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California Fair Housing Legislation Background and Issues

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ASSEMBLY HOUSING AND COMMUNITY DEVELOPMENT COMMITTEE
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**CALIFORNIA FAIR HOUSING LEGISLATION
BACKGROUND AND ISSUES**

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CALIFORNIA FAIR HOUSING LEGISLATION

BACKGROUND AND ISSUES

Introduction

The federal Fair Housing Amendments Act of 1988 (FHAA) amended Title VIII of the federal Civil Rights Act of 1968 (Title VIII) and specifies that if the federal Department of Housing and Urban Development (HUD) receives a complaint alleging discrimination in housing, HUD must refer the complaint to a state or local agency for action if the agency has jurisdiction and has been certified by HUD as having protections, procedures, and remedies "substantially equivalent" to HUD in fair housing enforcement.

The FHAA also added "familial status" and "handicap" to the list of categories specified in Title VIII against which it is unlawful to discriminate in housing.

California's fair housing law consists of the Fair Employment and Housing Act (FEHA) and related statutes. The FEHA is administratively enforced by the Department of Fair Employment and Housing (DFEH). If California's fair housing law is not certified by HUD to be substantially equivalent to the FHAA, DFEH would no longer process housing discrimination complaints based on Title VIII.

Two measures have been introduced which purport to make California's fair housing law substantially equivalent to the FHAA, thereby ensuring that DFEH would continue to process HUD complaints: AB 531 (Polanco) and SB 1234

(Calderon). These bills were heard on July 17 by the Assembly Housing and Community Development Committee and were held for interim study. The purpose of this report is to provide background information and discuss issues presented by these bills.

First, the report describes California and federal fair housing law. Second, the report summarizes the two fair housing bills. Finally, the report sets forth issues relating to "substantial equivalence."

Appendix D provides a comparison of significant issues presented by these bills.

I. California Fair Housing Law

California's primary fair housing law is the Fair Employment and Housing Act (FEHA), which provides that it is unlawful for an owner of any housing accommodation to discriminate against any person because of race, color, religion, sex, marital status, national origin, or ancestry of such person.

The Unruh Civil Rights Act (Unruh Act) provides that all persons in the state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, or blindness or other physical disability, they are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind.

The Unruh Act also prohibits a business establishment from discriminating in the sale or rental of housing based on age (i.e., familial status, generally), but permits, with certain exceptions, a business establishment to establish and preserve housing for seniors where the accommodations are designed to meet the physical and social needs of senior citizens, as specified.

The Unruh Act does not require any person renting, leasing, or otherwise providing real property for compensation to modify his or her property in any way, or to provide a higher degree of care for a blind or other physically disabled person than for a person who is not physically disabled.

The FEHA is administered by the Department of Fair Employment and Housing (DFEH) and provides for procedures to prevent and eliminate discrimination in housing. Specifically, the FEHA:

- A) Authorizes DFEH to receive, investigate, and conciliate complaints alleging discrimination in housing on the bases enumerated in the FEHA and the Unruh Act.
- B) Provides for administrative hearings before the Fair Employment and Housing Commission (FEHC) and judicial relief through civil action.

If the FEHC finds that discrimination has occurred, it can require the respondent to take actions including, but not limited to, any of the following:

- A) Sell or rent the housing accommodation.
- B) Pay punitive damages in an amount not to exceed \$1,000 as adjusted annually and pay actual damages.
- C) Provide affirmative or prospective relief.

California law also provides for special treatment of certain groups of people. These laws allow for exclusive congregation (adults) on the one hand and prohibition against too close a proximity (disabled) on the other hand.

The Mobilehome Residency Law (MRL) permits park management to require that a purchaser of a mobilehome which will remain in the park comply with any rule or regulation limiting residence to adults only.

The California Community Facilities Act and related statutes establish a comprehensive scheme regarding community care for the mentally ill, developmentally and physically disabled and provide, among other things, that:

- A) It is the policy of the state to prevent over-concentration of specified facilities which "impair the integrity of residential neighborhoods" and permits the Director of Social Services to deny an application for a new facility if it is located within a specified distance of another facility.
- B) Specified facilities which serve six or fewer persons, as defined, must be considered a residential use of the property.
- C) Residents and operators of the facility must be considered a family for the purposes of any law or zoning ordinance and no conditional use permits, zoning variances, or other zoning clearances be required of such facilities which are not required of a single-family residence in the same zone.
- D) Any congregate living health facility of more than six beds and serving specified persons is subject to conditional use requirements of the city or county unless the requirement is waived.

