SENATE THIRD READING
SB 403 (Wahab)
As Amended July 10, 2023
Majority vote

SUMMARY

Defines "ancestry" to include "caste," thereby making caste, as defined, a protected characteristic under the state's anti-discrimination.

Major Provisions
1) Defines "ancestry" to include "caste" for purposes of defining protected characteristics in the Unruh Civil Rights Act, The Fair Employment and Housing Act, and anti-discrimination provisions of the Education Code.

2) Defines caste to mean an individual's perceived position in a system of social stratification on the basis of inherited status.

3) Specifies that "a system of social stratification on the basis of inherited status," for purposes of the above, may be characterized by factors that may include, but are not limited to, inability or restricted ability to alter inherited status; socially enforced restrictions on marriage, private and public segregation, and discrimination; and social exclusion on the basis of perceived status.

COMMENTS

Existing anti-discrimination laws. California's Unruh Civil Rights Act, the Fair Employment and Housing Act (FEHA), and provisions of the Education Code prohibit discrimination on the basis of enumerated "protected characteristics." While the lists of protected characteristics are not identical, they are quite similar, including, among other things, "sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status." (See e.g. Civil Code Section 51.) Provisions of the Government Code, which includes FEHA, prohibit a similar list of protected characteristics in different sections prohibiting discrimination in employment, housing, and participation in state-funded programs. (See Government Code Sections 11135, 12940, and 12955.) Finally, provisions of the Education Code prohibit discrimination in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance, or enrolls pupils who receive state student financial aid. (See especially Education Code Section 200 et seq.)

This bill would define "ancestry" in existing anti-discrimination statutes to include "caste." The bill defines "caste" to mean "an individual's perceived position in a system of social stratification on the basis of inherited status," specifying further that "a system of social stratification on the basis of inherited status" may be characterized by factors that include inability to alter inherited status; socially enforced restrictions on marriage, private and public segregation, and discrimination; and social exclusion on the basis of perceived status. Finally, the bill declares that its provisions are "declarative and clarifying" of existing law, because the Civil Rights Department already assumes that "caste" is included within other protected characteristics and the court confirmed that interpretation.
Evidence of "caste" discrimination in California. Equality Labs, the bill's primary sponsor, conducted a survey of Americans of South Asian descent and their experience with caste discrimination. Based on interviews with Americans of South Asian descent, the survey found that 25% of caste-oppressed Dalits (the lowest caste once referred to as "untouchables") experienced verbal or physical assault because of their caste, and one-third of Dalit students have experienced caste-based discrimination during the course of their education. "Even more alarming," according to the co-sponsors of this bill, two-thirds of Dalits reported experiencing discrimination in the workplace. Although workplace discrimination apparently exists across the occupational spectrum, many of the letters submitted by supporters point in particular to Silicon Valley and the "tech industry." For example, the Tech-Equity Collaborative, a co-sponsor, claims that perhaps "no industry has shown the most complaints related to caste than the tech industry." Tech-Equity cites several articles that appear to reinforce this claim.

Some high-technology companies – but apparently not all – have admitted that a problem exists and have begun to take corrective steps. Indeed, a recent report by the Reuters news organization began by stating that "America's tech giants are taking a modern-day crash course in India's ancient caste system, with Apple emerging as an early leader in policies to rid Silicon Valley of a rigid hierarchy that's segregated Indians for generations." According to the report, Apple updated its general employee conduct policy in 2020 to explicitly prohibit discrimination on the basis of caste, adding it to existing categories, including race, religion, gender, age, and ancestry. The report claimed that India has become the technology sector's "top source of skilled foreign workers," implying that Indian workers bring ideas about caste with them (a claim the opponents of this bill dispute). Reuters spoke to "about two dozen Dalit tech workers in the United States who said discrimination had followed them overseas." The workers reported that "caste cues," including last names, hometowns, diets and religious practices, "had led to colleagues bypassing them in hiring, promotions and social activities." ("Caste in California: Tech giants confront ancient Indian hierarchy," Reuters.com August 15, 2022.)

Objections to the inclusion of "caste" in California statutes. Opponents of the bill contend that inserting "caste" in state law unfairly singles out South Asians and reinforces stereotypes about Hinduism, which opponents claim are no longer warranted, or at least not to the extent suggested by the supporters. Opponents are unpersuaded by claims that the definition of "caste" in the bill is facially neutral and could be applied to any caste system in many parts of the world. Even if the word "caste" may be used to describe other forms of social stratification and oppression, the opponents argue, caste is historically associated with South Asians, and Hindus in particular. Popular dictionary definitions, encyclopedia entries, and even the California social science standards, opponents claim, routinely associate caste primarily with South Asians and Hindus. Indeed, however broadly the bill in print might define the term, the letters and background information provided to the Judiciary Committee by the author and supporters reinforce the association of caste and South Asians. The Equality Labs survey, according to its own description, interviewed persons of South Asian descent. The executive summary of the survey posted on the Equality Labs website states that as members of "the South Asian American community [Equality Labs is] uniquely situated to redeem the errors of history" around caste. The website that introduces the survey asserts that there are "four main caste groups," and then proceeds to list the four castes associated with Hinduism. It defines caste as "a system of religiously codified exclusion that was established in Hindu scripture." Even when noting that caste is not limited to the Indian subcontinent, it states that "caste has been found wherever South Asian migrants go." If the opponents are wrongly associating the bill's use of "caste" with South Asians, then some of the supporters own statements may be providing grist for the mill.
According to the Author

