civil Service Act, except as to
5 positions the duties of which are vested in a position
6 exempt from civil service.

7 The personnel records of all transferred employees
8 shall be transferred to the new Department of Fair
9 Employment and Housing.

10 12912. The Department of Fair Employment and
11 Housing and the Fair Employment and Housing
12 Commission shall have possession and control of all
13 records, books, papers, offices, equipment, supplies,
14 moneys, funds, appropriations, land, licenses, permits,
15 agreements, contracts, claims, judgments, and other
16 property, real or personal, held for the benefit or use of
17 any state agency the functions of which are vested in the
18 Department of Fair Employment and Housing or the
19 Fair Employment and Housing Commission.

20 12913. All unexpended balances of appropriations and
21 other funds available to the State Fair Employment
22 Practice Commission shall be transferred to the Fair
23 Employment and Housing Commission. All unexpended
24 balances of appropriations and other funds available to
25 the Division of Fair Employment Practices in the
26 Department of Industrial Relations shall be transferred to
27 the Department of Fair Employment and Housing in the
28 State and Consumer Services Agency. All funds so
29 transferred shall be for the use or the purpose for which
30 the appropriations or other funds were originally
31 available.

32

33 CHAPTER 3. FINDINGS AND DECLARATIONS OF 34 POLICY

35

36 12920. It is hereby declared as the public policy of this
37 state that it is necessary to protect and safeguard the right
38 and opportunity of all persons to seek, obtain, and hold
39 employment without discrimination or abridgment on
40 account of race, religious creed, color, national origin,

1 ancestry, physical handicap, medical condition, marital
2 status, sex, or age.

3 It is recognized that the practice of denying
4 employment opportunity and discriminating in the terms
5 of employment for such reasons foments domestic strife
6 and unrest, deprives the state of the fullest utilization of
7 its capacities for development and advance, and
8 substantially and adversely affects the interest of
9 employees, employers, and the public in general.

10 Further, the practice of discrimination because of race,
11 color, religion, sex, marital status, national origin, or
12 ancestry in housing accommodations is declared to be
13 against public policy.

14 It is the purpose of this part to provide effective
15 remedies which will eliminate such discriminatory
16 practices.

17 This part shall be deemed an exercise of the police
18 power of the state for the protection of the welfare,
19 health, and peace of the people of this state.

20 12921. The opportunity to seek, obtain and hold
21 employment without discrimination because of race,
22 religious creed, color, national origin, ancestry, physical
23 handicap, medical condition, marital status, sex, or age is
24 hereby recognized as and declared to be a civil right.

25

26

CHAPTER 4. DEFINITIONS

27

28 12925. As used in this part, unless a different meaning
29 clearly appears from the context:

30 (a) "Commission" means the Fair Employment and
31 Housing Commission and "commissioner" means a
32 member of the commission.

33 (b) "Department" means the Department of Fair
34 Employment and Housing.

35 (c) "Director" means the Director of Fair
36 Employment and Housing.

37 (d) "Person" includes one or more individuals,
38 partnerships, associations, corporations, legal
39 representatives, trustees, trustees in bankruptcy, and
40 receivers or other fiduciaries.

1 12926. As used in this part in connection with unlawful
2 practices, unless a different meaning clearly appears
3 from the context:

4 (a) "Age" refers to the chronological age of any
5 individual who has reached his or her 40th birthday.

6 (b) "Employee" does not include any individual
7 employed by his parents, spouse, or child, or any
8 individual employed under a special license in a
9 nonprofit sheltered workshop or rehabilitation facility.

10 (c) "Employer," except as hereinafter provided,
11 includes any person regularly employing five or more
12 persons, or any person acting as an agent of an employer,
13 directly or indirectly; the state or any political or civil
14 subdivision thereof and cities.

15 "Employer" does not include a religious association or
16 corporation not organized for private profit.

17 (d) "Employment agency" includes any person
18 undertaking for compensation to procure employees or
19 opportunities to work.

20 (e) "Labor organization" includes any organization
21 which exists and is constituted for the purpose, in whole
22 or in part, of collective bargaining or of dealing with
23 employers concerning grievances, terms or conditions of
24 employment, or of other mutual aid or protection.

25 (f) "Medical condition" means any health impairment
26 related to or associated with a diagnosis of cancer, for
27 which a person has been rehabilitated or cured, based on
28 competent medical evidence.

29 (g) "On the bases enumerated in this part" means or
30 refers to discrimination in connection with employment
31 on the basis of one or more of the following: race,
32 religious creed, color, national origin, ancestry, physical
33 handicap, medical condition, marital status, sex, or age.

34 (h) "Physical handicap" includes impairment of sight,
35 hearing, or speech, or impairment of physical ability
36 because of amputation or loss of function or coordination,
37 or any other health impairment which requires special
38 education or related services.

39 12927. As used in this part in connection with housing
40 accommodations, unless a different meaning clearly

1 appears from the context:

2 (a) "Affirmative actions" means any activity for the
3 purpose of eliminating discrimination in housing
4 accommodations because of race, color, religion, sex,
5 marital status, national origin, or ancestry.

6 (b) "Conciliation council" means a nonprofit
7 organization, or a city or county human relations
8 commission, which provides education, factfinding, and
9 mediation or conciliation services in resolution of
10 complaints of housing discrimination.

11 (c) "Discrimination" includes refusal to sell, rent, or
12 lease housing accommodations; includes refusal to
13 negotiate for the sale, rental, or lease of housing
14 accommodations; includes representation that a housing
15 accommodation is not available for inspection, sale, or
16 rental when such housing accommodation is in fact so
17 available; includes any other denial or withholding of
18 housing accommodations; includes provision of inferior
19 terms, conditions, privileges, facilities, or services in
20 connection with such housing accommodations; includes
21 the cancellation or termination of a sale or rental
22 agreement; and includes the provision of segregated or
23 separated housing accommodations. The term
24 "discrimination" does not include refusal to rent or lease
25 a portion of an owner-occupied single-family house to a
26 person as a roomer or boarder living within the
27 household, provided that no more than one roomer or
28 boarder is to live within the household.

29 (d) "Housing accommodation" includes any
30 improved or unimproved real property, or portion
31 thereof, which is used or occupied, or is intended,
32 arranged or designed to be used or occupied, as the
33 home, residence, or sleeping place of one or more human
34 beings, but shall not include any accommodations
35 operated by a religious, fraternal, or charitable
36 association or corporation not organized or operated for
37 private profit; provided, that such accommodations are
38 being used in furtherance of the primary purpose or
39 purposes for which the association or corporation was
40 formed.

1 (e) "Owner" includes the lessee, sublessee, assignee,
 2 managing agent, real estate broker or salesman, or any
 3 person having any legal or equitable right of ownership
 4 or possession or the right to rent or lease housing
 5 accommodations, and includes the state and any of its
 6 political subdivisions and any agency thereof.

7

8 CHAPTER 5. POWERS AND DUTIES

9

10 Article 1. The Department

11

12 12930. The department shall have the following
 13 functions, powers and duties:

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

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

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

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

26 (e) To adopt, promulgate, amend, and rescind suitable
 27 rules and regulations to carry out the functions and duties
 28 of the department pursuant to this part.

29 (f) (1) To receive, investigate and conciliate
 30 complaints alleging discrimination in employment on the
 31 bases enumerated in this part and discrimination in
 32 housing because of race, religious creed, color, sex,
 33 marital status, national origin, or ancestry.

34 (2) To receive, investigate, and conciliate complaints
 35 alleging a violation of Section 51 or 51.7 of the Civil Code.
 36 The remedies and procedures of this part shall be
 37 independent of any other remedy or procedure that
 38 might apply.

39 (g) To subpoena witnesses, compel their attendance,
 40 administer oaths, examine any person under oath or by

1 sworn interrogatory, and, in connection therewith, to
2 require the production of any books or papers relating to
3 any matter under investigation or in question before the
4 department.