II. Federal Fair Housing Law

Title VIII of the Civil Rights Act of 1968 (Title VIII) prohibits discrimination in the sale or rental of housing because of race, color, religion, sex, or national origin.

The federal Fair Housing Amendments Act of 1988 (FHAA) amends Title VIII and prohibits housing discrimination with respect to familial status (i.e., the presence of one or more children under 18 in the household) and handicap.

The FHAA generally permits senior housing:

- A) If the housing is intended and operated solely for, and occupied by, persons 62 years of age or older.
- B) If at least 80 percent of the housing units are occupied by one person 55 years of age or older and have "significant facilities and services" specially designed to meet the physical or social needs of older persons. Federal law and regulations further set forth seven specific factors--the existence of which would make any senior housing exempt from the requirement that it provide significant facilities and services for older persons.

The FHAA defines "handicap" to include, but not be limited to:

- A) A physical or mental impairment that substantially limits one or more of a person's major life activities.

- B) A record of having, or being perceived as having, a physical or mental impairment, other than addiction caused by current, illegal use of a controlled substance, or alcoholism.

The FHAA requires newly constructed multifamily housing, as defined, to ensure handicap accessibility and usability. A handicapped person is permitted to provide, at his/her expense, reasonable modifications to his/her dwelling unit if it is necessary to afford full enjoyment of the premises; a landlord may condition permission for modification on the tenant agreeing to restore the premises to its pre-existing condition; it is unlawful to refuse to make reasonable accommodations, rules, and practices when such accommodations may be necessary to afford that individual full enjoyment of the premises.

The FHAA establishes a comprehensive system of administrative actions and civil procedures, as follows:

- A) Conciliation: The United States Department of Housing and Urban Development (HUD) is charged with investigating complaints. After the filing of a complaint, HUD will attempt to conciliate the complaint. The conciliation process may result in monetary or equitable relief, including injunctive relief.
- B) Substantial Penalties: If HUD files a charge and an administrative law judge finds the respondent has engaged, or is about to engage, in housing discrimination, the judge may issue an order for relief including actual damages, injunctive or other equitable relief, or civil penalties in an amount ranging from \$10,000 to \$50,000.

C) Civil and Administrative Remedies: A complainant may request a civil action instead of an administrative hearing (i.e., a complainant need not exhaust administrative remedies before proceeding with an action in court). The United States Attorney General represents the complainant in such an action and the court may award preventive relief, monetary damages, and assess a civil penalty of up to \$100,000.

The FHAA requires complaints filed with HUD to be referred to a state or local agency if the agency has jurisdiction and is certified by HUD as having substantive protections, procedures, and remedies "substantially equivalent" to HUD in fair housing enforcement.

(NOTE: For a detailed comparison of Title VIII, FEHA, and the Unruh Act, see Appendix A.)

III. Fair Housing Legislation

AB 531 (Polanco) amends the FEHA to make it substantially equivalent to the federal Fair Housing Amendments Act of 1988.

This bill is supported by a coalition of fair housing advocates, including groups associated with the physically and mentally disabled and the National Center for Youth law.

SB 1234 (Calderon) also amends the FEHA to achieve substantial equivalence with the FHAA. The bill is sponsored by the California Association of Realtors and is supported by the California Apartment Association.

AB 531 (Polanco) varies from SB 1234 in its treatment of the following issues:

- A) Proof of Discrimination. Expressly provides that a complainant show that a practice has a discriminatory effect.
- B) Land Use. Makes it unlawful to discriminate through land use practices.
- C) Occupancy Standards. Provides that unlawful discrimination includes the refusal to rent or sell a dwelling if the total number of occupants does not exceed the general Uniform Housing Code (UHC) occupancy requirements established by the state or any city or county.

IV. Issues

To Conform or Not Conform

- A) California must achieve substantial equivalence by January 13, 1992 in order to receive federal funding for enforcement of California's equivalent of the FHAA. (The FHAA allows an extension of up to eight months due to exceptional circumstances.)
- B) Fair housing advocates argue that if California law does not provide the same rights and remedies as the FHAA, the state should not seek substantial equivalence.
- C) If California does not obtain certification, DFEH will not process HUD complaints and will lose approximately \$300,000 in federal reimbursement.

(NOTE: The fiscal impact of fair housing legislation is shown in Appendix B.)

