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Councilmember Dan Kalb

CITY OF OAKLAND

CITY HALL - ONE FRANK H. OGAWA PLAZA, 2ND FLOOR - OAKLAND - CALIFORNIA 94612

Agenda Memorandum

To: Rules & Legislation Committee

From: Councilmember Dan Kalb

Date: May 19, 2016

Subject: Resolution in Support of AB 2707 – Stop Consumer Racial Profiling Act

Colleagues on the City Council and Members of the Public,

With my introduction of a Resolution in Support of AB 2707 (Ridley-Thomas), I am submitting the attached Fact Sheet, Bill Analysis from the Assembly Committee on Privacy and Consumer Protection, and text of the bill.

Respectfully submitted,

A handwritten signature in black ink that reads "Dan Kalb". The signature is written in a cursive, flowing style.

Dan Kalb, Councilmember

Assembly Bill 2707

STOP CONSUMER RACIAL PROFILING ACT OF 2016

INTRODUCED 02.19.2016

Assemblyman Sebastian Ridley-Thomas 54th District

SUMMARY

AB 2707 would prohibit the use of consumer racial profiling.

BACKGROUND

Federal and state public accommodation laws are often ill-equipped to address consumer racial profiling. Courts often fail to understand the subtle nature of modern discrimination and interpret civil rights statutes narrowly requiring plaintiffs to establish specific harms.

However, no incident of consumer racial profiling is harmless. The use of consumer racial profiling negatively impacts the quality of life for African Americans and other ethnic minorities. Furthermore, the victims of consumer racial profiling feel as if they remain second-class citizens, marginalized by the rest of society. All consumers, regardless of race or ethnicity, should enjoy fair and equal treatment in the marketplace.

Since the enactment of the federal Civil Rights Act of 1964 and the state Unruh Civil Rights Act of 1959, all people are legally entitled to equal access to businesses and the right to service regardless of race or ethnicity. Despite the tremendous progress that our nation has made since the passage of these civil rights laws, discrimination in the marketplace remains a problem.

Across California there have been numerous reports of consumer racial profiling, including targeting and regarding ethnic minority consumers as potential criminals, unworthy of service, and being unable to afford high-end merchandise available for purchase. There have also been additional reports of consumer racial

profiling resulting in different standards being applied to minority consumers. These incidents have impacted celebrity and working-class ethnic minorities alike.

The Center for Popular Democracy released a report that found Black customers are 7 times more likely to be targeted as potential thieves than white customers. However, research on shoplifting trends in retail stores found no differences by race or ethnicity. The common misperception that African American consumers engage in more criminal activity than other consumers must be put to an end.

EXISTING LAW

- The Unruh Civil Rights Act, Section 51 of the Civil Code, provides that all persons are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments.
- Section 12930 of the Government Code provides that the Department of fair Employment and Housing is responsible for the enforcement of the Unruh Civil Rights Act.

THIS BILL WOULD

- Prohibit the use of consumer racial profiling.
- Define consumer racial profiling as the profiling or targeting of a person that results in differential treatment based on his or her race or ethnicity and that constitutes a denial or degradation in the product or service offered to consumers.

- Make the Department of Fair Employment and Housing responsible for the enforcement of this act.

SUPPORT

Lawyers' Committee for Civil Rights
(Sponsor)
Black Women Organized for Political
Action
Consumer Attorneys of California
Consumer Federation of California
CA NAACP
SEIU Local 1000

Date of Hearing: April 19, 2016

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION
Ed Chau, Chair
AB 2707 (Ridley-Thomas) – As Amended April 11, 2016

SUBJECT: Stop Consumer Racial Profiling Act of 2016

SUMMARY: Prohibits "consumer racial profiling," defined as the targeting of a person that results in differential treatment of a consumer based on race or ethnicity, and gives the Department of Fair Employment and Housing (DFEH) authority to receive consumer complaints and investigate and prosecute violations. Specifically, **this bill:**

- 1) Prohibits a business establishment from using "consumer racial profiling" in its business.
- 2) Defines "consumer racial profiling" to mean profiling or targeting of a person that results in differential treatment based on his or her race or ethnicity and that constitutes a denial or degradation in the product or service offered to customers.
- 3) Specifies that "consumer racial profiling" includes, but is not limited to, refusal to serve, removal from the business establishment premises, segregated seating, requiring additional forms of identification, and surveillance practices based on race or ethnicity.
- 4) Gives DFEH the power to receive, investigate, conciliate, mediate, and prosecute complaints alleging a violation of this bill.