5 (h) To issue accusations pursuant to Section 12965 or
6 12981 and to prosecute such accusations before the
7 commission.

8 (i) To issue such publications and such results of
9 investigations and research as in its judgment will tend to
10 promote goodwill and minimize or eliminate
11 discrimination in employment on the bases enumerated
12 in this part and discrimination in housing because of race,
13 religious creed, color, sex, marital status, national origin,
14 or ancestry.

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

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

21 12931. The department may also provide assistance to
22 communities and persons therein in resolving disputes,
23 disagreements, or difficulties relating to discriminatory
24 practices based on race, religious creed, color, national
25 origin, marital status, or ancestry which impair the rights
26 of persons in such communities under the Constitution or
27 laws of the United States or of this state. The services of
28 the department may be made available in cases of such
29 disputes, disagreements, or difficulties only when, in its
30 judgment, peaceful relations among the citizens of the
31 community involved are threatened thereby. The
32 department's services are to be made available only upon
33 the request of an appropriate state or local public body,
34 or upon the request of any person directly affected by any
35 such dispute, disagreement, or difficulty.

36 The assistance of the department pursuant to this
37 section shall be limited to endeavors at investigation,
38 conference, conciliation, and persuasion.

39 12932. (a) The Legislature recognizes that the
40 avoidance of discriminatory practices in the employment

1 of disabled persons is most effectively achieved through
2 the ongoing efforts of state agencies involved in the
3 vocational rehabilitation and job placement of the
4 disabled. The department may utilize the efforts and
5 experience of the Department of Rehabilitation in the
6 development of job opportunities for the disabled by
7 requesting the Department of Rehabilitation to foster
8 good will and to conciliate on employment policies with
9 employers who, in the judgment of the department, have
10 employment practices or policies that discriminate
11 against disabled persons. Nothing contained in this
12 paragraph shall be construed to transfer any of the
13 functions, powers, or duties from the department to the
14 Department of Rehabilitation.

15 (b) The activities of the department in providing
16 conciliation assistance shall be conducted in confidence
17 and without publicity, and the department shall hold
18 confidential any information acquired in the regular
19 performance of its duties upon the understanding that it
20 would be so held. No employee of the department shall
21 engage in the performance of investigative or
22 prosecuting functions of any department or agency in
23 any litigation arising out of a dispute in which he acted
24 on behalf of the department. Any employee of the
25 department, who makes public in any manner whatever
26 any information in violation of this subdivision, is guilty
27 of a misdemeanor and, if a member of the state civil
28 service, shall be subject to disciplinary action under the
29 State Civil Service Act. When contacted by the
30 department, employers, labor organizations, or
31 employment agencies shall be informed whether a
32 particular discussion, or portion thereof, constitutes
33 either: (1) endeavors at conference, conciliation and
34 persuasion which may not be disclosed by the
35 department or received in evidence in any formal
36 hearing or court action; or (2) investigative processes,
37 which are not so protected.

38 12933. The department shall maintain liaison with the
39 human relations commissions of cities, counties, and any
40 city and county, and shall provide any information not

1 designated by law as confidential to such commissions on
2 request.

3

4

Article 2. The Commission

5

6 12935. The commission shall have the following
7 functions, powers and duties:

8 (a) To adopt, promulgate, amend, and rescind suitable
9 rules, regulations, and standards (1) to interpret,
10 implement, and apply Sections 12920, 12940, 12941, 12943,
11 12990, 12993, and 12994, as well as any other section of this
12 part pertaining to unlawful employment practices,
13 affirmative action, and public work contracts, (2) to
14 interpret, implement, and apply Section 12955 pertaining
15 to discrimination in housing and Section 12927 pertaining
16 to affirmative action in housing, (3) to regulate the
17 conduct of hearings held pursuant to Sections 12967 and
18 12980, and (4) to carry out all other functions and duties
19 of the commission pursuant to this part.

20 (b) To conduct hearings pursuant to Sections 12967
21 and 12981.

22 (c) To establish and maintain a principal office within
23 the state.

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

25 (e) To appoint an executive secretary, and such
26 attorneys and other employees as it may deem necessary,
27 fix their compensation within the limitations provided by
28 law, and prescribe their duties.

29 (f) To hold hearings, subpoena witnesses, compel their
30 attendance, administer oaths, examine any person under
31 oath and, in connection therewith, to require the
32 production of any books or papers relating to any matter
33 under investigation or in question before the commission.

34 (g) To create or provide financial or technical
35 assistance to such advisory agencies and conciliation
36 councils, local or otherwise, as in its judgment will aid in
37 effectuating the purposes of this part, and to empower
38 them to study the problems of discrimination in all or
39 specific fields of human relationships or in particular
40 instances of discrimination on the bases enumerated in

1 this part or in specific instances of housing discrimination
2 because of race, religious creed, color, national origin,
3 ancestry, marital status, or sex, and to foster, through
4 community effort or otherwise, good will, cooperation,
5 and conciliation among the groups and elements of the
6 population of the state and to make recommendations to
7 the commission for the development of policies and
8 procedures in general. Such advisory agencies and
9 conciliation councils shall be composed of representative
10 citizens, serving without pay.

11 (h) With respect to findings and orders made
12 pursuant to Section 12967, to establish a system of
13 published opinions which shall serve as precedent in
14 interpreting and applying Sections 12940, 12941, and
15 12990, as well as of any other section of this part, except
16 those relating to housing discrimination, on which the
17 commission is authorized to issue findings or orders.

18 (i) To issue publications and results of inquiries and
19 research which in its judgment will tend to promote good
20 will and minimize or eliminate unlawful discrimination.
21 Such publications shall include an annual report to the
22 Governor and the Legislature of its activities and
23 recommendations.

24

25 CHAPTER 6. DISCRIMINATION PROHIBITED

26

27 Article 1. Unlawful Practices, Generally

28

29 12940. It shall be an unlawful employment practice,
30 unless based upon a bona fide occupational qualification,
31 or, except where based upon applicable security
32 regulations established by the United States or the State
33 of California:

34 (a) For an employer, because of the race, religious
35 creed, color, national origin, ancestry, physical handicap,
36 medical condition, marital status, or sex of any person, to
37 refuse to hire or employ the person or to refuse to select
38 the person for a training program leading to
39 employment, or to bar or to discharge such person from
40 employment or from a training program leading to

1 employment, or to discriminate against such person
2 compensation or in terms, conditions or privilege
3 employment.

4 (1) Nothing in this part shall prohibit an employer
5 from refusing to hire or discharging a physically
6 handicapped employee, or subject an employer to
7 legal liability resulting from the refusal to employ or
8 discharge of a physically handicapped employee, with
9 the employee, because of his or her physical handicap
10 unable to perform his or her duties, or cannot perform
11 such duties in a manner which would not endanger his
12 her health or safety or the health and safety of others.

13 (2) Nothing in this part shall prohibit an employer
14 from refusing to hire or discharging an employee who
15 because of the employee's medical condition, is unable
16 perform his or her duties, or cannot perform such duties
17 in a manner which would not endanger the employee's
18 health or safety or the health or safety of others. Nothing
19 in this part shall subject an employer to any legal liability
20 resulting from the refusal to employ or the discharge
21 of an employee who, because of the employee's medical
22 condition, is unable to perform his or her duties.
23 cannot perform such duties in a manner which would
24 endanger the employee's health or safety or the health
25 safety of others.

26 (3) Nothing in this part relating to discrimination
27 account of marital status shall either (i) affect the right
28 of an employer to reasonably regulate, for reasons of
29 supervision, safety, security, or morale, the working
30 spouses in the same department, division, or facility
31 consistent with the rules and regulations adopted by the
32 commission, or (ii) prohibit bona fide health plans from
33 providing additional or greater benefits to employees
34 with dependents than to those employees without or with
35 fewer dependents.