Proof of Discrimination

- A) It is generally held that under the FEHA and Title VIII the burden on a complainant to establish discrimination in housing is met if the complainant demonstrates that the practice has a discriminatory effect. A complainant is not required to show that a discriminatory practice is intentional. AB 531 expressly provides that a complainant show discriminatory effect. SB 1234 is silent on this issue.
- B) Discriminatory effect is demonstrated by the disparate impact test. This test allows a complainant (plaintiff) to establish a prima facie case of discrimination by showing that a respondent's (defendant's) practices or policies have an adverse impact on a statutorily protected class of persons.

- C) The test originated in Griggs v. Duke Power (1971) 401 U.S.424, a case involving employment discrimination. The United States Supreme Court held that a plaintiff may prove a facially neutral employment practice is discriminatory because of its disproportionate negative impact on a protected class. If a prima facie case is established, the defendant must show that the discriminatory practice is justified by a business necessity and that there is no other practice with lessor discriminatory impact which would serve the defendant's legitimate business interests.
- D) The disparate impact test has been applied to Title VIII by several federal circuit courts. For example, in United States v. City of Black Jack (1974) 508 F.2d 1184, the Eighth Circuit Court, relying on Griggs, held that "the plaintiff need prove no more than that the conduct of the defendants actually or predictably results in racial discrimination; in other words, that it has a discriminatory effect."
- E) The FEHC expressed the view in DFEH v. Merribrook Apartments (1988) FEHC Dec. No.88-19, that a particular practice (relating to occupancy limitations) resulted in a proscribed disparate impact under the FEHA and the Unruh Act. In addition, DFEH considers the disparate impact test to be applicable to both Title VIII and the FEHA (see Appendix A comparing Title VIII, FEHA and the Unruh Act).
- F) The California Supreme Court in Harris v. Capital Growth Investors (1991) 52 Cal. 3d 1142, noted the FEHC's opinion in the Merribrook decision but held that a "plaintiff seeking to establish a case under the Unruh Act must plead and prove intentional discrimination...."
- G) The House Report regarding the FHAA states "...that housing discrimination against handicapped persons is not limited to blatant, intentional acts of

discrimination. Acts that have the effect of causing discrimination can be just as devastating as intentional discrimination."

- H) The Legislative Counsel, when specifically asked about these provisions in AB 531, stated, "Since a showing of discriminatory intent is not deemed necessary to invalidate a practice at issue under the [FHAA]...we conclude that [showing discriminatory effect] complies with federal law in this respect." (Legislative Counsel Opinion Number 17386)

Land Use

- A) Section 804 of the federal Fair Housing Act contains a general prohibition against discrimination because of a person's disability. Paragraph (a) states that it is unlawful to discriminate against any person in the sale or rental of a dwelling unit, or to otherwise make unavailable or deny a dwelling to any buyer or renter.

Paragraph (b) makes it unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling unit, or in the provision of services or facilities with such dwellings.

- B) The House Report states that the prohibition against discrimination is intended to apply to zoning decisions and practices. "The Act is intended to prohibit the application of special restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals...."

- C) HUD regulations do not specifically address the issue of land use. HUD has stated in its Response to Public Comments on the proposed regulations that, based on the fact that HUD does not have enforcement jurisdiction over land use, it would not be appropriate to provide regulations.

However, under Section 810(g) of the Act, if HUD does determine that a

matter involves the legality of a land use practice, HUD is required to refer the matter to the United States Attorney General for appropriate action under Section 814.

- D) Congress clearly intended that discriminatory land use practices be covered by the FHAA. AB 531 makes it unlawful to discriminate through land use practices. Opponents of AB 531 argue that this provision is not required to achieve substantial equivalence. Regardless of the merits of this debate, provisions of California law regarding congregate housing for the disabled appear to be discriminatory on their face.
- E) The FHAA provides that discriminatory land use practices should be referred to the United States Attorney General for prosecution. AB 531 and SB 1234 contain a parallel provision to refer state or local zoning issues to the state Attorney General. This could provide a conflict for the state Attorney General as several state laws, including the California Community Care Facilities Act, have been identified as potentially discriminatory.
- F) Assembly Bill 531 establishes a legal challenge standard for actions brought against state and local land use policies. The bill states that discriminatory governmental actions may be appropriate if it is established by credible and objective evidence that the action is necessary to achieve a compelling governmental action and that no less discriminatory action exists to achieve that purpose. Courts have consistently held that Title VIII applies to governmental entities. In City of Black Jack, the court held that the action of a governmental entity that was deemed to have a discriminatory effect would violate Title VIII unless it could be shown that the action was necessary to

promote a compelling governmental interest. This bill would establish this principle in statute.

