

should have known of that conduct and failed to take immediate and appropriate corrective action. (Government Code §12940)

- 5) Establishes the Department of Fair Employment and Housing (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, among other things, the Unruh Civil Rights Act. (Gov. Code §§ 12900-12930.)

This bill:

- 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; and
 - 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. “discrimination and harassment” means discrimination and other conduct prohibited under the Unruh Civil Rights Act and other specified provisions of law.
- 2) Provides that it is the intent of the Legislature 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 the Unruh Civil Rights Act, or because the person is perceived to have one or more of those characteristics, or because the person associated with a person who has or is perceived to have one or more of those characteristics.
- 3) Requires 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:
 - a. posting the sign developed pursuant to subsequent sections of this bill in a visible and conspicuous place, notifying customers of their rights and how to report harassment;
 - b. ensuring that employees are trained, as specified in (12) below; and
 - 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 DFEH upon DFEH’s request.
- 4) Requires DFEH to create a standardized form for businesses to report data pursuant to the provisions of this bill.
- 5) 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.

- 6) 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.
- 7) 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.
- 8) 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 and specifies that the employee is not personally liable for any violations of these provisions.
- 9) Directs DFEH, by no later than June 30, 2024, to develop or procure, and make available on its internet website, an *online training course for employees* regarding discrimination and harassment at businesses, that is at least one hour in length but no longer than two hours. The training shall include, but is not limited to, the following information:
 - a. Summaries of federal and state statutes relating to discrimination against and harassment of customers at businesses, as specified, the duties of a business, how to identify and report those acts to the department, and remedies available to victims.
 - b. How to identify discrimination and harassment, including examples, as specified.
 - c. The training shall include an interactive feature that requires a viewer to respond to a question periodically in order for the course to continue to play.
 - d. The department shall provide a method for employees who have completed the training to save electronically and print a certificate of completion.
- 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 as follows:
 - a. once every two years to all its employees who interact with members of the public;
 - b. 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.
 - c. take place during regularly scheduled work hours, on paid time, and at a time dedicated solely to the training.
- 11) Directs DFEH, on or before January 1, 2025 and until July 1, 2028, 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. Requires DFEH to provide a certificate to qualifying businesses that may be prominently displayed on site and publish on its internet website a database of businesses receiving that certificate.
- 12) Provides findings and declarations affirming the Legislatures intent 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.

COMMENTS

1. Background:

Violence against other individuals has always been a problem, but the COVID-19 pandemic appears to have emboldened some leading to an increase in personal attacks. Hate and racially motivated attacks, in particular against Asian Americans, has increased dramatically since the onset of the pandemic. According to materials provided by the author:

- The sponsor of this bill reports receiving nearly 11,000 reports of hate incidents nationwide since March 2020, including over 4,100 reports from California. The vast majority of what has been reported does not meet the definition of a hate crime. Two-thirds of the reports include verbal harassment.¹
- In California, over a quarter of the hate incidents reported to the sponsor of this bill took place at a business. A majority of these incidents took place in service or retail establishments, such as grocery stores, restaurants, big box retailers, and their parking lots. In the majority of cases, customers reported being verbally harassed by another customer or passerby.²
- A late 2021 survey of AAPI individuals in Los Angeles, found that half of respondents experienced racial discrimination, with 40 percent reporting racial discrimination in a grocery store.³
- More than a third of Black Americans surveyed in 2021 responded that they personally were treated unfairly while shopping during the last 30 days, representing about a 10 percent increase beyond previously reported levels.⁴

As noted above, existing law already imposes certain requirements of employers in regards to discrimination and harassment. Specifically, the law prohibits businesses from discriminating against their customers for specified characteristics and against their employees for similar characteristics. Existing law even specifies that an employer's legal duty to protect its employees against discriminatory harassment extends to situations in which the source of the harassment is a third party, at least to the degree to which the employer has control or legal responsibility over the third party. However, very little protection or requirements exist around customer on customer harassment or discrimination

¹ Yellow Horse *et al.* *Stop AAPI Hate National Report (3/19/20-12/31/21)* <https://stopaapihate.org/wp-content/uploads/2022/03/22-SAH-NationalReport-3.1.22-v9.pdf> (as of Jun. 11, 2022) at p. 1.

² *California State Policy Recommendations to Address AAPI Hate: A Starting Point for Taking Action Stop AAPI Hate* (October 13, 2021) Stop AAPI Hate https://stopaapihate.org/wp-content/uploads/2022/01/SAH-State-Policy-Agenda-10.13.21-w_urls-2.pdf (as of June 11, 2022) at p. 2.