36 (b) For a labor organization, because of the reasons
37 religious creed, color, national origin, ancestry, physical
38 handicap, medical condition, marital status, or sex of
39 person, to exclude, expel or restrict from its membership
40 such person, or to provide only second-class or segregated

1 membership or to discriminate against any person
2 because of the race, religious creed, color, national origin,
3 ancestry, physical handicap, medical condition, marital
4 status, or sex of such person in the election of officers of
5 the labor organization or in the selection of the labor
6 organization's staff or to discriminate in any way against
7 any of its members or against any employer or against any
8 person employed by an employer.

9 (c) For any person to discriminate against any person
10 in the selection or training of that person in any
11 apprenticeship training program or any other training
12 program leading to employment because of the race,
13 religious creed, color, national origin, ancestry, physical
14 handicap, medical condition, marital status, or sex of the
15 person discriminated against.

16 (d) For any employer or employment agency, unless
17 specifically acting in accordance with federal equal
18 employment opportunity guidelines and regulations
19 approved by the commission, to print or circulate or
20 cause to be printed or circulated any publication, or to
21 make any non-job-related inquiry, either verbal or
22 through use of an application form, which expresses,
23 directly or indirectly, any limitation, specification, or
24 discrimination as to race, religious creed, color, national
25 origin, ancestry, physical handicap, medical condition,
26 marital status, or sex, or any intent to make any such
27 limitation, specification or discrimination. Nothing in this
28 subdivision shall prohibit any employer from making, in
29 connection with prospective employment, an inquiry as
30 to, or a request for information regarding, the physical
31 fitness, medical condition, physical condition or medical
32 history of applicants if that inquiry or request for
33 information is directly related and pertinent to the
34 position the applicant is applying for or directly related
35 to a determination of whether the applicant would
36 endanger his or her health or safety or the health or safety
37 of others.

38 (e) For any employer, labor organization or
39 employment agency to discharge, expel or otherwise
40 discriminate against any person because the person has

1 opposed any practices forbidden under this part or
2 because the person has filed a complaint, testified or
3 assisted in any proceeding under this part.

4 (f) For any person to aid, abet, incite, compel, or
5 coerce the doing of any of the acts forbidden under this
6 part, or to attempt to do so.

7 (g) For the governing board of a school district to
8 violate Section 44066 or 87402 of the Education Code.

9 12941. (a) It is an unlawful employment practice for an
10 employer to refuse to hire or employ, or to discharge,
11 dismiss, reduce, suspend, or demote, any individual over
12 the age of 40 on the ground of age, except in cases where
13 the law compels or provides for such action. This section
14 shall not be construed to make unlawful the rejection or
15 termination of employment where the individual
16 applicant or employee failed to meet bona fide
17 requirements for the job or position sought or held, or to
18 require any changes in any bona fide retirement or
19 pension programs or existing collective-bargaining
20 agreements during the life of the contract, or until
21 January 1, 1980, whichever occurs first, nor shall this
22 section preclude such physical and medical examinations
23 of applicants and employees as an employer may make or
24 have made to determine fitness for the job or position
25 sought or held.

26 Promotions within the existing staff, hiring or
27 promotion on the basis of experience and training,
28 rehiring on the basis of seniority and prior service with
29 the employer, or hiring under an established recruiting
30 program from high schools, colleges, universities, and
31 trade schools shall not, in and of themselves, constitute a
32 violation of this section.

33 (b) This section shall not limit the right of an
34 employer, employment agency, or labor union to select
35 or refer the better qualified person from among all
36 applicants for a job. The burden of proving a violation of
37 this section shall be upon the person or persons claiming
38 that the violation occurred.

39 (c) The age limitations of the apprenticeship
40 programs in which the state participates shall not be

1 deemed to violate this section.

2 12942. Every employer in this state, except a public
3 agency, shall permit any employee who indicates in
4 writing a desire in a reasonable time and can demonstrate
5 the ability to do so, to continue his employment beyond
6 the normal retirement date contained in any private
7 pension or retirement plan.

8 Such employment shall continue so long as the
9 employee demonstrates his ability to perform the
10 functions of the job adequately and the employer is
11 satisfied with the quality of work performed.

12 This section shall not be construed to require any
13 change in funding, benefit levels, or formulas of any
14 existing retirement plan, or to require any employer to
15 increase such employer's payments for the provision of
16 insurance benefits contained in any existing employee
17 benefit or insurance plan, by reason of such employee's
18 continuation of employment beyond the normal
19 retirement date, or to require any changes in any bona
20 fide retirement or pension programs or existing
21 collective-bargaining agreements during the life of the
22 contract, or until January 1, 1980, whichever occurs first.

23 Any employee indicating such desire and continuing
24 such employment shall give the employer written notice
25 in reasonable time, of intent to retire or terminate when
26 such retirement or termination occurs after the
27 employee's normal retirement date.

28 Nothing in this section or Section 12941 shall be
29 construed to prohibit compulsory retirement of any
30 employee who has attained 65 years of age but not 70
31 years of age, and who is either:

32 (a) Serving under a contract of unlimited tenure, or
33 similar arrangement providing for unlimited tenure at an
34 institution of higher education as defined by Section
35 1201(a) of the Federal Higher Education Act of 1965; or

36 (b) For the two-year period immediately before
37 retirement, is employed in a bona fide executive or a high
38 policymaking position, if such employee is entitled to an
39 immediate nonforfeitable annual retirement benefit
40 from a pension, profitsharing, savings, or deferred

1 compensation plan, or any combination of such plans, of
2 the employer of such employee, which equals, in the
3 aggregate, at least \$27,000.

4 12943. It shall be an unlawful employment practice
5 unless based upon a bona fide occupational qualification:

6 (a) For the governing board of any school district,
7 because of the pregnancy of any female person, to refuse
8 to hire or employ her, or to refuse to select her for a
9 training program leading to employment, or to bar or to
10 discharge her from employment or from a training
11 program leading to employment, or to discriminate
12 against her in compensation or in terms, conditions, or
13 privileges of employment.

14 (b) For the governing board of any school district to
15 terminate any employee who is temporarily disabled,
16 pursuant to or on the basis of an employment policy
17 under which insufficient or no leave is available, if the
18 policy has a disparate impact on employees of one sex and
19 is not justified by necessity of the public schools.

20 12944. (a) It shall be unlawful for a licensing board to
21 require any examination or establish any other
22 qualification for licensing which has an adverse impact on
23 any class by virtue of its race, creed, color, national origin
24 or ancestry, sex, age, medical condition, or physical
25 handicap, unless such practice can be demonstrated to be
26 job related.

27 Where the commission, after hearing, determines that
28 an examination is unlawful under this subdivision, the
29 licensing board may continue to use and rely on such
30 examination until such time as judicial review by the
31 superior court of the determination is exhausted.

32 If an examination or other qualification for licensing is
33 determined to be unlawful under this section, that
34 determination shall not void, limit, repeal, or otherwise
35 affect any right, privilege, status, or responsibility
36 previously conferred upon any person by such
37 examination or by a license issued in reliance on such
38 examination or qualification.

39 (b) It shall be unlawful for any licensing board, unless
40 specifically acting in accordance with federal equal

1 employment opportunity guidelines or regulations
2 approved by the commission, to print or circulate or
3 cause to be printed or circulated any publication, or to
4 make any non-job-related inquiry, either verbal or
5 through use of an application form, which expresses,
6 directly or indirectly, any limitation, specification, or
7 discrimination as to race, religious creed, color, national
8 origin, ancestry, physical handicap, medical condition,
9 sex, or age, or any intent to make any such limitation,
10 specification, or discrimination. Nothing in this
11 subdivision shall prohibit any licensing board from
12 making, in connection with prospective licensure or
13 certification, an inquiry as to, or a request for information
14 regarding, the physical fitness of applicants if that inquiry
15 or request for information is directly related and
16 pertinent to the license or the licensed position the
17 applicant is applying for.