Occupancy Standards

- A) FHAA expressly does not limit the applicability of any reasonable occupancy standards adopted by state and local governments; however, HUD will examine complaints regarding occupancy standards on a case-by-case basis to determine whether a reasonable government restriction applies. AB 531 provides that unlawful discrimination includes the refusal to rent or sell a dwelling if the total number of occupants does not exceed the general UHC occupancy requirements established by the state or any city or county. SB 1234 does not address this issue.
- B) The state has adopted the UHC as a statewide overcrowding standard; however, local jurisdictions may modify this standard. The UHC provides that every dwelling, except for studio apartments, have one room with at least 120 square feet of floor area. Two persons are allowed to use a room for sleeping purposes if it has a total area of not less than 70 square feet. Where more than two persons occupy a room, the required floor area must be increased by an additional 50 square feet per occupant. The UHC is based on health and safety considerations.
- C) The FEHC has recognized that occupancy standards may violate the state's fair housing law. In Merribrook, the FEHC determined that an occupancy limitation violates fair housing law unless it is necessary to serve a compelling public purpose and there is no alternative means of serving the same need with less discriminatory impact.
- D) As a result of Merribrook, DFEH adopted guidelines for accepting complaints regarding occupancy limitations. When a housing provider's

occupancy limitation permits the number of occupants to be equal to, or greater than, two persons per bedroom plus one additional person (2+1) for the entire dwelling unit, DFEH will advise the complainant that the complaint probably cannot be sustained unless there is proof of intentional discrimination.

Senior Housing

- A) The Unruh Act permits discrimination based on age where accommodations are designed to meet the physical and social needs of senior citizens, as specified.
- B) The FHAA also permits age discrimination--arguably in a more expansive manner than that permitted under the Unruh Act (i.e., it permits greater discrimination against families with children).
- C) The MRL permits mobilehome parks to be limited to adults only.
- D) Facially, the MRL violates the FHAA.
- E) Should the MRL be amended to conform to the provisions of the Unruh Act or the FHAA? (Both bills conform the MRL to the FHAA.)

HIGHLIGHTS OF DIFFERENCES BETWEEN STATE AND FEDERAL FAIR HOUSING LAWS

	Title VIII of 1968 Civil Rights Act; 42 USC 8601	California Fair Employment and Housing Act (FEHA); Government Code Section 12955	California Unruh Civil Rights Act; Civil Code Section 51
ENFORCING AGENCY	HUD	DFEH	DFEH
Coverage	<p>Prohibits discrimination in the sale, rental, lease, or negotiations for real property based on:</p> <ul style="list-style-type: none"> ▶ Race ▶ Color ▶ Religion ▶ Sex ▶ National Origin ▶ Familial Status ▶ Handicap (includes mental disability, alcoholism, drug addiction not resulting from current abuse of controlled substances) <p>Prohibits:</p> <ul style="list-style-type: none"> ▶ Intentional discrimination ▶ Adverse Impact 	<p>Prohibits discrimination in the sale, rental, lease, negotiations or finance of real property based on:</p> <ul style="list-style-type: none"> ▶ Race ▶ Color ▶ Creed ▶ Sex ▶ National Origin ▶ Ancestry ▶ Marital Status <p>Prohibits:</p> <ul style="list-style-type: none"> ▶ Intentional discrimination ▶ Adverse Impact 	<p>Prohibits arbitrary discrimination by business establishments based on:</p> <ul style="list-style-type: none"> ▶ Race ▶ Color ▶ Religion ▶ Sex ▶ Ancestry ▶ National Origin ▶ Blindness ▶ Physical Disability ▶ Age/Children ▶ Any arbitrary discrimination based on personal characteristics (excludes mental disability) <p>Prohibits:</p> <p>Intentional discrimination <u>only</u></p>
Familial Status	<p>Prohibits discrimination against families with children</p> <p><u>Exceptions:</u></p> <ul style="list-style-type: none"> ▶ Senior citizen housing 	No coverage	<p>Prohibits age discrimination which includes discrimination against children</p> <p><u>Exceptions:</u></p> <ul style="list-style-type: none"> ▶ Senior citizen housing ▶ Mobilehome parks
Senior Citizen Housing	<p><u>Qualifying Requirements:</u></p> <ul style="list-style-type: none"> ▶ Facility must show intention to house older people and have 100% of residents age 62 or older; <p style="text-align: center;"><u>OR</u></p> <ul style="list-style-type: none"> ▶ Facility must show intention to house older people and have 80% of units with one person age 55 or older, <u>and</u> provide significant facilities and services for seniors. ▶ No minimum number of residents required. 	No coverage	<p><u>Qualifying Requirements:</u></p> <ul style="list-style-type: none"> ▶ Facility must restrict occupants to persons age 62 or older; <p style="text-align: center;"><u>OR</u></p> <ul style="list-style-type: none"> ▶ Facility is a senior citizen housing development and restricts occupancy to persons 55 or older <u>and also:</u> ◆ Has 150 units in a Standard Metropolitan Statistical Area (SMSA) or 35 units in other areas; <u>and</u> ◆ Is "developed for, or substantially rehabilitated or renovated" to meet the physical and social needs of seniors.

