

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 2563 (Pacheco)
Version: May 18, 2026
Hearing Date: June 16, 2026
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Sex discrimination: scope

DIGEST

This bill clarifies that “sex,” as used within California antidiscrimination laws, includes gender, gender expression, gender identity, pregnancy and related conditions, and other specified traits or conditions.

EXECUTIVE SUMMARY

In 2022, the Legislature enacted SCR 92 (Leyva, Ch. 150, Stats. 2022), which instructed the California Law Revision Commission to determine whether California’s antidiscrimination laws might conflict with the Equal Rights Amendment (ERA), so that the state would be prepared if the ERA was actually added to the United States Constitution. The CLRC’s 2025 report found that California law already complies with a potential ERA. The CLRC also found, however, that the specific definitions of “sex” within California’s various antidiscrimination statutes are inconsistent, and while California’s most significant antidiscrimination statutes define “sex” broadly, the broad definition is not clearly employed across the Codes.

This bill adopts the CRLC’s proposed solution to clarify that “sex” has a consistent meaning throughout the state’s antidiscrimination statutes, by adopting, within each Code, a provision clarifying the definition of “sex.” The uniform definition provided by this bill accords with what is already in existing laws such as the Unruh Civil Rights Act, certain provisions of the Education Code, and the Fair Employment and Housing Act (FEHA), and is intended to clarify the scope of all California antidiscrimination laws, not expand existing law. The bill also provides that, in the event that an existing provision of law conflicts with the uniform definition, the definition that results in greater protections against discrimination should prevail.

This bill is sponsored by the California Women's Law Center and Feminist Majority and is supported by the Alameda County Office of Education and the California Teachers Association. This bill is opposed by Californias United for Sex-Based Evidence in Policy and Law (CAUSE) and Democrats for an Informed Approach to Gender.

PROPOSED CHANGES TO THE LAW

Existing constitutional law:

- 1) Provides for equal protection under the law as follows:
 - a) Under the United States Constitution, provides that no state shall deny to any person within its jurisdiction the equal protection of the laws. (U.S. Const., 14th Amend., § 1.)
 - b) Under the California Constitution, provides that a person may not be denied the equal protection of the laws, and that a citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. (Cal. Const., art. I, § 7.)
- 2) Provides that the State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. (Cal. Const., art. I, § 31.)

Existing state law:

- 3) Provides, pursuant to 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, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. (Civ. Code, § 51(a).)
- 4) Provides that "sex," for purposes of 1), includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth; or a person's gender, which means sex, and includes a person's gender identity and gender expression. "Gender expression" means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth. (Civ. Code, § 51(e)(6).)
- 5) Prohibits discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, any other characteristic that is contained in the definition of hate crimes, or immigration status in any program or activity conducted by an educational institution that receives, or

benefits from, state financial assistance, or enrolls pupils who receive state financial assistance. (Ed. Code, § 220.)

- 6) Defines the following for purposes of 5):
 - a) “Gender” means sex and includes a person’s gender identity and gender expression.
 - b) “Gender expression” means a person’s gender-related appearance and behavior, whether or not stereotypically associated with the person’s assigned sex at birth. (Ed. Code, § 210.7.)
- 7) Establishes the Fair Employment and Housing Act (FEHA), which prohibits the following:
 - a) Specified acts of discrimination in employment on the basis of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person. (Gov. Code, § 12940.)
 - b) Specified acts of discrimination in connection with housing on the basis of the person’s race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information. (Gov. Code, § 12955.)
- 8) Provides that “sex,” for purposes of 7), includes, but is not limited to:
 - a) Pregnancy, childbirth, or breastfeeding, or medical conditions related to pregnancy, childbirth, or breastfeeding.
 - b) A person’s gender, which means sex, and includes a person’s gender expression; “gender expression” means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.
- 9) Establishes other prohibitions on the basis of sex, gender, gender identity, and/or gender expression throughout the Codes. (*See generally* California Codes.)

This bill:

- 1) States that the Legislature finds and declares that this bill is existing law and is not intended to expand or contract any existing rights or responsibilities.
- 2) States that any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting sex discrimination, as defined in 4).