18 (c) It is unlawful for a licensing board to discriminate
19 against any person because such person has filed a
20 complaint, testified, or assisted in any proceeding under
21 this part.

22 (d) It is unlawful for any licensing board to fail to keep
23 records of applications for licensing or certification for a
24 period of two years following the date of receipt of such
25 applications.

26 (e) As used in this section, "licensing board" means
27 any state board, agency, or authority in the Department
28 of Consumer Affairs which has the authority to grant
29 licenses or certificates which are prerequisites to
30 employment eligibility or professional status.

31 12945. It shall be an unlawful employment practice
32 unless based upon a bona fide occupational qualification:

33 (a) For any employer, because of the pregnancy,
34 childbirth, or related medical condition of any female
35 employee, to refuse to promote her, or to refuse to select
36 her for a training program leading to promotion,
37 provided she is able to complete the training program at
38 least three months prior to the anticipated date of
39 departure for her pregnancy leave, or to discharge her
40 from employment or from a training program leading to

1 promotion, or to discriminate against her in
2 compensation or in terms, conditions, or privileges of
3 employment.

4 (b) For any employer to refuse to allow a female
5 employee affected by pregnancy, childbirth, or related
6 medical conditions either:

7 (1) To receive the same benefits or privileges of
8 employment granted by that employer to other persons
9 not so affected who are similar in their ability or inability
10 to work, including to take disability or sick leave or any
11 other accrued leave which is made available by the
12 employer to temporarily disabled employees. For
13 purposes of this section, pregnancy, childbirth, and
14 related medical conditions are treated as any other
15 temporary disability. However, no employer shall be
16 required to provide a female employee disability leave on
17 account of normal pregnancy, childbirth, or related
18 medical condition for a period exceeding six weeks.
19 Nothing in this section shall be construed to require an
20 employer to provide his or her employees with health
21 insurance coverage for the medical costs of pregnancy,
22 childbirth, or related medical conditions. The inclusion in
23 any such health insurance coverage of any provisions or
24 coverage relating to medical costs of pregnancy,
25 childbirth, or related medical conditions shall not be
26 construed to require the inclusion of any other provisions
27 or coverage, nor shall coverage of any related medical
28 conditions be required by virtue of coverage of any
29 medical costs of pregnancy, childbirth, or other related
30 medical conditions.

31 (2) To take a leave on account of pregnancy for a
32 reasonable period of time; provided, such period shall not
33 exceed four months. Such employee shall be entitled to
34 utilize any accrued vacation leave during this period of
35 time. Reasonable period of time means that period
36 during which the female employee is disabled on account
37 of pregnancy, childbirth, or related medical conditions.
38 Nothing herein shall be construed to limit the provisions
39 of paragraph (1) of subdivision (b) of this section.

40 An employer may require any employee who plans to

take a leave pursuant to this subdivision to give the employer reasonable notice of the date such leave shall commence and the estimated duration of such leave.

(c) (1) For an employer who has a policy, practice, or collective-bargaining agreement requiring or authorizing the transfer of temporarily disabled employees to less strenuous or hazardous positions for the duration of the disability to refuse to transfer a pregnant female employee who so requests.

(2) For any employer to refuse to temporarily transfer a pregnant female employee to a less strenuous or hazardous position for the duration of her pregnancy if she so requests, with the advice of her physician, where such transfer can be reasonably accommodated, provided, however, that no employer shall be required by this section to create additional employment which the employer would not otherwise have created, nor shall such employer be required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job.

(d) This section shall not be construed to affect any other provision of law relating to sex discrimination or pregnancy.

(e) The provisions of this section, except paragraph (2) of subdivision (b), shall be inapplicable to any employer subject to Title VII of the Civil Rights Act of 1964.

12946. It shall be an unlawful practice for employers, labor organizations, and employment agencies subject to the provisions of this part to fail to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after such records and files are initially created or received, or for employers to fail to retain personnel files of applicants or terminated employees for a minimum period of two years after the date of the employment action taken. For the purposes of this section, the State Personnel Board is exempt from the two-year retention requirement and shall instead, maintain such records and files for a period of one year.

1 Upon notice that a verified complaint against it has been
2 filed under this part, any such employer, labor
3 organization, or employment agency shall maintain and
4 preserve any and all such records and files until such
5 complaint is fully and finally disposed of and all appeals
6 or related proceedings terminated. The commission shall
7 adopt suitable rules, regulations, and standards to carry
8 out the purposes of this section. Where necessary, the
9 division, pursuant to its powers under Section 12974, may
10 seek temporary or preliminary judicial relief to enforce
11 this section.

12 12947. It shall not be an unlawful practice under this
13 part for an employer or labor organization to provide or
14 make financial provision for child care services of a
15 custodial or other nature for its employees or members
16 who are responsible for minor children.

17 12948. It shall be an unlawful practice under this part
18 for a person to deny or to aid, incite, or conspire in the
19 denial of the rights created by Section 51 or 51.7 of the
20 Civil Code.

21

22 Article 2. Housing Discrimination

23

24 12955. It shall be unlawful:

25 (a) For the owner of any housing accommodation to
26 discriminate against any person because of the race,
27 color, religion, sex, marital status, national origin, or
28 ancestry of such person.

29 (b) For the owner of any housing accommodation to
30 make or to cause to be made any written or oral inquiry
31 concerning the race, color, religion, sex, marital status,
32 national origin, or ancestry of any person seeking to
33 purchase, rent or lease any housing accommodation.

34 (c) For any person to make, print, or publish, or cause
35 to be made, printed, or published any notice, statement,
36 or advertisement, with respect to the sale or rental of a
37 housing accommodation that indicates any preference,
38 limitation, or discrimination based on race, color,
39 religion, sex, marital status, national origin, or ancestry or
40 an intention to make any such preference, limitation, or

1 discrimination.

2 (d) For any person subject to the provisions of Section
3 51 of the Civil Code, as that section applies to housing
4 accommodations, as defined in this part, to discriminate
5 against any person because of race, color, religion, sex,
6 marital status, national origin, or ancestry with reference
7 thereto.

8 (e) For any person, bank, mortgage company or other
9 financial institution to whom application is made for
10 financial assistance for the purchase, organization, or
11 construction of any housing accommodation to
12 discriminate against any person or group of persons
13 because of the race, color, religion, sex, marital status,
14 national origin, or ancestry of such person or persons, or
15 of prospective occupants or tenants, in the terms,
16 conditions, or privileges relating to the obtaining or use
17 of any such financial assistance.

18 (f) For any owner of housing accommodations to
19 harass, evict, or otherwise discriminate against any
20 person in the sale or rental of housing accommodations
21 when the owner's dominant purpose is retaliation against
22 a person who has opposed practices unlawful under this
23 section, informed law enforcement agencies of practices
24 believed unlawful under this section, or has testified or
25 assisted in any proceeding under this part. Nothing
26 herein is intended to cause or permit the delay of an
27 unlawful detainer action.

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

31

32 CHAPTER 7. ENFORCEMENT AND HEARING
33 PROCEDURES

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Article 1. Unlawful Practices

12960. The provisions of this article govern the
procedure for the prevention and elimination of
practices made unlawful pursuant to Article 1
(commencing with Section 12940) of Chapter 6 of this

1 part.

2 Any person claiming to be aggrieved by an alleged
3 unlawful practice may file with the department a verified
4 complaint in writing which shall state the name and
5 address of the person, employer, labor organization or
6 employment agency alleged to have committed the
7 unlawful practice complained of and which shall set forth
8 the particulars thereof and contain such other
9 information as may be required by the department. The
10 director or his or her authorized representative may in
11 like manner, on his or her own motion, make, sign and file
12 such complaint. Any employer whose employees, or
13 some of them, refuse or threaten to refuse to cooperate
14 with the provisions of this part may file with the
15 department a verified complaint asking for assistance by
16 conciliation or other remedial action.

