

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
AB 2448 (Ting) – As Amended March 30, 2022

**SUBJECT:** CIVIL RIGHTS: BUSINESSES: DISCRIMINATION AND HARASSMENT

**KEY ISSUE:** SHOULD BUSINESSES BE REQUIRED TO TRAIN THEIR EMPLOYEES TO RECOGNIZE AND RESPOND TO HARASSMENT BY PROVIDING REGULAR TRAININGS DESIGNED BY THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING (DFEH) AND POSTING A NOTICE OF CUSTOMERS' RIGHTS ON THEIR WEBSITES?

**SYNOPSIS**

*Seemingly triggered by the COVID-19 pandemic, California has witnessed a marked rise in racially-motivated harassment of members of the Asian Americans and Pacific Islanders (AAPI) community. Throughout the state, the spread of hateful behavior has become so prevalent and extreme that it has forced individuals to remain in their homes in order to avoid potentially dangerous situations. This bill seeks to address this trend, specifically in the context of commercial establishments. The bill would establish, as the intent of the Legislature, that additional protections should be provided for the civil rights of customers in businesses where bias-motivated harassment takes place, and to protect a person's right to full and equal accommodations, advantages, facilities, privileges, and services in businesses. Further, the bill would require a business to address the harassment of customers on its premises, including harassment by a third party who is not affiliated with the business, by requiring all of the following on the part of businesses: 1) posting a sign made available by DFEH pursuant to subsequent provisions of the bill in a conspicuous place notifying customers of their rights at a business and how to report harassment; 2) ensuring that employees are trained utilizing a training designed by DFEH in accordance with subsequent provisions of the bill; and 3) implementing a policy regarding collection and maintenance of data relating to incidents of harassments by a third party. The data collected by businesses must be submitted to DFEH upon request.*

*Under the provisions of the bill, an employee would not be required to intervene in the harassment of customers on the business's premises by a third party, and would not be held personally liable for any violations of the bill's provisions. Further, the bill would prohibit a business, or any person acting on behalf of the business, from retaliating against an employee for any actions taken, or not taken, by the employee. The bill would define relevant terms. This bill is sponsored by Stop AAPI Hate and has received support from numerous progressive organizations. Should it be approved by this Committee, it will be heard by the Assembly Labor Committee.*

**SUMMARY:** Seeks to address the rise in harassment of minority communities by equipping commercial businesses with specified training and resources. Specifically, **this bill:**

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

services in businesses, and that all persons within the jurisdiction of this state have the right to be free from harassment at a business because of a characteristic listed or defined in other sections of law, or because the person is perceived to have one or more of those characteristics, or because the person is associated with a person who has or is perceived to have one or more of those characteristics.

- 2) Defines the following for the purposes of this bill:
  - a) “Harassment” means words, gestures, or actions directed at a specific person on account of any characteristic listed or defined under the Unruh Civil Rights Act and other specified provisions of law, or because the person is perceived to have one or more of those characteristics, or because the person is associated with a person who has or is perceived to have one or more of those characteristics.
  - b) “Business” means any private enterprise with a physical presence in the state that is open to members of the public and has a total of 100 or more employees working in the state, including, but not limited to, restaurants, grocery stores, retail stores, gas stations, banks, and gymnasiums.
  - c) “Premises” means both any area inside the building that is under the business’s possession, management, or control, and any area outside of the building that is under the business’s possession, management, or control, including, but not limited to, outdoor eating areas and parking lots.
  - d) “Department” means the Department of Fair Employment and Housing (DFEH).
  - e) “Bias-based discrimination and harassment” means discrimination and other conduct prohibited under the Unruh Civil Rights Act and other specified provisions of law.
- 3) Requires a business, as defined by this bill, to address the harassment of customers on its premises, including harassment by a third party who is not affiliated with the business, by doing all of the following:
  - a) Posting the sign developed pursuant to subsequent sections of this bill in a visible and conspicuous place, notifying customers of their rights at a business and how to report harassment.
  - b) Ensuring that employees are trained in accordance with the subsequent provisions of this bill.
  - c) Having a policy regarding how the business collects and maintains data related to incidents of harassment by a third party, notifying employees of this policy, and submitting this data to the department upon the department’s request.
- 4) Requires DFEH to develop and publish on its internet website a sign that informs customers of their rights at a business and how to report incidents of harassment, including by a third party, to the business or the department.
- 5) Requires DFEH, by December 31, 2023, and December 31 of each year thereafter, to submit to the Legislature and Governor, and publish on its internet website, a report summarizing

