

AMENDED IN ASSEMBLY MAY 22, 2015
AMENDED IN ASSEMBLY APRIL 30, 2015
AMENDED IN ASSEMBLY APRIL 21, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 396

Introduced by Assembly Member Jones-Sawyer
(Coauthor: Assembly Member Chiu)

February 19, 2015

An act to amend Section 12955 of, and to add Section 12955.05 to, the Government Code, relating to rental housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 396, as amended, Jones-Sawyer. Rental housing discrimination: applications: criminal records.

Existing law generally prohibits housing discrimination with respect to the personal characteristics of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information.

This bill would make it unlawful for the owner of any rental housing accommodation to deny the rental or lease of a housing accommodation without first satisfying specified requirements relating to the application process. The bill would prohibit the owner of a rental housing accommodation from inquiring about, or requiring an applicant for rental housing accommodation to disclose, a criminal record during the initial application assessment phase, as defined, unless otherwise required by state or federal law. The bill would permit an owner of a rental housing accommodation, *accommodation to disclose the owner's*

criminal background check policy on the rental housing accommodation application, as specified, and after successful completion of the initial application assessment phase, to request a criminal background check and inquire about and consider an applicant's criminal record in deciding whether to rent or lease. The bill would require the owner of a rental housing accommodation who is considering denying an application to rent or lease after requesting a criminal background check or considering an applicant's criminal record, and the possible denial is based on the applicant's criminal record, to promptly provide the applicant with a written statement listing the reasons for the possible denial before making a final decision. If, within 14 days of receipt of the written statement, the applicant provides the owner notice of evidence demonstrating the inaccuracy of the item or items within the applicant's criminal record or evidence of rehabilitation or other mitigating factors, as defined, the bill would require the owner to delay the denial for a reasonable period after receipt of the information and reconsider his or her decision. The bill would require, in these circumstances, that the owner provide written notification to the applicant of his or her final decision to deny the application. The bill would require that disclosure and request to include a written disclosure that the applicant may provide evidence demonstrating inaccuracies within the applicant's criminal record or evidence of rehabilitation or other mitigating factors, as defined. The bill would prohibit, in connection with a rental application, the owner of the rental housing accommodation from requiring disclosure of, or, if such information is received, denying a dwelling based in whole or in part on specified information or occurrence, including arrests that did not result in conviction, with specified exceptions, convictions that have been voided, and juvenile justice determinations, among others. The bill would provide that an owner is not liable to any person for accepting or denying a person with a criminal record as a tenant if the owner followed the above-described procedures in accepting that person as a tenant.

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 12955 of the Government Code is
- 2 amended to read:

1 12955. It shall be unlawful:

2 (a) For the owner of any housing accommodation to discriminate
3 against or harass any person because of the race, color, religion,
4 sex, gender, gender identity, gender expression, sexual orientation,
5 marital status, national origin, ancestry, familial status, source of
6 income, disability, or genetic information of that person.

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

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

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

32 (e) For any person, bank, mortgage-~~company~~ *company*, or other
33 financial institution that provides financial assistance for the
34 purchase, organization, or construction of any housing
35 accommodation to discriminate against any person or group of
36 persons because of the race, color, religion, sex, gender, gender
37 identity, gender expression, sexual orientation, marital status,
38 national origin, ancestry, familial status, source of income,
39 disability, or genetic information in the terms, conditions, or

1 privileges relating to the obtaining or use of that financial
2 assistance.

3 (f) For any owner of housing accommodations to harass, evict,
4 or otherwise discriminate against any person in the sale or rental
5 of housing accommodations when the owner's dominant purpose
6 is retaliation against a person who has opposed practices unlawful
7 under this section, informed law enforcement agencies of practices
8 believed unlawful under this section, has testified or assisted in
9 any proceeding under this part, or has aided or encouraged a person
10 to exercise or enjoy the rights secured by this part. Nothing herein
11 is intended to cause or permit the delay of an unlawful detainer
12 action.

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

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

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

30 (j) To deny a person access to, or membership or participation
31 in, a multiple listing service, real estate brokerage organization,
32 or other service because of race, color, religion, sex, gender, gender
33 identity, gender expression, sexual orientation, marital status,
34 ancestry, disability, genetic information, familial status, source of
35 income, or national origin.

36 (k) To otherwise make unavailable or deny a dwelling based
37 on discrimination because of race, color, religion, sex, gender,
38 gender identity, gender expression, sexual orientation, familial
39 status, source of income, disability, genetic information, or national
40 origin.

1 (l) To discriminate through public or private land use practices,
2 decisions, and authorizations because of race, color, religion, sex,
3 gender, gender identity, gender expression, sexual orientation,
4 familial status, marital status, disability, genetic information,
5 national origin, source of income, or ancestry. Discrimination
6 includes, but is not limited to, restrictive covenants, zoning laws,
7 denials of use permits, and other actions authorized under the
8 Planning and Zoning Law (Title 7 (commencing with Section
9 65000)), that make housing opportunities unavailable.

10 Discrimination under this subdivision also includes the existence
11 of a restrictive covenant, regardless of whether accompanied by a
12 statement that the restrictive covenant is repealed or void.

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

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

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

29 (p) For the owner of any rental housing accommodations to
30 deny the rental or lease of a housing accommodation without first
31 satisfying the requirements of Section 12955.05, unless otherwise
32 required by state or federal law.

33 (q) (1) For the purposes of this section, “source of income”
34 means lawful, verifiable income paid directly to a tenant or paid
35 to a representative of a tenant. For the purposes of this section, a
36 landlord is not considered a representative of a tenant.