APPENDIX A (Continued)

	TITLE VIII	FEHA	UNRUH
Senior Citizen Housing (Continued)	<p><u>Significant Facilities and Services:</u></p> <p>Includes physical accessibility, congregate dining rooms, social and recreational programs, information and counseling, emergency and preventive health care or programs, transportation services, etc.</p> <p><u>Exceptions to Senior AGE Requirements:</u></p> <p><u>62 or Older</u></p> <p>Persons under age 62 may reside in the complex <u>if:</u></p> <ul style="list-style-type: none"> ▶ They resided there prior to September 13, 1988 and all <u>new</u> occupants after September 13, 1988 meet the age requirements; <p style="text-align: center;"><u>OR</u></p> <ul style="list-style-type: none"> ▶ They are <u>employees</u> of the housing complex who perform substantial duties directly related to management or maintenance (includes family members of such employees). <p><u>55 or Older</u></p> <p>It is permissible that less than 80% of the units are occupied by tenants under age 55 <u>if:</u></p> <ul style="list-style-type: none"> ▶ On September 13, 1988, less than 80% of the units were occupied by at least one person age 55 or older <u>and</u> at least 80% of the units occupied <u>after</u> September 13, 1988 are occupied by at least one person 55 years of age or older; <p style="text-align: center;"><u>OR</u></p> <ul style="list-style-type: none"> ▶ There are unoccupied units, <u>and</u> at least 80% of the units are <u>reserved</u> for occupancy by at least one person 55 years of age or older; <p style="text-align: center;"><u>OR</u></p>	No coverage	<p><u>Substantial Renovation, Rehabilitation or Development:</u> (senior design requirements)</p> <p>Handrails, ramps, recreational facilities, wide sidewalks, specialized transportation, medical services, large bathrooms, provision for common rooms, etc.</p> <p><u>Exceptions to Senior AGE Requirements:</u></p> <ul style="list-style-type: none"> ▶ A person who is at least <u>45 years of age or is under the age of 45</u> and is a spouse, cohabitant, or person providing primary physical or economic support may reside with a senior as a "qualified permanent resident" if the person: <ul style="list-style-type: none"> ◆ Resided with a senior prior to the death, hospitalization, prolonged absence, or dissolution of marriage; <p style="text-align: center;"><u>AND</u></p> <ul style="list-style-type: none"> ◆ Has an ownership interest or expectation of having an ownership interest, in dwelling unit. <ul style="list-style-type: none"> ▶ A non-senior "qualified permanent resident" is entitled to <u>continue</u> his/her residency in the event of death, dissolution of marriage, hospitalization, or the prolonged absence of the senior resident. ▶ A non-senior "permitted health care resident" may reside with a senior if hired to provide live-in, long-term, or terminal health care. ▶ Non-senior residents may continue to reside in senior complexes <u>provided</u> they were residents <u>prior</u> to January 1, 1985.

APPENDIX A (Continued)

	TITLE VIII	FEHA	UNRUH
Senior Citizen Housing (Continued)	<p><u>Exceptions to Senior AGE Requirements: (Continued)</u></p> <p><u>55 or Older (Continued)</u></p> <ul style="list-style-type: none"> ▶ The complex is newly constructed for first occupancy after March 12, 1989 and fewer than 25% of the units are occupied; <p style="text-align: center;"><u>OR</u></p> <ul style="list-style-type: none"> ▶ There are units occupied by employees of the housing complex who are under age 55 <u>provided</u> they perform substantial duties directly related to the management or maintenance of the housing. <p><u>Exceptions to Provision of Significant FACILITIES and SERVICES:</u></p> <p>Senior complexes housing persons 55 or older are exempt from having significant facilities and services specifically designed for seniors <u>if</u>:</p> <ul style="list-style-type: none"> ▶ It is not practicable to provide such services; <p style="text-align: center;"><u>AND</u></p> <ul style="list-style-type: none"> ▶ The housing facility is necessary to provide important housing opportunities for older persons (housing provider must show that provision of such services would result in depriving older persons in relevant geographic area of needed and desired housing). 		<p><u>Exceptions to Senior DESIGN Requirements:</u></p> <p>Senior housing developments (55 or over) are exempt from senior design requirements until January 1, 2000 <u>if</u> they:</p> <ul style="list-style-type: none"> ▶ Were constructed prior to February 8, 1982; ▶ Can show that it is not practical to meet senior requirements in the areas in which they are located; ▶ Can show that the housing development is necessary to provide housing opportunities to seniors.
Mobilehome Parks	Prohibits familial status discrimination in mobilehome parks	No coverage	Mobilehome Residency Act (Civil Code Section 798.76) permits parks to establish "adults only" facilities (18 years of age or older)
Handicap	Encompasses physical and mental disability; includes alcoholism and drug addiction	No coverage	Encompasses only <u>physical</u> handicap