17 No complaint may be filed after the expiration of one
18 year from the date upon which the alleged unlawful
19 practice or refusal to cooperate occurred; except that this
20 period may be extended for not to exceed 90 days
21 following the expiration of that year, if a person allegedly
22 aggrieved by an unlawful practice first obtained
23 knowledge of the facts of the alleged unlawful practice
24 after the expiration of one year from the date of their
25 occurrence.

26 Complaints alleging a violation of subdivision (c) of
27 Section 12940 shall be filed as provided in Section 3096 of
28 the Labor Code.

29 12961. Where an unlawful practice alleged in a verified
30 complaint adversely affects, in a similar manner, a group
31 or class of persons of which the aggrieved person filing
32 the complaint is a member, or where such an unlawful
33 practice raises questions of law or fact which are common
34 to such a group or class, the aggrieved person or the
35 director may file the complaint on behalf and as
36 representative of such a group or class. Any complaint so
37 filed may be investigated as a group or class complaint,
38 and, if in the judgment of the director circumstances
39 warrant, shall be treated as such for purposes of
40 conciliation and accusation. Where an accusation is issued

1 as a group or class accusation, the case shall be treated as
2 a group or class case for all other purposes of this part,
3 including, but not limited to, hearing, determination,
4 reconsideration, and judicial proceedings.

5 12962. The department shall cause any verified
6 complaint filed under the provisions of this part to be
7 served, either personally or by certified mail with return
8 receipt requested, upon the person, employer, labor
9 organization, or employment agency alleged to have
10 committed the unlawful practice complained of. Service
11 shall be made at the time of initial contact with such
12 person, employer, labor organization, or employment
13 agency or the agents thereof, or within 45 days,
14 whichever first occurs. At the discretion of the director,
15 the complaint may not contain the name of the
16 complaining party unless such complaint is filed by the
17 director or his or her authorized representative.

18 12963. After the filing of any complaint alleging facts
19 sufficient to constitute a violation of any of the provisions
20 of Section 12940 or 12941, the department shall make
21 prompt investigation in connection therewith. If the
22 department determines after investigation that the
23 complaint is valid, the department shall immediately
24 endeavor to eliminate the unlawful employment practice
25 complained of by conference, conciliation and
26 persuasion. The staff of the department shall not disclose
27 what has transpired in the course of any endeavors to
28 eliminate the unlawful employment practice through
29 conference, conciliation, and persuasion.

30 Any member of the staff of the department who
31 discloses information in violation of the requirements of
32 this section is guilty of a misdemeanor. Such disclosure by
33 an employee subject to civil service shall be cause for
34 disciplinary action under the State Civil Service Act.

35 12964. Any agreement entered into by conference,
36 conciliation and persuasion shall be reduced to writing,
37 signed by all parties, and approved by the director or the
38 authorized representative of the director. Within one
39 year of the effective date of every such agreement, the
40 department shall conduct a compliance review to

1 determine whether such agreement has been fully
2 obeyed and implemented. Whenever the department
3 believes, on the basis of evidence presented to it, that any
4 person is violating or about to violate any such
5 agreement, the department may bring an action in the
6 appropriate superior court of the State of California in
7 the same manner as actions may be brought under
8 Section 12973. In resolving allegedly unlawful practices
9 through conciliation such resolutions may be in the
10 nature of, but are not limited to, types of remedies that
11 might be ordered after accusation and hearing.

12 12965. (a) In the case of failure to eliminate an
13 unlawful practice under this part through conference,
14 conciliation or persuasion, or in advance thereof if
15 circumstances warrant, the director in his or her
16 discretion may cause to be issued in the name of the
17 department a written accusation. The accusation shall
18 contain the name of the person, employer, labor
19 organization or employment agency accused, which shall
20 be known as the respondent, shall set forth the nature of
21 the charges, shall be served upon the respondent
22 together with a copy of the verified complaint, as
23 amended, and shall require the respondent to answer the
24 charges at a hearing. An accusation shall be issued, if at
25 all, within one year after the filing of a complaint.

26 (b) If an accusation is not issued within 150 days after
27 the filing of a complaint, or if the department earlier
28 determines that no accusation will issue, the department
29 shall promptly notify, in writing, the person claiming to
30 be aggrieved. Such notice shall indicate that the person
31 claiming to be aggrieved may bring a civil action under
32 this part against the person, employer, labor organization
33 or employment agency named in the verified complaint
34 within one year from the date of such notice. The
35 superior courts of the State of California shall have
36 jurisdiction of such actions. Such an action may be
37 brought in any county in the state in which the unlawful
38 practice is alleged to have been committed, in the county
39 in which the records relevant to such practice are
40 maintained and administered, or in the county in which

1 the aggrieved person would have worked or would have
2 had access to the public accommodation but for the
3 alleged unlawful practice, but if the defendant is not
4 found within any such county, such an action may be
5 brought within the county of defendant's residence or
6 principal office. Such actions may not be filed as class
7 actions or may not be maintained as class actions by the
8 person or persons claiming to be aggrieved where such
9 persons have filed a civil class action in the federal courts
10 alleging a comparable claim of employment
11 discrimination against the same defendant or defendants.
12 In actions brought under this section, the court, in its
13 discretion may award to the prevailing party reasonable
14 attorney fees and costs except where such action is filed
15 by a public agency or a public official, acting in an official
16 capacity.

17 12966. Where the department issues an accusation, or
18 is about to do so, and the respondent accused of engaging
19 in unlawful practices under this part is a state contractor
20 or is a supplier of goods and services to the state, the
21 director shall send a written notice of the issuance of the
22 accusation and a copy of the accusation to the appropriate
23 awarding agency and request a report of any action
24 which the awarding agency takes in response to the
25 department's notification and issuance of accusation.

26 12967. The commission shall hold hearings on
27 accusations issued pursuant to Section 12965 and shall
28 determine the issues raised therein.

29 12968. Hearings shall take place not more than 90 days
30 after the issuance of the accusation upon which they are
31 based.

32 12969. The case in support of the accusation shall be
33 presented before the commission by the attorneys or
34 agents of the department. Any commissioner who, in
35 regard to a particular case, shall have previously been
36 assigned to engage in investigation or conciliation
37 endeavors or shall otherwise have been or be personally
38 or professionally connected with the parties or factual
39 situation of the original complaint upon which the
40 accusation is based, shall not participate in the hearing

1 except as a witness and shall not give his or her opinion
2 of the merits of the case, nor shall he or she participate
3 in the deliberations of the commission in such case. In
4 connection with complaints initiated by the director, the
5 personal or professional association of the commissioners
6 with the director shall not prohibit the commissioners
7 from participating in the deliberations of such cases. In
8 any hearing, the content of discussions or endeavors at
9 conciliation shall not be received in evidence.

10 12970. (a) If the commission finds that a respondent
11 has engaged in any unlawful practice under this part, it
12 shall state its findings of fact and determination and shall
13 issue and cause to be served on the parties an order
14 requiring such respondent to cease and desist from such
15 unlawful practice and to take such action, including, but
16 not limited to, hiring, reinstatement or upgrading of
17 employees, with or without back pay, restoration to
18 membership in any respondent labor organization, as, in
19 the judgment of the commission, will effectuate the
20 purposes of this part, and including a requirement for
21 report of the manner of compliance.

22 (b) If the commission finds the respondent has
23 engaged in an unlawful practice under this part, and the
24 respondent is licensed or granted a privilege by an
25 agency of the state to do business, provide a service, or
26 conduct activities, and the unlawful practice is
27 determined to have occurred in connection with the
28 exercise of that license or privilege, the commission shall
29 provide the licensing or privilege granting agency with a
30 copy of its decision or order.

31 (c) If the commission finds that a respondent has not
32 engaged in any such unlawful practice, the commission
33 shall state its findings of fact and determination and shall
34 issue and cause to be served on the parties an order
35 dismissing such accusation as to such respondent.

36 (d) Any findings and determination made or any
37 order issued pursuant to this section shall be written and
38 shall indicate the identity of the members of the
39 commission who participated herein.

