

ASSEMBLY THIRD READING

AB 2448 (Ting)

As Amended May 19, 2022

Majority vote

SUMMARY

Seeks to address the rise in harassment of minority communities by equipping commercial businesses with specified training and resources.

Major Provisions

- 1) 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) "Discrimination and harassment" means discrimination and other conduct prohibited under the Unruh Civil Rights Act and other specified provisions of law.
- 2) Requires a business to address the harassment of customers on its premises 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.
- 3) Requires the Department of Fair Employment and Housing (DFEH) to create a standardized form for businesses to report data pursuant to the provisions of this bill.
- 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 January 1, 2024, and January 1 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) Prohibits the language of this 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.
- 7) 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.
- 8) Provides that an employee of a business is not personally liable for any violations of this section.
- 9) Directs DFEH to, no later than June 30, 2024, develop or procure, and make available on its internet website, an online training courses for employees regarding discrimination and harassment at businesses.
- 10) 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.
- 11) Requires the training to take place during regularly scheduled work hours, on aid time, and at a time dedicated solely to the training.
- 12) Directs DFEH to establish a pilot program that recognizes businesses for creating safe and welcoming environments free from discrimination and harassment of customers, and to establish criteria that a business must meet in order to qualify for recognition under the program.

COMMENTS

It is undeniable that, particularly since the onset of the COVID-19 pandemic, Asian Americans and Pacific Islanders (AAPI) communities have seen a rise in racist and bigoted behavior levied against them. In addition to the precipitous rise of anti-Asian harassment and hate crimes, other minority populations regularly face harassment in their daily lives. These disturbing trends 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.

In an effort to address racially motivated harassment in public spaces, this 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 utilizing a program designed by DFEH; 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 and submit this data to DFEH upon their request. The bill would not require employees to intervene in incidents of harassments, and would prohibit a business from retaliating against an employee for any

action taken, or not taken, in response to perceived harassment. 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 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 "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.4th 264, p. 279.)

The issues presented by this bill and its language are complex. 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." 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. This also leads to potential confusion for employees facing instances of harassment, and how they may identify it.

The author's previous amendments significantly clarify some of the confusion inherent in codifying the same term, but defining it differently than other sections of law. Additionally, it is reasonable for the purposes of this bill that the author may wish to capture behaviors beyond those identified under the existing statutory definitions of harassment. Therefore, while there remains some potential confusion in the separate definitions of harassment, the concern is significantly minimized both by the clarifying amendments taken in Labor Committee, as well as the requirement that DFEH develop a training to equip employees to identify harassment as considered by this bill.

According to the Author

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.

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 this 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.

Arguments in Opposition

No opposition on file.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, costs (General Fund (GF)) of \$730,000 in fiscal year (FY) 2023-24 and \$525,000 in FY 2024-25 and annually thereafter for DFEH to create or procure a multi-lingual training for California workers, create and translate a sign for customers, collect and store data from thousands of businesses across the state (and potentially pursue court action for non-compliance), annually analyze and report data to the Legislature and create and run a pilot program to recognize businesses, among other activities aimed at reducing customer-on-customer harassment in the marketplace.

VOTES

ASM JUDICIARY: 9-0-1

YES: Stone, Davies, Holden, Kalra, Mathis, Maienschein, Reyes, Robert Rivas, Luz Rivas

ABS, ABST OR NV: Cunningham

ASM LABOR AND EMPLOYMENT: 6-0-1

YES: Kalra, Flora, Jones-Sawyer, Reyes, Ward, Lee

ABS, ABST OR NV: Seyarto

ASM APPROPRIATIONS: 14-0-2

YES: Holden, Bryan, Calderon, Carrillo, Davies, Mike Fong, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

ABS, ABST OR NV: Bigelow, Megan Dahle

UPDATED

VERSION: May 19, 2022

CONSULTANT: Manuela Boucher-de la Cadena / JUD. / (916) 319-2334

FN: 0002531