APPENDIX A (Continued)

	TITLE VIII	FEMA	UNRUH
Handicap (Continued)	<p><u>Reasonable Accommodation:</u></p> <ul style="list-style-type: none"> Requires housing provider to reasonably accommodate by permitting physical alteration of premises if there is reasonable assurance premises will be restored to original status at end of tenancy. 		<p><u>Reasonable Accommodation:</u></p> <ul style="list-style-type: none"> Specifically exempts housing providers from accommodation requirements
Filing Requirements	<p><u>With HUD</u></p> <p>File within one year of discriminatory act.</p> <p><u>Civil Court Suit by Individual</u></p> <p>File lawsuit within two years (no prerequisite of filing with HUD).</p>	<p><u>With DFEH</u></p> <p>File within 60 days of discriminatory act.</p> <p><u>Civil Court Suit by Individual</u></p> <p>File lawsuit within one year of receiving right to sue (must file with DFEH as prerequisite to court action).</p>	<p><u>With DFEH</u></p> <p>File within one year of discriminatory act.</p> <p><u>Civil Court Suit by Individual</u></p> <p>File lawsuit within three years (no prerequisite of filing first with DFEH).</p>
Processing	<p><u>HUD Investigation</u></p> <p>Concludes within 100 days</p> <p align="center">↓</p> <p><u>Litigation Forum</u></p> <p>Complainant or respondent elects:</p> <ul style="list-style-type: none"> HUD administrative hearing before Administrative Law Judge <p align="center">OR</p> <ul style="list-style-type: none"> Suit in federal district court with complainant represented by Department of Justice attorneys 	<p><u>DFEH Investigation</u></p> <p>Concludes within one year</p> <p align="center">↓</p> <p><u>Litigation Forum</u></p> <p>DFEH attorneys litigate case in administrative hearing before Administrative Law Judge and Fair Employment and Housing Commission renders final decision.</p>	<p><u>DFEH Investigation</u></p> <p>Concludes within one year</p> <p align="center">↓</p> <p><u>Litigation Forum</u></p> <p>DFEH attorneys litigate case in administrative hearing before Administrative Law Judge and Fair Employment and Housing Commission renders final decision.</p>
Remedies	<p><u>HUD</u></p> <ul style="list-style-type: none"> Actual damages (including pain and suffering) Injunctive relief Equitable relief Penalties between \$10,000 and \$50,000 Attorney's fees and costs <p><u>Court</u></p> <ul style="list-style-type: none"> Actual and punitive damages Injunctive and equitable relief Attorney's fees 	<p><u>DFEH/FEHC</u></p> <ul style="list-style-type: none"> Actual damages (including pain and suffering) Punitive damages of \$1,000 per violation Injunctive relief Equitable relief <p><u>Court</u></p> <ul style="list-style-type: none"> Unlimited actual and punitive damages Injunctive and equitable relief Attorney's fees 	<p><u>DFEH/FEHC</u></p> <ul style="list-style-type: none"> Injunctive and equitable relief A legal question exists as to monetary damages <p><u>Court</u></p> <ul style="list-style-type: none"> Actual damages punitive damages up to three times actuals Injunctive and equitable relief Attorney's fees

APPENDIX B

Fiscal Effect and DFEH Workload

The fair housing bills each would impose additional annual General Fund costs of up to \$150,000 on DFEH to process additional discrimination complaints. In addition, enactment of the bill would enable DFEH to receive federal reimbursement of as much as \$200,000 annually for processing cases of discrimination based on physical disability and familial status.

If California's fair housing law is not certified to be substantially equivalent to the FHAA, DFEH would no longer process HUD complaints and would thereby lose approximately \$300,000 in federal reimbursement.

A summary of DFEH workload for 1989-90 follows.