³ Chan. *#VoicesofLA AAPI Survey Results* (March 15, 2022) Pat Brown Institute for Public Affairs and California Community Foundation <https://calstatela.patbrowninstitute.org/wp-content/uploads/2022/03/A-API-Survey-Slides-Released-March-15-2022.pdf> (as of June 11, 2022) at slide 14.

⁴ Jones and Lloyed. *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> (as of Jun. 11, 2022).

or the duty of employers to respond to such incidents on their premises. This bill attempts to bridge that gap by specifically requiring employers of large establishments to post information regarding the law, train employees on how to recognize and respond to such incidents, and report information to the Department of Fair Employment and Housing to ensure more data on these incidents is collected.

2. Need for 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.”

AB 2448 requires the Department of Fair Employment and Housing (DFEH) to create a model training for employees and supervisors on how to spot, report, and properly respond to incidents of discrimination and harassment against their customers. Additionally, this bill requires DFEH to develop a pilot program that publicly recognizes businesses for creating safe and welcoming places via a certificate that can be posted onsite and on its website and evaluate the effectiveness of the pilot. This bill will also require large businesses to train all employees with the model training from DFEH, post signage so that customers who face acts of discrimination and harassment understand their rights, and report incidents of discrimination and harassment to DFEH.

3. Double Referral and Amendments:

This bill has been double referred and was previously heard and passed by the Senate Judiciary Committee. Due to time constraints, the author was unable to amend the bill in the previous committee and is offering amendments today that would:

- expand upon the findings and declarations that show increasing levels of discriminatory harassment impacting the daily lives of Californians;
- clarify that businesses are only required to make a good faith effort to determine which incidents constitute harassment and report them;
- clarify that DFEH should report aggregate data without identifying individual businesses, but that DFEH may break the data down by geography and business type;
- specify that the bill does not alter a business’ duty of care towards its customers;
- ensure that the DFEH trainings include information about how to contact DFEH with questions; and
- authorize DFEH to receive, investigate, and prosecute reports of violations of the bill, meaning failure to put up the required sign, failure to provide the required training, or failure to take a report of harassment from a customer.

4. Proponent Arguments:

According to the sponsors, Stop AAPI Hate, “Since the start of the COVID-19 pandemic, nearly 11,000 reports of hate incidents have been shared with Stop AAPI Hate by Asian Americans and Pacific Islanders across the country, including more than 4,100 reports in California. More than 1 in 4 of these incidents took place at businesses. 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.

Everyone 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. Existing civil rights laws prohibit businesses from discriminating against customers. State law also protects Californians from bias-motivated violence or threats of violence, including at businesses. However, these laws do not adequately protect community members against harassment, including harassment by other customers.

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. The bill also improves reporting on hate incidents by businesses and DFEH, and directs DFEH to develop a pilot program recognizing businesses that have taken tangible steps to create a safe and welcoming environment.”

5. Opponent Arguments:

None received.

6. Prior and Related Legislation:

AB 2549 (Bonta, Muratsuchi, Weber, 2022) would create a public health approach to prevent the street harassment of women and other vulnerable communities in California through: 1) a multi-year and statewide public education campaign to raise awareness about street harassment as a public problem, 2) research into the extent and impact of street harassment as a public health issue in the state, and 3) a definition of street harassment as a way to identify, educate others about, and end street harassment without taking a punitive, criminal approach. AB 2549 was held under submission in the Assembly Appropriations Committee.

SB 1161 (Min, 2022) seeks to promote safe ridership on public transit systems statewide by requiring the top ten public transit operators by ridership to: 1) recognize street harassment as a safety concern, 2) gather and analyze ridership data regarding street harassment, and 3) based on this data and community consultation, develop a plan to reduce street harassment experienced by riders. SB 1161 is currently pending consideration before the Senate Transportation Committee.

Stop AAPI Hate (Co-Sponsor)
AAPI Equity Alliance
Anti-Defamation League
APEX Express
Asian Americans in Action
Asian Youth Center
California Association of Human Relations Organizations
California Employment Lawyers Association
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
Equal Justice Society
Hmong Innovating Politics
Khmer Girls in Action
Korean American Coalition
Korean American Family Services, Inc.
La Raza Community Resource Center
Little Tokyo Service Center
LL's Private Practice
Los Angeles County
National Asian Pacific American Families Against Substance Abuse
North East Medical Services
Orange County Asian and Pacific Islander Community Alliance
Pacific Asian Counseling Services
Saahas for Cause
San Francisco Senior & Disability Action
San Francisco State University
Self-Help for the Elderly
South Asian Network
Southeast Asian Community Center
Southeast Asian Resource Action Center
SSG/API Forward Movement
Thai Community Development Center

OPPOSITION

None received.

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