data on harassment at businesses in the state. Requires the report to include data related to harassment at businesses reported to DFEH by a member of the public, and data related to harassment at businesses collected by businesses pursuant to provisions of this bill. Requires the report to exclude any personally identifiable information of any individual. Permits the report to be combined with other reporting required of the department.

- 6) Adopts a sunset provision for the reporting requirement of January 1, 2027.
- 7) Requires the report to comply with other provisions of law.
- 8) Prohibits the language of the bill from being construed to require an employee of a business to intervene in the harassment of customers on the business's premises by a third party.
- 9) Prohibits a business, or any person acting on behalf of the business, from retaliating against an employee for any actions taken, or not taken, pursuant to the sections of this bill.
- 10) Provides that an employee of a business is not personally liable for any violations of this section.
- 11) Directs DFEH to, no later than June 30, 2024, develop or procure, and make available on its internet website, two online training courses, one for supervisory employees and one for nonsupervisory employees, regarding bias-based discrimination and harassment at businesses. Requires the training to be at least two hours for supervisory employees and at least one hour for nonsupervisory employees. Requires the training to include, but not be limited to the following:
  - a) Summaries of federal and state statutes relating to bias-based discrimination and harassment against customers at businesses, including, but not limited to, Section 51, 51.5, 51.7, and 51.15, the duties of a business or its employees pursuant to these sections, how to report those acts to the department, and remedies available to victims.
  - b) How to identify bias-based discrimination and harassment, including examples of bias-based discrimination and harassment, examples where the perpetrator is an employee and examples where the perpetrator is a third party who is not the business or its employees, and examples that address the intersection of race and gender.
- 12) Requires the training to include an interactive feature that requires a viewer to respond to a question periodically in order for the course to continue to play.
- 13) Directs DFEH to provide a method for employees who have completed the training to save electronically and print a certificate of completion, which must be portable across employers.
- 14) Requires businesses, no later than January 1, 2025, to provide the training to all its employees in the state who interact with members of the public. After January 1, 2025, the business must provide training required by this bill once every two years to all its employees in the state who interact with members of the public, and must provide that training to new employees who interact with members of the public within six months from the date of their hire or promotion. For new employees who have received the training from a previous employer, the requirements set out by the bill will be considered met and the employee will be placed on a two-year training schedule.

- 15) Requires the training to take place during regularly scheduled work hours, on aid time, and at a time dedicated solely to the training.
- 16) Permits DFEH to seek an order requiring a business to comply with the sections of this bill.
- 17) Makes a business's failure to comply with the sections of this bill relevant to, alone insufficient to establish liability for violations of this section or other provisions of law.
- 18) Directs DFEH to establish a pilot program that recognizes businesses for creating safe and welcoming environments free from bias-based discrimination and harassment of customers, and to establish criteria that a business must meet in order to qualify for recognition under the program.

**EXISTING LAW:**

- 1) Provides, under the Unruh Civil Rights Act, that all persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever and prohibits other arbitrary discrimination. Further clarifies the protection against discrimination extends to a perception that the person has any particular characteristic or characteristics within the listed categories. (Civil Code Section 51 (b) and (g).)
- 2) Establishes the DFEH to combat discrimination in housing and employment. Specifies that the DFEH has the power to receive, investigate, conciliate, mediate, and prosecute complaints alleging practices made unlawful by the Fair Employment and Housing Act (FEHA). (Government Code Sections 12900-12930.)