40 (e) Any order issued by the commission shall have

1 printed on its face references to the rights of appeal of
2 any party to the proceeding to whose position the order
3 is adverse.

4 12971. If, at any time during the proceedings described
5 in this part, after a complaint has been served on a
6 respondent, the complaint is withdrawn by the
7 complainant or dismissed by the department, or an
8 investigation is terminated or closed by the department,
9 notice of this fact shall be given to the respondent and the
10 complainant without undue delay.

11 12972. All actions and procedures of the commission
12 shall be conducted pursuant to Chapter 5 (commencing
13 with Section 11500) of Part 1 of Division 3 of Title 2 of the
14 Government Code.

15 12973. Within one year of the effective date of every
16 final order or decision issued pursuant to this part, the
17 department shall conduct a compliance review to
18 determine whether such order or decision has been fully
19 obeyed and implemented.

20 Whenever the department believes, on the basis of
21 evidence presented to it, that any person is violating or
22 is about to violate any final order or decision issued
23 pursuant to this part, the department may bring an action
24 in the Superior Court of the State of California against
25 such person to enjoin him from continuing the violation
26 or engaging therein or in doing anything in furtherance
27 thereof. In such action an order or judgment may be
28 entered awarding such temporary restraining order or
29 such preliminary or final injunction as may be proper.
30 Such an action may be brought in any county in which
31 actions may be brought under subdivision (b) of Section
32 12965.

33 12974. Whenever a complaint is filed with the
34 department and the department concludes on the basis
35 of a preliminary investigation that prompt judicial action
36 is necessary to carry out the purposes of this part, the
37 director or his authorized representative may bring a
38 civil action for appropriate temporary or preliminary
39 relief pending final disposition of such complaint. Any
40 temporary restraining order or other order granting

1 preliminary or temporary relief shall be issued in
2 accordance with Section 527 of the Code of Civil
3 Procedure. An action seeking such temporary or
4 preliminary relief may be brought in any county in which
5 actions may be brought under subdivision (b) of Section
6 12965.

7 12975. Any person who shall willfully resist, prevent,
8 impede or interfere with any member of the department
9 or the commission or any of its agents or employees in the
10 performance of duties pursuant to the provisions of this
11 part, except those relating to housing discrimination, or
12 who shall in any manner willfully violate an order of the
13 commission relating to such matter, shall be guilty of a
14 misdemeanor, punishable by imprisonment in a county
15 jail, not exceeding six months, or by a fine not exceeding
16 five hundred dollar (\$500), or both.

17 12976. Any person who willfully violates Section 12946
18 concerning record keeping shall be guilty of a
19 misdemeanor, punishable by imprisonment in a county
20 jail, not exceeding six months, or by a fine not exceeding
21 five hundred dollars (\$500), or both.

22

23

Article 2. Housing Discrimination

24

25 12980. The provisions of this article govern the
26 procedure for the prevention and elimination of
27 discrimination in housing made unlawful pursuant to
28 Article 2 (commencing with Section 12955) of Chapter 6
29 of this part.

30 (a) Any person claiming to be aggrieved by an alleged
31 violation of Section 12955 may file with the division a
32 verified complaint in writing which shall state the name
33 and address of the person alleged to have committed the
34 violation complained of, and which shall set forth the
35 particulars thereof and contain such other information as
36 may be required by the department.

37 The filing of a complaint and pursuit of conciliation or
38 remedy under this part shall not prejudice the
39 complainant's right to pursue effective judicial relief
40 under other applicable laws, but if a civil action has been

1 filed under Section 52 of the Civil Code, the department
2 shall terminate proceedings upon notification of the
3 entry of final judgment unless such judgment is a
4 dismissal entered at the complainant's request.

5 (b) The Attorney General, the commission, or the
6 director may, in a like manner, make, sign, and file such
7 complaints citing practices which appear to violate the
8 purpose of this part or any specific provisions of this part
9 relating to housing discrimination.

10 No complaint may be filed after the expiration of 60
11 days from the date upon which the alleged violation
12 occurred. This period may be extended for not to exceed
13 60 days following the expiration of the initial 60 days, if a
14 person allegedly aggrieved by such violation first
15 obtained knowledge of the facts of such alleged violation
16 after the expiration of the initial 60 days from date of its
17 occurrence.

18 (c) The department may thereupon proceed upon
19 such complaint in the same manner and with the same
20 powers as provided in this part in the case of an unlawful
21 practice.

22 (d) If an accusation is not issued within 150 days after
23 the filing of a complaint, or if the department earlier
24 determines that no accusation will issue, the department
25 shall promptly notify the person claiming to be
26 aggrieved. This notice shall, in any event, be issued no
27 more than 30 days after the date of the determination or
28 30 days after the date of the expiration of the 150-day
29 period, whichever date first occurs. Such notice shall
30 indicate that the person claiming to be aggrieved may
31 bring a civil action under this part against the person
32 named in the verified complaint within one year from
33 the date such notice is mailed. The superior courts of the
34 State of California shall have jurisdiction of such actions.
35 Such an action may be brought in any county in the state
36 in which the violation is alleged to have been committed,
37 or in the county in which the records relevant to such
38 alleged violation are maintained and administered, but if
39 the defendant is not found within any such county, such
40 an action may be brought within the county of

1 defendant's residence or principal office. In a civil action
2 brought under this section, the court, in its discretion,
3 may award to the prevailing party reasonable attorney
4 fees.

5 12981. (a) In the case of failure to eliminate a violation
6 of Section 12955 through conference, conciliation or
7 persuasion, or in advance thereof if circumstances
8 warrant, the director in his discretion may cause to be
9 issued in the name of the department a written
10 accusation, in the same manner and with the same
11 powers as provided in Section 12965.

12 (b) The commission shall hold hearings on accusations
13 issued pursuant to subdivision (a) in the same manner
14 and with the same powers as provided in Sections 12967
15 to 12972, inclusive.

16 (c) Within one year of the effective date of every final
17 order or decision issued pursuant to this part, the
18 department shall conduct a compliance review to
19 determine whether such order or decision has been fully
20 obeyed and implemented.

21 Whenever the department believes, on the basis of
22 evidence presented to it, that any person is violating or
23 is about to violate any final order or decision issued
24 pursuant to this part relating to housing discrimination,
25 the department may bring an action in the Superior
26 Court of the State of California against such person to
27 enjoin the person from continuing the violation or
28 engaging therein or in doing anything in furtherance
29 thereof. In such action an order or judgment may be
30 entered awarding such temporary restraining order or
31 such preliminary or final injunction as may be proper.
32 Such an action may be brought in any county in which
33 actions may be brought under subdivision (d) of Section
34 12980.

35 12982. After a verified complaint has been filed with
36 the department pursuant to Section 12980, and the
37 preliminary investigation thereof has been carried out, or
38 a 20-day period has elapsed from the filing of the verified
39 complaint, if the preliminary investigation has not then
40 been completed, an appropriate superior court may,

1 upon the motion of the respondent, order the
2 department to give to the respondent, within a specified
3 time, a copy of any book, document, or paper, or any
4 entries therein, in the possession or under the control of
5 the department, containing evidence relating to the
6 merits of the verified complaint, or to a defense thereto.
7 The department shall comply with such an order.

8 12983. The department, at any time after a complaint
9 is filed with it and it has been determined that probable
10 cause exists for believing that the allegations of the
11 complaint are true and constitute a violation of this part,
12 may bring an action in the superior court to enjoin the
13 owner of the property from taking further action with
14 respect to the rental, lease, or sale of the property until
15 the department has completed its investigation and
16 made its determination; but a temporary restraining
17 order obtained under this section shall not, in any event,
18 be in effect for more than 20 days. In such action an order
19 or judgment may be entered awarding such temporary
20 restraining order or such preliminary or final injunction
21 in accordance with Section 527 of the Code of Civil
22 Procedure.