HOUSING CASES FILED: TYPE OF RESPONDENT

JULY 1, 1989 - JUNE 30, 1990

<u>TYPE OF RESPONDENT</u>	<u>NUMBER FILED</u>	<u>%</u>
Apartment/Home-Owner/Manager	663	87.6
New Tract Developer	5	.7
Trailer Park Owner	35	4.6
Mortgage Company	1	.1
Real Estate Broker	37	4.9
Individual Home-Owner	11	1.5
Public Housing Authority	<u>5</u>	<u>.7</u>
TOTAL	757	100.0

(A) Includes public schools

(B) Includes labor unions

HOUSING CASES FILED: TYPE OF OCCUPATION

JULY 1, 1989 - JUNE 30, 1990

<u>TYPE OF ACCOMMODATION</u>	<u>NUMBER FILED</u>	<u>%</u>
Home	126	16.6
Apartment	557	73.6
Trailer Space/Mobile Home	47	6.2
Condominium	22	2.9
Public Housing	<u>5</u>	<u>.7</u>
TOTAL	757	100.0

HOUSING CASES FILED: ALLEGED DISCRIMINATORY ACT

JULY 1, 1989 - JUNE 30, 1990

<u>ACT</u>	<u>COUNT</u>	<u>% OF TOTAL COMPLAINTS(B)</u>	<u>% OF TOTAL ALLEGED ACTS</u>
Refusal to Show	42	5.5	4.6
Refusal to Rent	278	36.7	30.4
Refusal to Sell	26	3.4	2.8
Refusal to Grant Equal Terms	59	7.8	6.5
Eviction	318	42.0	34.8
Rent Increase	24	3.2	2.6
Loan Withheld	1	.1	.1
Harassment	126	16.6	13.8
Unequal Access to Facilities	23	3.0	2.5
Occupancy Standards	12	1.6	1.3
Surcharge	<u>4</u>	<u>.5</u>	<u>.4</u>
TOTAL (A)	757	100.0	100.0

(A) Where more than one discriminatory act was alleged, the complaint was counted under each act reported.

(B) Percentages will not total to 100% since multiple alleged acts may occur per case.

HOUSING CASES CLOSED: TYPE OF DISPOSITION

JULY 1, 1989 - JUNE 30, 1990

<u>TYPE OF DISPOSITION</u>	<u>NUMBER CLOSED</u>	<u>%</u>
Settlement	315	44.94
Insufficient Evidence	282	40.23
Closed Through Public Hearing	1	.14
Administrative Closures	<u>103</u>	<u>14.69</u>
TOTAL	701	100.00

ADMINISTRATIVE CLOSURE

Cases are closed administratively when the Department is unable to proceed with case processing due to legal or technical circumstances. Some examples include: (1) the complainant elected court action; (2) the issue is not jurisdictional; and (3) the complainant failed to cooperate.

HOUSING CASES FILE: ALLEGED BASIS OF DISCRIMINATION

JULY 1, 1989 - JUNE 30, 1990

SUMMARY OF HOUSING CASES FILED/CLOSED
UNDER FEHA/UNRUH ACT (A)

JULY 1, 1989 - JUNE 30, 1990

	FILED	CLOSED
FEHA	757	699
UNRUH (Service/Accommodation)	-0-	2
TOTAL	757	701

(A) In 1986-87, we started filing all Housing cases under the Fair Employment and Housing Act.

HOUSING CASES FILED: OFFICE WHERE FILED

JULY 1, 1989 - JUNE 30, 1990

BASIS	NUMBER FILED	%
San Francisco	58	7.7
Los Angeles	130	17.2
Fresno	159	21.0
San Diego	65	8.6
Sacramento	69	9.1
San Jose	61	8.1
Bakersfield	29	3.8
San Bernardino	73	9.6
Santa Ana	42	5.5
Ventura	34	4.5
Oakland	37	4.9
STATEWIDE TOTAL	757	100.0

	COUNT	% OF TOTAL CASES (B)	% OF TOTAL BASES
TOTAL (A)	997		100.0
1. Race/Color	326	43.1	32.7
- Black	255	33.7	25.6
- Asian	6	.1	.1
- Caucasian	55	7.3	5.5
- Other Race/Color	2	.0	.0
- Multiple Complainants	8	.1	.1
2. Origin/Ancstry	103	13.6	10.3
- Mexican-American	32	4.2	3.2
- Other Hispanic	18	6.3	1.8
- Mexican National	31	4.1	3.1
- Native American	6	.1	.1
- Filipino	6	.1	.1
- Other Origin/Ancstry	6	.1	.1
- Multiple Complaints	4	.1	.0
3. Religion	15	2.0	1.5
4. Physical Handicap	41	5.4	4.1
5. Sex	90	11.9	9.0
- General	55	7.3	5.5
- Harassment	23	3.0	2.3
- Pregnancy	1	.1	.1
- Orientation	11	1.5	1.1
6. Marital Status	94	12.4	9.4
7. Age	23	3.0	2.3
8. Medical Condition	1	.1	.1
9. Retaliation	30	4.0	3.0
10. Association	62	8.2	6.2
11. Children	189	25.0	19.0
12. Other	22	2.9	2.2
TOTAL OF CASES FILED	757		