- 3) States that, in the event of a conflict between the provisions of 2) and other provisions of the relevant Code that set forth the scope of sex discrimination, gender discrimination, or similar discrimination, the provisions that would result in greater protections of individuals based on sex, gender, or similar discrimination shall prevail; and that these provisions shall not be construed to impair or diminish any other civil rights protection that is broader in scope.
- 4) Provides that, for purposes of 2) and 3), the following definitions apply:
 - a) "Discrimination" includes, but is not limited to, harassment.
 - b) "Pregnancy or related medical conditions" includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.
 - c) "Sex discrimination" includes, but is not limited to, discrimination on the basis of any of the following actual or perceived characteristics:
 - i. Assigned sex or gender category, including female, male, or nonbinary.
 - ii. Degree of conformity to sex or gender stereotypes.
 - iii. Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.
 - iv. Pregnancy or other related medical conditions.
 - v. Decisionmaking, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.
 - vi. Sexual orientation.
 - vii. Variations in sex characteristics, including intersex traits or differences in sex development.
- 5) Provides that 2)-4) reflects the existing protections of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual's reproductive freedom, and that these provisions shall be construed liberally to effectuate the purposes of these constitutional protections.
- 6) Adds the language in 2)-5) to each of the Codes.
- 7) Adds, to the Unruh Act and the FEHA, specific references within the definitions to the clarifying sections added to their respective Codes pursuant to 6).

COMMENTS

1. Author's comment

According to the author:

In 1972, the California legislature ratified the federal Equal Rights Amendment (ERA), which declares, "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." However, the amendment was not formally added to the U.S. Constitution after disputes over ratification deadlines. Rather than rely on federal action, the California Legislature directed the California Law Revision Commission to study whether California statutes reflect the principles of the ERA.

In September 2025, the Commission completed its review and found that the definitions of sex discrimination are not consistent across California's many codes. While California has strong civil rights protections, inconsistent language can create confusion, weaken enforcement, and result in uneven protections depending on the code section. At a time when federal protections have been rolled back – including the overturning of *Roe v. Wade* – California must ensure that its laws are clear, consistent, and unequivocal in protecting people from discrimination based on sex.

AB 2563 aligns the definition of sex discrimination across all of California's codes. The bill ensures that protections apply equally in every area of state law, reaffirming California's commitment to protecting women and girls, and all people who face discrimination based on sex, amid increasing uncertainty at the federal level.

2. California's strong protections against sex- and gender-based discrimination and the CLRC's report

California's antidiscrimination statutes have, for decades, protected against discrimination on the basis of "sex." Over that time, the Legislature has amended those statutes to make clear that "sex" is an expansive term that incorporates a wide range of stereotypes, traits, and conditions typically associated with sex. For example, the FEHA was amended in 1990 to clarify that "sex" includes pregnancy, childbirth, or medical conditions related to pregnancy or childbirth;¹ the Legislature amended the FEHA again in 2003 to clarify that "sex" includes gender;² and in 2011, the Legislature clarified that "sex" includes gender, gender identity, and gender expression when used in specified antidiscrimination contexts, including the Unruh Civil Rights Act, the Education Code, and the FEHA.³ Subsequent legislation added express protections for gender, gender identity, and gender expression in other statutes; but due to the fact that

¹ SB 1027 (Petriss, Ch. 15, Stats. 1990).

² AB 196 (Leno, Ch. 164, Stats. 2003).

³ AB 887 (Atkins, Ch. Stats. 2011).

these changes were made in a piecemeal fashion, the exact terminology has not remained consistent across statutes, even as the legislative intent is ultimately the same.

In 2022 – inspired by a wave of optimism that the Equal Rights Amendment (ERA) would be certified and added to the United States Constitution – the Legislature adopted SCR 92 (Leyva, Ch. 150, Stats. 2022). SCR 92 instructed the CLRC to study, report on, and prepare recommended legislation to revise California law to remedy defects related to the inclusion of potentially discriminatory language on the basis of sex, and disparate impacts on the basis of sex in the enforcement of state law.