23 12984. All matters connected with any conference,
24 conciliation, or persuasion efforts under this part are
25 privileged and may not be received in evidence. The
26 members of the department and its staff shall not disclose
27 to any person what has transpired in the course of such
28 endeavors to conciliate. Every member of the
29 department or its staff who discloses information in
30 violation of this section is guilty of a misdemeanor. Such
31 disclosure by an employee subject to civil service shall be
32 cause for disciplinary action under the State Civil Service
33 Act.

34 12985 When a person is contacted by the department,
35 a commissioner, or a member of the department's staff,
36 following the filing of a complaint against that person, the
37 person shall be informed whether the contact is for the
38 purpose of investigation or conference, conciliation, or
39 persuasion; and if it is for conference, conciliation, or
40 persuasion, the person shall be informed that all matters

1 relating thereto are privileged.

2 12986. The department shall without undue delay
3 cause a copy of the verified complaint that has been filed
4 under the provisions of this part to be served upon or
5 mailed to the owner alleged to have committed the
6 violation complained of.

7 12987. If the commission, after hearing, finds that a
8 respondent has engaged in any unlawful practice as
9 defined in this part, the commission shall state its findings
10 of fact and shall issue and cause to be served on such
11 respondent an order requiring such respondent to cease
12 and desist from such practice and to take such actions, as,
13 in the judgment of the commission, will effectuate the
14 purpose of this part, including, but not limited to:

15 (1) The sale or rental of the housing accommodation
16 if it is still available, or the sale or rental of a like housing
17 accommodation, if one is available, or the provision of
18 financial assistance, terms, conditions, or privileges
19 previously denied in violation of subdivision (f) of
20 Section 12955 in the purchase, organization, or
21 construction of the housing accommodation, if available;
22 or,

23 (2) The payment of actual and punitive damages to
24 the aggrieved person in an amount not to exceed one
25 thousand dollars (\$1,000); or,

26 (3) Affirmative or prospective relief.

27 However, no remedy shall be available to the
28 aggrieved person unless the aggrieved person waives any
29 and all rights or claims under Section 52 of the Civil Code
30 prior to receiving a remedy, and signs a written waiver
31 to that effect.

32 The commission may require a report of the manner of
33 compliance.

34 If the commission finds that a respondent has not
35 engaged in any practice which constitutes a violation of
36 this part, the commission shall state its findings of fact and
37 shall issue and cause to be served on the complainant an
38 order dismissing the said accusation as to such
39 respondent.

40 Any order issued by the commission shall have printed

1 on its face references to the provisions of the
2 Administrative Procedure Act which prescribe the rights
3 of appeal of any party to the proceeding to whose position
4 the order is adverse.

5 12988. The commission may engage in affirmative
6 actions with owners in furtherance of the purpose of this
7 part as expressed in Section 12920.

8

9 CHAPTER 8. NONDISCRIMINATION AND COMPLIANCE
10 EMPLOYMENT PROGRAMS

11

12 12990. (a) Any employer who is, or wishes to become,
13 a contractor with the state for public works or for goods
14 or services is subject to the provisions of this part relating
15 to discrimination in employment and to the
16 nondiscrimination requirements of this section and any
17 rules and regulations which implement it.

18 (b) Prior to becoming a contractor or subcontractor
19 with the state, an employer may be required to submit a
20 nondiscrimination program to the department for
21 approval and certification and may be required to submit
22 periodic reports of its compliance with such a program.

23 (c) Every state contract and subcontract for public
24 works or for goods or services shall contain a
25 nondiscrimination clause prohibiting discrimination on
26 the bases enumerated in this part by contractors or
27 subcontractors. The nondiscrimination clause shall
28 contain a provision requiring contractors and
29 subcontractors to give written notice of their obligations
30 under such clause to labor organizations with which they
31 have a collective bargaining or other agreement. Such
32 contractual provisions shall be fully and effectively
33 enforced.

34 (d) The department shall periodically develop rules
35 and regulations for the application and implementation
36 of this section, and submit them to the commission for
37 consideration and adoption in accordance with the
38 provisions of Chapter 4.5 (commencing with Section
39 11371) of Part 3 of Division 3 of Title 2 of this code. Such
40 rules and regulations shall describe and include, but not

1 be limited to:

2 (1) Procedures for the investigation, approval,
3 certification, decertification, monitoring, and
4 enforcement of nondiscrimination programs.

5 (2) The size of contracts or subcontracts below which
6 any particular provision of this section shall not apply.

7 (3) The circumstances, if any, under which a
8 contractor or subcontractor is not subject to this section.

9 (4) Criteria for determining the appropriate plant,
10 region, division, or other unit of a contractor's or
11 subcontractor's operation for which a nondiscrimination
12 program is required.

13 (5) Procedures for coordinating the
14 nondiscrimination requirements of this section and its
15 implementing rules and regulations with the California
16 Plan for Equal Opportunity in Apprenticeship, with the
17 provisions and implementing regulations of Article 9.5
18 (commencing with Section 11135) of Chapter 1 of Part 1
19 of Division 3 of Title 2 of this code, and with comparable
20 federal laws and regulations concerning
21 nondiscrimination, equal employment opportunity, and
22 affirmative action by those who contract with the United
23 States.

24 (6) The basic principles and standards to guide the
25 department in administering and implementing this
26 section.

27 (e) Where a contractor or subcontractor is required to
28 prepare an affirmative action, equal employment, or
29 nondiscrimination program subject to review and
30 approval by a federal compliance agency, that program
31 may be filed with the department, instead of any
32 nondiscrimination program regularly required by this
33 section or its implementing rules and regulations. Such a
34 program shall constitute a prima facie demonstration of
35 compliance with this section. Where the department or
36 a federal compliance agency has required the
37 preparation of an affirmative action, equal employment,
38 or nondiscrimination program subject to review and
39 approval by the department or a federal compliance
40 agency, evidence of such a program shall also constitute

1 prima facie compliance with an ordinance or regulation
2 of any city, city and county, or county which requires an
3 employer to submit such a program to a local awarding
4 agency for its approval prior to becoming a contractor or
5 subcontractor with such agency.

6 (f) Where the department determines and certifies
7 that the provisions of this section or its implementing
8 rules and regulations are violated or where the
9 commission, after hearing an accusation pursuant to
10 Section 12967, determines a contractor or subcontractor
11 is engaging in practices made unlawful under this part,
12 the department or the commission may recommend
13 appropriate sanctions to the awarding agency. Any such
14 recommendation shall take into account the severity of
15 the violation or violations and any other penalties,
16 sanctions, or remedies previously imposed.

17

18

CHAPTER 9. MISCELLANEOUS

19

20 12993. (a) The provisions of this part shall be construed
21 liberally for the accomplishment of the purposes thereof.
22 Nothing contained in this part shall be deemed to repeal
23 any of the provisions of the Civil Rights Law or of any
24 other law of this state relating to discrimination because
25 of race, religious creed, color, national origin, ancestry,
26 physical handicap, medical condition, marital status, sex,
27 or age.

28 (b) Nothing contained in this part relating to
29 discrimination in employment on account of sex or
30 medical condition shall be deemed to affect the operation
31 of the terms or conditions of any bona fide retirement,
32 pension, employee benefit, or insurance plan, provided
33 such terms or conditions are in accordance with
34 customary and reasonable or actuarially sound
35 underwriting practices.

36 (c) While it is the intention of the Legislature to
37 occupy the field of regulation of discrimination in
38 employment and housing encompassed by the provisions
39 of this part, exclusive of all other laws banning
40 discrimination in employment and housing by any city,

1 city and county, county, or other political subdivision of
2 the state, nothing contained in this part shall be
3 construed, in any manner or way, to limit or restrict the
4 application of Section 51 of the Civil Code.

5 12994. Nothing in this part relating to discrimination in
6 employment shall be construed to require an employer to
7 alter his premises to accommodate employees who have
8 a physical handicap or medical condition, as defined in
9 Section 12926, beyond safety requirements applicable to
10 other employees.