**FISCAL EFFECT:** As currently in print this bill is keyed fiscal.

**COMMENTS:** Seemingly triggered by the COVID-19 pandemic, California has witnessed a marked rise in racially-motivated harassment of members of the AAPI community. Throughout the state, the spread of such hateful behavior has become so prevalent and extreme that it has forced some individuals to remain in their homes in order to avoid potentially dangerous situations. This bill seeks to address this trend, specifically in the context of commercial establishments. In identifying the need for this bill, the author states:

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

It is undeniable that, particularly since the onset of the COVID-19 pandemic, AAPI communities across the country have seen a rise in racist and bigoted behavior levied against them. According

to Stop AAPI Hate, 40% of anti-Asian hate crimes nationwide were reported in California alone, despite the state being home to 30% of the country's Asian population. (Penumaka, *California Voters Are Concerned by Anti-Asian Hate Crimes – and Want Government Action* (May 21, 2021), <https://www.dataforprogress.org/blog/2021/5/18/california-voters-concerned-anti-asian-hate-crimes>.) In addition to the precipitous rise of anti-Asian harassment and hate crimes, other minority populations regularly face harassment in their daily lives. A recent Gallup poll investigating the experiences of Black Americans in public reflected that 35% of participants reported being mistreated while shopping in a store. (Jones and Lloyd, *Black Americans' Reports of Mistreatment Steady or Higher* (July 27, 2021), Gallup, <https://news.gallup.com/poll/352580/black-americans-reports-mistreatment-steady-higher.aspx>.) In 2018, NPR reported that hate crimes against Latinos in California rose more than 50% in the preceding two years. (Hinojosa and Navarro, *Hate Crimes Against Latinos Increase In California* (July 15, 2018), <https://www.npr.org/2018/07/15/629212976/hate-crimes-against-latinos-increase-in-california>.) These disturbing trends reflect the hostility members of specific populations face on a daily basis. Moreover, they highlight additional barriers that these communities are forced to navigate in order to complete basic tasks, such as grocery shopping, going to the bank, taking their children to school, and even simply walking down the street.

***This bill*** would establish that it is the intent of the Legislature to provide additional protections for the civil rights of customers in businesses where bias-motivated harassment takes place, and to protect a person's right to full and equal accommodations, advantages, facilities, privileges, and services in businesses. Further, the bill would require a business to address the harassment of customers on its premises, including harassment by a third party who is not affiliated with the business, by doing all of the following: 1) posting a sign made available pursuant to subsequent provisions of the bill in a conspicuous place, notifying customers of their rights at a business and how to report harassment; 2) ensuring that employees are trained in accordance with subsequent provisions of the bill; and 3) having a policy regarding how the business collects and maintains data related to incidents of harassment by a third party. It would also require businesses to collect and maintain data about incidents of harassment by a third party in accordance with this policy, notify employees of this policy, and submit this data to DFEH upon their request.

The bill would also direct DFEH to design or procure a training program to teach employers and employees how to recognize instances of bias-motivated harassment, as well as to develop a notice designed to inform customers of their rights in businesses. The bill would require DFEH to produce two online training courses, one for supervisory employees and one for nonsupervisory employees, regarding bias-based discrimination and harassment at businesses. The training would be required to include the following information: how to identify bias-based discrimination and harassment, including examples of bias-based discrimination and harassment; examples in which the perpetrator is an employee; examples in which the perpetrator is a third party who is not the business or its employees; and examples that address the intersection of race and gender. The bill would also direct DFEH, by January 1, 2024, to create an annual report summarizing data on harassment that occurs at businesses in the state that would be submitted to the Legislature and Governor, as well as posted on DFEH's website.

Under the provisions of the bill, an employee would not be required to intervene in the harassment of customers on the business's premises by a third party. Further, the bill would prohibit a business, or any person acting on behalf of the business, from retaliating against an employee for any actions taken, or not taken, by the employee. The bill specifies that an employee of a business would not be personally liable for any violations of the section.