Caste systems exist across the globe and have a long-standing existence in California that predates the waves of migration from South Asia. In my district, I continue to hear about caste discrimination experienced by Dalit women which affirms the importance of this bill. Adding caste to existing protections increases access to resources, cultural competency for agencies and organizations, and empowers individuals experiencing caste discrimination. Depending on an individual's primary language and cultural background, they may use a word other than caste to describe their experience, however the word we use in the English-language to describe a system of social stratification is caste. That is why the inclusion of that word is important; it has a meaning. Existing anti-discrimination laws are inclusive of caste discrimination, however there is an inequitable application of the law because caste is not expressly stated in our laws. When someone has a claim of caste discrimination, the strength of their evidence may not be sufficient if the presiding judge decides current laws are not inclusive of caste discrimination. This is why we must expressly state caste discrimination is prohibited in California.

Arguments in Support

The California Labor Federation (CLF) supports SB 403 because it is a "historic effort to end caste discrimination in the State of California." CLF elaborates:

Caste-oppressed South Asians experience some of the highest rates of discrimination in the United States. Working class and undocumented caste-oppressed Californians are in even more precarious positions, as they struggle with exclusion from immigrant networks and the post-traumatic stress of leaving their homelands behind as they settle in California to escape caste violence.

Freedom from caste discrimination is inextricably tied to workers' rights. In California, caste discrimination occurs across industries, including technology, education, construction, restaurants, domestic work, and medicine. Caste discrimination against Dalits—people referred to as "untouchables" by dominant castes—has included bullying, harassment, bias, wage theft, sexual harassment, and even trafficking. A 2018 survey by Dalit civil rights organization Equality Labs found that 1 in 4 Dalit Americans experienced verbal or physical assault because of their caste, and 1 in 3 Dalit students reported experiencing discrimination during the course of their education. Even more alarming was that 2 out of 3 Dalits reported experiencing caste discrimination in their workplaces.

SB 403 states that individuals are protected from discrimination based on their caste or perceived caste. By taking action to clarify existing protections for caste oppressed Californians, SB 403 will be a positive step forward to end caste discrimination and will send a message that everyone deserves to be treated with dignity and respect.

The California Labor Federation views caste equity as one of the many issues we must address for workers to achieve equal rights and justice alongside all Californians.

Arguments in Opposition

The Hindu American Foundation opposes this bill "both its legislative intent and impact will result in an unconstitutional denial of equal protection and due process to South Asians (the vast majority of whom are of Indian origin) and other vulnerable ethnic communities. SB 403
unfairly maligns, targets and racially profiles select communities on the basis of their national origin, ethnicity and ancestry for disparate treatment, thereby violating the very laws it seeks to amend, the Unruh Civil Rights Act. It further violates Title VII of the Civil Rights Act of 1964 and the US and California State Constitutions.

The Ambedkar-Phule Network of American Dalits and Bahujans (APNA) contends that SB 403 is a "misinformed bill [that] is pushing hate in the name of stopping hate." APNA, an organization of Dalits and Bahujans, contends, as a preliminary matter, that the supporters of the bill "do not speak for us — the Dalits and Bahujans, the alleged victims," claiming that the bill was introduced without any "community consultation" and without gathering "reliable data" on the subject. "It is," APNA writes, "merely a rush to legislate, carried by a marketing campaign fueled by emotional rhetoric." Finally, APNA contends that "SB 403 unfairly maligns, targets and racially profiles all South Asians . . . on the basis of our national origin, ethnicity and ancestry for disparate treatment, thereby violating the very laws it seeks to amend, the Unruh Civil Rights Act."

FISCAL COMMENTS

According to the Assembly Appropriations Committee, minor state costs, if any. As discussed below [in the Assembly Appropriations analysis], discrimination on the basis of caste is already prohibited under California law. The Civil Rights Department (CRD) reports that it receives and processes relatively few complaints expressly related to caste discrimination and expects any increase in complaints resulting from this bill to be absorbable by the department.

VOTES

SENATE FLOOR: 34-1-5
NO: Jones
ABS, ABST OR NV: Becker, Dahle, Grove, Nguyen, Seyarto

ASM JUDICIARY: 9-0-2
YES: Maienschein, Connolly, Haney, Kalra, Pacheco, Papan, Reyes, Sanchez, McKinnor
ABS, ABST OR NV: Essayli, Dixon

ASM APPROPRIATIONS: 13-1-2
NO: Megan Dahle
ABS, ABST OR NV: Dixon, Mathis

UPDATED

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CONSULTANT: Tom Clark / JUD. / (916) 319-2334 FN: 0001257