The CLRC published its report in September 2025, by which point chances that the President of the United States would direct the Archivist of the United States to certify the ERA as part of the Constitution seemed slim. The CLRC’s report nevertheless found that “California law generally appears to be aligned with the ERA.”⁴ The CLRC did find, however, that while California “broadly extends protections for sex and gender,” the laws “use inconsistent terms in identifying the scope of protection.”⁵ Moreover, while California’s wide-reaching antidiscrimination statutes – such as the FEHA and the Unruh Civil Rights Act – contain significant detail about the broad definition of “sex,” “not all of California’s [antidiscrimination] laws contain the same level of detail.”⁶ The CLRC therefore recommended that the Legislature adopt an identical “sex equity provision” in each Code to clarify which grounds, at a minimum, constitute sex discrimination under the law.⁷

3. This bill clarifies that a broad definition of “sex” applies throughout California’s antidiscrimination laws

This bill adopts the CLRC’s recommendation and adds, to each Code, language clarifying the minimum scope of sex-based discrimination under California law. The provisions clarify that “sex” includes all of the following:

- Assigned sex or gender category, including female, male, or nonbinary.
- Degree of conformity to sex or gender stereotypes.
- Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.
- Pregnancy or related medical conditions, including childbirth, abortion, lactation, miscarriage, fertility, and contraception.
- Decisionmaking, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.
- Sexual orientation.

⁴ CLRC, Preprint Recommendation: Equal Rights Amendment (Sept. 2025) p. 39, *available at* <https://clrc.ca.gov/pub/Printed-Reports/Pub248-I100.pdf> (link current as of June 11, 2026).

⁵ *Id.* at p. 30.

⁶ *Id.* at p. 40.

⁷ *Id.* at pp. 40-41.

- Variations in sex characteristics, including intersex traits or differences in sex development.

The bill also clarifies that “discrimination” includes “harassment,” and sets forth the California Constitutional provisions that underpin these protections. The bill further provides that, in the event that an existing provision of law conflicts with the uniform definition, the definition that results in greater protections against discrimination should prevail. Within the Education Code, the provisions are placed deliberately to avoid a conflict with the statutes authorizing single-gender school pilot projects.⁸

4. Arguments in support

According to the California Women’s Law Center and Feminist Majority:

California has long been a national leader in advancing gender equity, with strong constitutional and statutory protections against sex discrimination. However, inconsistencies in how “sex” and “sex discrimination” are defined and interpreted across different areas of state law can create gaps in protection, limit enforcement, and leave individuals vulnerable to discrimination.

AB 2563 addresses this issue by establishing a clear, minimum standard across California law. The bill requires that all provisions prohibiting discrimination on the basis of sex or gender be interpreted to prohibit sex discrimination and defines sex discrimination to include a broad range of actual or perceived characteristics, including gender identity and expression, pregnancy and related medical conditions, reproductive health decision-making, and conformity to gender stereotypes.

By aligning statutory interpretation with California’s constitutional guarantees of equal protection, privacy, and reproductive freedom, AB 2563 strengthens existing civil rights protections and ensures they are applied broadly and as intended. This clarification is critical to protecting individuals from discrimination across employment, housing, education, healthcare, and public accommodations.

At a time when rights related to gender, identity, basic needs, and reproductive autonomy are increasingly contested nationwide, AB 2563 reaffirms California’s commitment to ensuring that all individuals can live, work, and access services free from discrimination.

⁸ See Ed. Code, tit. 1, div. 1, pt. 1, ch. 2, art. 4.5, §§ 232 et seq.

5. Arguments in opposition

According to CAUSE:

Women are not women due to “identity.” Women are women because our sex is determined to be female at conception. Female development in the womb and through puberty results in a body organized around the production of large, immobile egg cells- gametes- called ova in humans. Human females develop to carry our young in our uterus, give birth to our young through our cervix and vagina, and to nourish our young at our breasts, all female specific, necessary roles in human reproduction. Humans share this same reproductive process with every other mammalian species that exists or ever existed (even, in most aspects, monotremes- primitive egg-laying mammals that nurse their young.)

SUPPORT

California Women’s Law Center (co-sponsor)
Feminist Majority (co-sponsor)
Alameda County Office of Education
California Teachers Association

OPPOSITION

CAUSE

Democrats for an Informed Approach to Gender

RELATED LEGISLATION

Pending legislation: AB 1940 (Calderon, 2026) adds “perimenopause, menopause, and postmenopause, or medical conditions related to perimenopause, menopause, and postmenopause” to the definition of “sex” in the FEHA. AB 1940 is pending before this Committee and is set to be heard on the same date as this bill.

Prior legislation: SCR 92 (Leyva, Ch. 150, Stats. 2022) is discussed in further detail in Comment 2 of this analysis.

PRIOR VOTES

Assembly Floor (Ayes 58, Noes 17)
Assembly Appropriations Committee (Ayes 11, Noes 4)
Assembly Judiciary Committee (Ayes 9, Noes 3)