The bill would also define a number of terms. For example, it would define “harassment” as “words, gestures, or actions directed at a specific person without the consent of the person on account of any characteristics listed or defined by the Unruh Civil Rights Act, or because the person is perceived to have one or more of those characteristics, or because the person is associated with a person who has or is perceived to have one or more of those characteristics.” It would also define “bias-based discrimination and harassment” to mean discrimination and other conduct prohibited under other specified sections of law. It would define “business” to mean any private enterprise with a physical presence in the state that is open to members of the public and has a total of 100 or more employees working in the state (thus, only the largest businesses in the state), including, but not limited to, restaurants, grocery stores, retail stores, gas stations, banks, and gymnasiums. The term “premises” is defined to mean both any area inside a building that is under the business’s possession, management, or control, and any other area outside of a building that is under the business’s possession, management, or control, including, but not limited to, outdoor eating areas and parking lots. While some of the language is unclear in its application, discussed more below, requiring targeted trainings for employees who interact with the public and requiring posting notices of customer’s rights in commercial establishments would arguably arm business, employees, and customers with the knowledge necessary to combat harassment in commercial establishments.

***Many existing laws deal with bias-based discrimination and harassment, resulting in possible confusion about the use of those same terms in the bill.*** Under the bill, the term “harassment” is defined as “words, gestures, or actions directed at a specific person without the consent of the person on account of any characteristic listed or defined in [the Unruh Civil Rights Act], or because the person is perceived to have one or more of those characteristics, or because the person is associated with a person who has or is perceived to have one or more of those characteristics.” The bill further defines “bias-based discrimination and harassment,” to mean “discrimination and other conduct prohibited under the Unruh Civil Rights Act.”

California Code of Civil Procedure (CCP) Section 527.6 meanwhile defines harassment, for purposes of a civil harassment protective order, as “unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.” Further, while FEHA prohibits sexual *harassment* in the workplace, there is no statutory definition of “harassment.” (Civil Code Section 12940 *et seq.*) Instead, case law has established such behavior is considered to be unlawful if it creates a hostile work environment that is severe or pervasive enough so as to fundamentally alter the conditions of employment. (*Lyle v. Warner Bros.* (2006) 38 Cal.4<sup>th</sup> 264, p. 279.) Finally, there is no definition or other use of the phrase “bias-based” currently in statute (likely because the concept of bias against protected groups is incorporated into anti-discrimination laws, such as the Unruh Civil Rights Act).

The issues presented by this bill and its language are complex. On one hand, there is a valid interest in capturing activity beyond that which is identified under CCP Section 527.6 (which defines harassment for purposes of a civil harassment protective order). Arguably, the language of CCP Section 527.6 only captures violent, or near-violent behaviors, largely present in petitions for restraining orders. The intent of this bill is not just to identify the egregious *physically violent* behavior that people of color face in their day-to-day lives, but to also curb the more subtle and arguably more common non-violent verbal attacks. Examples include, but are

certainly not limited to, reports of Asian individuals being coughed or spat on, and being verbally accosted and accused of spreading the Coronavirus using racist terms such as “China virus” or “kung flu.” (*More than 9,000 anti-Asian incidents reported in the US since pandemic started* (August 12, 2021), The Guardian, <https://www.theguardian.com/world/2021/aug/12/anti-asian-stop-aapi-hate-covid-report>.) None of these examples would fall neatly under the definition of “harassment” as defined under CCP Section 527.6 and thus the bill reasonably adopts a more expansive definition in order to achieve its policy goals. Similarly, due to the transitory nature of commercial establishments, it is less likely that behavior would be sufficiently severe or pervasive to satisfy the definition of “harassment” for purposes of workplace harassment.

However, there is a risk of confusion inherent in codifying the same term, but defining it differently than other sections of law. Further, it is conceivable that the author would like to also capture the actions identified under the existing definition of harassment under the provisions of this bill. That is to say that it is not the intent of the bill to *only* capture those actions left out by the narrow parameters of CCP Section 527.6, thereby leaving out more violent instances of harassment against individuals because of their race, ethnicity, or other protected status.