(A) Complaints with more than one basis have been counted under each basis reported.

(B) Percentages will not total to 100.0% since multiple bases may be reported per case.

APPENDIX C

Related Legislation

AB 1077 (Bronzan) makes a violation of the Americans with Disabilities Act of 1990, with respect to public accommodations, also a violation of the Unruh Act. The bill would also make certain of the exceptions in the Unruh Act subject to overriding requirements of that federal law.

AB 1795 (Frazee) amends the Unruh Act and the FEHA to achieve substantial equivalence with the FHAA. This bill is sponsored by DFEH and is a two-year bill.

AB 1888 (Connelly) amends the Unruh Act to provide that all persons within this state are entitled to be free "from discrimination because of their genetic characteristics" in obtaining and enjoying the "services, facilities, advantages, housing, or other accommodations, or employment opportunities of all business establishments." "Genetic characteristics" means any "scientifically or medically identifiable gene or chromosome, or alteration thereof, which is known to be a cause of a disease or disorder, or determined to be associated with a statistically increased risk of development of a disorder or disease and which is asymptomatic."

SB 1257 (Roberti) clarifies that the Unruh Act expressly prohibits all arbitrary discrimination by business establishments. According to the author, the California Supreme Court in Harris v. Capitol Growth Investors (1991) 52 Cal.3d 1142, narrowed the application of the Unruh Act. "The effect of this

APPENDIX C (Continued)

bill would be to return the Unruh Act to its status prior to the date of the Harris decision by specifically providing that all arbitrary discrimination by business establishments is prohibited."

APPENDIX D - COMPARISON OF SIGNIFICANT ISSUES

AB 531 (Polanco) and SB 1234 (Calderon)

California must achieve substantial equivalence with the federal Fair Housing Amendments Act (FHAA) by January 13, 1992 in order to receive federal funding for enforcement of California's equivalent of the FHAA. (The FHAA allows an extension of up to eight months due to exceptional circumstances.) Fair housing advocates argue that if California law does not provide the same rights and remedies as the FHAA, the state should not seek substantial equivalence. If California does not obtain certification, Department of Fair Employment and Housing (DFEH) will not process federal Department of Housing and Urban Development (HUD) complaints and will lose approximately \$300,000 in federal reimbursement.

The two measures which address the issue of "substantial equivalence" are substantially similar; the major differences are outlined below.

AB 531

SB 1234

Proof of Discrimination

Expressly provides that a complainant show only discriminatory effect.

This bill does not directly address this issue; however, it expressly provides that it shall not be construed to afford fewer rights and remedies than the FHAA, and implementing regulations, and it may be construed to afford greater rights and remedies than those afforded by the FHAA.

The bill provides that it shall not be construed to abrogate or limit the holding in a specified court decision relating to discriminatory effect.

COMMENT:

Proponents of AB 531 argue that this provision codifies federal case law and DFEH policy. Proponents of SB 1234 contend that this test has not been uniformly applied by the federal courts and is not required to achieve substantial compliance.

Land Use

This bill requires matters involving the legality of zoning or other land uses issues to be referred to the state Attorney General.

Same.

Makes it unlawful to discriminate through land use regulations, zoning laws, and restrictive covenants.

No similar provision.

COMMENT:

Congress clearly intended that discriminatory land use practices be covered by the FHAA. The FHAA provides that discriminatory land use practices should be referred to the federal Attorney General for prosecution. Both bills contain a similar provision. This could provide a conflict for the state Attorney General because several state laws, including the California Community Care Facilities Act, have been identified as potentially discriminatory.

Occupancy Standards

Discriminatory effect includes refusal to rent or sell on the basis of the number of occupants, as specified.

No similar provision.

COMMENTS:

The FHAA expressly does not limit the applicability of any reasonable occupancy standards adopted by state and local governments; however, HUD will examine complaints regarding occupancy standards on a case-by-case basis to determine whether a reasonable government restriction applies.