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

1 SEC. 2. Section 12955.05 is added to the Government Code,
 2 to read:
 3 12955.05. (a) For purposes of this section:
 4 (1) “Criminal record” means criminal offender *record*
 5 information, as defined in Section 13102 of the Penal Code or state
 6 summary criminal history information as defined in Section 11105
 7 of the Penal Code.
 8 (2) “Evidence of rehabilitation or other mitigating factors”
 9 means, but is not limited to, the following:
 10 (A) A person’s satisfactory compliance with all terms and
 11 conditions of parole or probation, provided that the person’s
 12 inability to pay fines, fees, and restitution due to indigence shall
 13 not be considered noncompliance with terms and conditions of
 14 parole or probation.
 15 (B) Employer recommendations, particularly a person’s
 16 postconviction employment.
 17 (C) Educational attainment or vocational or professional training
 18 since conviction, including training received while incarcerated.
 19 (D) Completion of or active participation in rehabilitative
 20 treatment, including alcohol or drug treatment.
 21 (E) Letters of recommendation from community organizations,
 22 counselors, case managers, teachers, community leaders, parole
 23 officers, and probation officers who have observed the person
 24 since his or her conviction.
 25 (F) A person’s familial relationship with a person who may be
 26 currently residing in the housing accommodation.
 27 (G) The age of the person at the time of the conviction.
 28 (H) Explanation of precedent coercive conditions, including
 29 physical, emotional, or sexual abuse, untreated substance abuse,
 30 or mental illness that contributed to the conviction.
 31 (3) “Initial application assessment phase” means the period
 32 before a decision is made to rent or lease, which ~~shall include the~~
 33 ~~request for, and the provision of, an application to~~ *includes the*
 34 *time during which* a person seeking a rental housing
 35 accommodation *requests and is provided an application and*
 36 ~~including~~ the time during which the assessment of rental history
 37 and credit history, the checking of sources of income, and the
 38 scheduling an applicant interview ~~routinely~~. *routinely occur.*
 39 (b) (1) It is an unlawful housing practice for the owner of a
 40 rental housing accommodation to inquire about, or to require an

1 applicant for rental housing accommodation to disclose, a criminal
2 record during the initial application assessment phase, unless
3 otherwise required by state or federal law.

4 (2) *The owner of a rental housing accommodation may disclose*
5 *to the applicant, on the rental housing accommodation application,*
6 *the policy and screening criteria that the owner uses in deciding*
7 *whether to rent or lease to an applicant with a criminal*
8 *background. The disclosure shall include a written disclosure that*
9 *the applicant may provide evidence demonstrating inaccuracies*
10 *within the applicant's criminal record or evidence of rehabilitation*
11 *or other mitigating factors, and contain written examples of*
12 *evidence of rehabilitation or other mitigating factors.*

13 ~~(2)~~

14 (3) Following the *successful completion of the* initial application
15 assessment phase, an owner of a rental housing accommodation
16 may request a criminal background check and *inquire about and*
17 consider an applicant's criminal record in deciding whether to rent
18 or lease. ~~If the owner of a rental housing accommodation is~~
19 ~~considering denying an application to rent or lease after requesting~~
20 ~~a criminal background check or considering an applicant's criminal~~
21 ~~record, and the possible denial is based on the applicant's criminal~~
22 ~~record, he or she shall promptly provide the applicant with a written~~
23 ~~statement listing the reasons for the possible denial before making~~
24 ~~a final decision. The request for a criminal background check shall~~
25 ~~include a written disclosure that the applicant may provide~~
26 ~~evidence demonstrating inaccuracies within the applicant's~~
27 ~~criminal record or evidence of rehabilitation or other mitigating~~
28 ~~factors and contain written examples of evidence of rehabilitation~~
29 ~~or other mitigating factors.~~

30 ~~(3) If, within 14 days of receipt of the written statement~~
31 ~~described in paragraph (2), the applicant provides the owner of~~
32 ~~the rental housing accommodation notice orally or in writing of~~
33 ~~evidence demonstrating the inaccuracy of the item or items within~~
34 ~~the applicant's criminal record or evidence of rehabilitation or~~
35 ~~other mitigating factors, the owner of the housing accommodation~~
36 ~~shall delay the denial for a reasonable period after receipt of the~~
37 ~~information and reconsider his or her decision in light of the~~
38 ~~information. If, upon individualized assessment of the applicant's~~
39 ~~criminal record and the evidence of rehabilitation and mitigating~~
40 ~~factors, the applicant still has an unacceptable criminal record,~~

1 ~~then the owner of the housing accommodation shall notify the~~
2 ~~applicant of his or her final decision to deny the application in~~
3 ~~writing.~~

4 (c) With regard to an application for rental housing
5 accommodations, the owner of the housing accommodation shall
6 not require disclosure of, or, if such information is received, deny
7 a dwelling based in whole or in part on the following:

8 (1) A previous arrest that did not result in a ~~conviction.~~
9 *conviction, except for records of arrest, indictment, information,*
10 *or misdemeanor complaints reported pending pronouncement of*
11 *judgment on the particular subject matter of those records.*

12 (2) Participation in, or completion of, a diversion or a deferral
13 of judgment program.

14 (3) A conviction that has been judicially dismissed, expunged,
15 voided, invalidated, or otherwise rendered inoperative, including,
16 but not limited to, as is provided under Section 1203.4, 1203.4a,
17 or 1203.41 of the Penal Code.

18 (4) A determination or adjudication in the juvenile justice system
19 or information regarding a matter considered in or processed
20 through the juvenile justice system.

21 (5) Information pertaining to an offense other than a felony or
22 misdemeanor.

23 (d) *An owner of a rental housing accommodation shall not be*
24 *liable to any person for accepting or denying a person with a*
25 *criminal record as a tenant if the owner followed the procedures*
26 *set forth in this section in accepting that person as a tenant.*