Additionally, how the term “bias-based discrimination and harassment” would be applied if the bill were to become law is somewhat unclear. There are certainly instances of behavior that is clearly aggressive and obviously based on racial or other animus towards minorities. For example, someone throwing a glass bottle at another individual and yelling “go home, chink” is clearly an incident of harassment levied at the recipient based on their perceived race or ethnicity. (*Over 800 COVID-19 Related Hate Incidents Against Asian Americans Take Place in California in Three Months* (2021), Stop AAPI Hate, <https://stopaapihate.org/wp-content/uploads/2021/04/Stop-AAPI-Hate-Report-California-200630.pdf>.) However, other instances may not be as clear cut. A grocery store clerk, for example, who witnesses one customer following a Black customer around the aisles with no other indicators, may not know whether that behavior rises to the level of “bias-motivated harassment.” After witnessing that activity, it is not clear whether either the clerk would have a responsibility to report the behavior, or to whom the clerk would be required to report it.

In sum, while the precise application of the terms “harassment,” and “bias-motivated harassment” is somewhat unclear, the goal of the bill to address a real and growing problem is certainly a worthy one. *With the understanding that the bill identifies a process by which DFEH would develop both the notice to be posted and employee training programs, the author may wish to consider clarifying amendments as the bill moves forward to more specifically identify what behaviors would fall under the provisions of this bill, thereby clarifying when a business is required to track such incidents.*

**ARGUMENTS IN SUPPORT:** This bill is supported by a coalition of affinity organizations, many of whom point to the increase in anti-Asian harassment and bigotry since 2020, as well as the need for explicit protections of individuals from this form of harassment. The AAPI Equity Alliance states:

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

how to recognize, report, and properly respond to discrimination and harassment against customers, and model signage, which large businesses will post to notify customers of their rights to be free from harassment and discrimination.

Further, as the sponsors of the bill, Stop AAPI Hate states:

This bill will promote the safety and well-being of customers at businesses by expanding civil rights protections and recognizing businesses that foster safe and welcoming environments.

AAPIs are not alone in experiencing this harassment and discrimination. Black customers have long reported unfair treatment while shopping, according to more than two decades of Gallup polling. Black, Asian, and Hispanic adults have reported heightened racialized harassment during the pandemic at rates higher than white adults.

***Pending related legislation:*** AB 2549 (Bonta) would require the department to conduct research and a 5-year, statewide, public campaign to raise awareness and understanding of street harassment as a public health problem in the state with the purpose of preventing its occurrence.

SB 1161 (Min) would require certain transit districts to develop and implement initiatives to reduce the street harassment, as defined, experienced by persons traveling by their systems at any point along the whole journey, as defined, and to consider the safety concerns and needs of these persons when planning, designing, and operating their systems.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Stop AAPI Hate (co-sponsor)  
 AAPI Equity Alliance (co-sponsor)  
 API Forward Movement  
 Asian Americans in Action  
 Asian Youth Center  
 California Healthy Nail Salon Collaborative  
 Cambodia Town INC.  
 Center for Asian Americans in Action  
 Center for The Pacific Asian Family  
 Chinatown Service Center  
 Chinese for Affirmative Action  
 Empowering Pacific Islander Communities (EPIC) Fiscally Sponsored by Community Partners  
 Hmong Innovating Politics  
 Khmer Girls in Action  
 Korean American Coalition - Los Angeles  
 Korean American Family Services  
 LA Raza Community Resource Center  
 Little Tokyo Service Center  
 LI's Private Practice  
 National Asian Pacific American Families Against Substance Abuse (NAPAFASA)  
 North East Medical Services  
 Orange County Asian and Pacific Islander Community Alliance, INC. (OCAPICA)

Pacific Asian Counseling Services  
Saahas for Cause  
Self-help for The Elderly  
South Asian Network  
Thai Community Development Center

**Opposition**

None on file

**Analysis Prepared by:** Manuela Boucher-de la Cadena / JUD. / (916) 319-2334