11 12995. Nothing contained in this part relating to
12 discrimination in housing shall be construed to:

13 (a) Affect the title or other interest of a person who
14 purchases, leases, or takes an encumbrance on a housing
15 accommodation in good faith and without knowledge
16 that the owner or lessor of the property has violated any
17 provision of this part.

18 (b) Prohibit any postsecondary educational
19 institution, whether private or public, from providing
20 housing accommodations reserved for either male or
21 female students so long as no individual person is denied
22 equal access to housing accommodations, or from
23 providing separate housing accommodations reserved
24 primarily for married students or for students with minor
25 dependents who reside with them.

26 (c) Prohibit selection based upon factors other than
27 race, color, religion, sex, marital status, national origin, or
28 ancestry.

29 (d) Promote housing accommodations on a
30 preferential or quota basis.

31 12996. If any clause, sentence, paragraph, or part of this
32 part relating to discrimination in employment or the
33 application thereof to any person or circumstance, shall,
34 for any reason, be adjudged by a court of competent
35 jurisdiction to be invalid, such judgment shall not affect,
36 impair, or invalidate the remainder of this part and the
37 application thereof to other persons or circumstances,
38 but shall be confined in its operation to the clause,
39 sentence, paragraph, or part thereof directly involved in
40 the controversy in which such judgment shall have been

1 rendered and to the person or circumstances involved.
2 SEC. 5. Section 19702.5 of the Government Code is
3 amended to read:

4 19702.5. (a) The board shall provide to the ~~State Fair~~
5 ~~Employment Practice Commission~~ *Fair Employment*
6 *and Housing Commission* a copy of each affirmative
7 action plan, and all subsequent amendments of such
8 plans, adopted by each state agency, department, office
9 or commission.

10 (b) The board shall annually, commencing January 1,
11 1975, submit to the ~~State Fair Employment Practice~~
12 ~~Commission~~ *Fair Employment and Housing Commission*
13 a statistical survey of the employment of each state
14 agency, department, office or commission. The survey
15 shall include, but not be limited to: sex, age, ethnic origin,
16 current employment classification, salary, full-time or
17 other employment status, department and
18 administrative unit, and county of employment of
19 employees.

20 (c) Such reports and information shall constitute
21 public records.

22 SEC. 6. Section 19704 of the Government Code is
23 amended to read:

24 19704. It is unlawful to require, permit or suffer any
25 notation or entry to be made upon or in any application,
26 examination paper or other paper, book, document, or
27 record used under this part indicating or in any wise
28 suggesting or pertaining to the race, color, religion, sex,
29 or marital status of any person. Notwithstanding the
30 provisions of this section, subsequent to employment,
31 ethnic, marital status, and gender data may be obtained
32 and maintained for research and statistical purposes
33 when safeguards preventing misuse of the information
34 exist as approved by the ~~Fair Employment Practices~~
35 ~~Commission~~ *Fair Employment and Housing Commission*
36 except that in no event shall any notation, entry, or
37 record of such data be made on papers or records relating
38 to the examination, appointment, or promotion of an
39 individual.

40 SEC. 7. Section 50085.5 of the Government Code is

1 amended to read:

2 50085.5. (a) Every local agency shall provide to the
3 ~~State Fair Employment Practice Commission Fair~~
4 ~~Employment and Housing~~ Commission a copy of any
5 affirmative action plan and subsequent amendments to
6 such plan adopted by the local agency.

7 (b) Every local agency which is required by federal
8 law, rule or regulation to submit an annual statistical
9 survey of the employment of the agency to the United
10 States Equal Employment Opportunity Commission shall
11 annually, commencing with January 1, 1975, submit a
12 copy of such survey to the ~~State Fair Employment~~
13 ~~Practice Commission Fair Employment and Housing~~
14 ~~Commission~~ .

15 (c) Such reports and information shall constitute
16 public records.

17 SEC. 8. Part 5 (commencing with Section 35700) of
18 Division 24 of the Health and Safety Code is repealed.

19 SEC. 9. Section 56 of the Labor Code is amended to
20 read:

21 56. The work of the department shall be divided into
22 at least ~~seven~~ six divisions known as the Division of
23 Industrial Accidents, the Division of Industrial Safety, the
24 Division of Labor Standards Enforcement, ~~the Division of~~
25 ~~Fair Employment Practices~~, the Division of Labor
26 Statistics and Research, the Division of Apprenticeship
27 Standards, and the State Compensation Insurance Fund.

28 SEC. 10. Section 1735 of the Labor Code is amended to
29 read:

30 1735. No discrimination shall be made in the
31 employment of persons upon public works because of the
32 race, religious creed, color, national origin, ancestry,
33 physical handicap, medical condition, marital status, or
34 sex of such persons, except as provided in Section ~~1420~~
35 ~~12940 of the Government Code~~ , and every contractor for
36 public works violating this section is subject to all the
37 penalties imposed for a violation of this chapter.

38 SEC. 11. Part 4.5 (commencing with Section 1410) of
39 Division 2 of the Labor Code is repealed.

40 SEC. 12. Section 3096 of the Labor Code is amended to

1 read:

2 3096. Complaints alleging discrimination against any
3 person in the selection or training of that person in any
4 apprenticeship training program because of the race,
5 religious creed, color, national origin, ancestry, or sex of
6 such person shall be filed with the ~~State Fair~~
7 ~~Employment Practice Commission pursuant to Part 4.5~~
8 ~~(commencing with Section 1410) of Division 2 of this~~
9 ~~code~~ *Fair Employment and Housing Commission*
10 *pursuant to Part 2.8 (commencing with Section 12900) of*
11 *Division 3 of Title 2 of the Government Code*. Whenever
12 such a complaint is filed with the commission, the
13 commission shall immediately send a copy of the
14 complaint to the Administrator of Apprenticeship for
15 investigation and action by the Division of
16 Apprenticeship Standards pursuant to this chapter and
17 rules and procedures prescribed by the California
18 Apprenticeship Council. The division shall hold at least
19 one open hearing relative to the complaint during the
20 21-day period following the day upon which the division
21 receives a written copy of the complaint. If the
22 commission finds that the complaint is not being
23 processed in accordance with this chapter and such rules
24 and procedures, or if the commission finds that the
25 division has not taken action which has resolved the
26 complaint within 30 days, the commission shall report
27 such findings in writing to the administrator, who upon
28 verification may cause the division to take conclusive
29 action prior to the 61st day following the day upon which
30 a written copy of the complaint was filed with the
31 division. Notwithstanding any other provision of this
32 section, the administrator shall, upon request of, and after
33 written report by, the commission, relieve the division of
34 the case and assign it to the commission, on or before the
35 61st day following the day upon which a written copy of
36 the complaint was filed with the division. Upon receipt of
37 such assignment, the commission shall immediately
38 proceed to act upon the complaint. The commission shall
39 hold at least one open hearing within 14 days following
40 the day of assignment. The commission shall complete its

1 investigations and any attempts to eliminate any
2 unlawful practices discovered and shall issue an
3 accusation thereon or advise the complainant that the
4 evidence does not warrant further proceedings thereon,
5 within 30 days after the complaint is assigned to the
6 commission. The commission shall prepare such findings,
7 determinations, and orders for issuance by the
8 administrator, who shall notify the complainant and shall
9 make available his findings within 10 days after review of
10 such findings by the commission. Such findings,
11 determinations and orders shall be subject to further
12 legal processes as set forth in this chapter. In the event
13 there is no action by the division or the commission
14 within 101 days after the filing of a complaint with the
15 commission, the person claiming to be aggrieved may
16 bring a civil action under this part within one year after
17 such 101st day.

18 The Division of Apprenticeship Standards shall inform
19 the commission of the number and disposition of all
20 complaints handled by the division pursuant to this
21 section for inclusion in the commission's report to the
22 Governor and the Legislature as required by law.