EXISTING LAW:

- 1) Provides, under the Unruh Civil Rights Act, that all persons within 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, or services of all business establishments of every kind whatsoever. (Civil Code (CC) Section 51.)
- 2) Provides that no business establishment of any kind whatsoever shall discriminate against, boycott or blacklist, or refuse to buy from, contract with, sell to, or trade with any person in this state on account of sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status. (CC 51.5 (a).)
- 3) Provides, under federal law, that all persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation without discrimination or segregation on the ground of race, color, religion, or national origin. (42 U.S.C. Section 2000a.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Purpose of this bill. This bill is intended to give consumers harmed by racial profiling tactics a means of redress by empowering DFEH to prosecute complaints. This measure is sponsored by the Lawyers' Committee for Civil Rights.
- 2) Author's statement. According to the author's office, "Federal and state public accommodation laws are often ill-equipped to address consumer racial profiling. Courts often fail to understand the subtle nature of modern discrimination and interpret civil rights statutes narrowly requiring plaintiffs to establish specific harms. However, no incident of consumer racial profiling is harmless. The use of consumer racial profiling negatively impacts the quality of life for African Americans and other ethnic minorities. Furthermore, the victims of consumer racial profiling feel as if they remain second-class citizens, marginalized by the rest of society. All consumers, regardless of race or ethnicity, should enjoy fair and equal treatment in the marketplace."
- 3) Racial profiling still a problem. According to a survey of workers at the high-end fashion retailer Zara's New York City stores, black customers are seven times more likely to be targeted as potential thieves than white customers. The survey suggested that both race and ethnic discrimination remain challenging problems, given that industry studies on actual shop lifting trends in retail stores indicate no differences by race or ethnicity. ("Stitched with Prejudice: Zara USA's Corporate Culture of Favoritism," Center for Popular Democracy; "Courting Customers: Assessing Consumer Racial Profiling and Other Marketplace Discrimination," Journal of Public Policy & Marketing)

According to the author, in California there have been numerous reports of consumer racial profiling, including targeting ethnic minority consumers as potential criminals, unworthy of service, and being unable to afford high-end merchandise available for purchase. The author notes these incidents have impacted celebrity and working-class ethnic minorities alike.

- 4) The Unruh Civil Rights Act of 1959. Since the enactment of the state Unruh Civil Rights Act of 1959 and the federal Civil Rights Act of 1964, all people are legally entitled to equal access to businesses and the right to service regardless of race or ethnicity. The author contends that despite these strong civil rights laws, discrimination in the marketplace remains a significant problem.

The Unruh Civil Rights Act already provides that no person shall be denied equal treatment or services in "all business establishments of any kind whatsoever" on the basis of several enumerated characteristics, including race or color. Therefore, some of the retailer conduct that constitutes "consumer racial profiling" may already be a violation of the Unruh Civil Rights Act. However, as with any general statute, the full range of conduct that a particular word or clause might encompass is not always clear. The Unruh Civil Rights Act states, for example, that all persons are entitled, regardless of race, to "full and equal accommodations, advantages, facilities, privileges, or services" in all business establishments. The author contends these words may not cover specific activities, such as race-based surveillance of consumers who are shopping, since depending on whether or not the consumer becomes aware or is treated differently because of the surveillance, it may not result in a denial of "full and equal accommodation, advantages, facilities, privileges, or services" under current law.

According to the author and the bill's sponsor, Lawyers' Committee for Civil Rights, the majority of the egregious consumer racial profiling cases are settled out of court, which

limits our knowledge about the deficiencies that may exist under current law. When a full trial is held in a case and the appeals process is exhausted, then a court decision can provide nuanced, binding interpretations of what the words in a statute actually mean when applied to a specific practice, such as racial profiling to surveil consumers who are shopping.

- 5) The Stop Consumer Racial Profiling Act of 2016. This bill defines and prohibits “consumer racial profiling” as the profiling or targeting of a person that results in differential treatment based on his or her race or ethnicity and that constitutes a denial or degradation in the consumer product or service offered to consumers.

The bill authorizes DFEH to receive, investigate, and prosecute allegations of racial profiling, which would give victims of consumer racial profiling a specific government agency where they can report incidents of discrimination. While existing law already gives DFEH express authority to enforce the Unruh Civil Rights Act, this bill expressly grants DFEH authority to investigate and prosecute consumer racial profiling. The author contends that it is important to give DFEH this specific prosecutorial authority because of the non-economic nature of the harm caused by consumer racial profiling, which makes it less likely that a private attorney would take such a case.

- 6) Arguments in support. According to the sponsor, the Lawyers' Committee for Civil Rights of the San Francisco Bay Area (LCCR), this measure will "prohibit a business establishment from using consumer racial profiling and makes the Department of Fair Employment and Housing (DFEH) responsible for the enforcement of this act. AB 2707 would make it clear that all forms of consumer racial profiling violate the Unruh Civil Rights Act. It would also ensure that consumers have a designated state entity to report incidents of racial profiling."

The Black Women Organized for Political Action (BWOPA) supports this bill because “it will send a strong message to all of California’s retailers that all consumers, regardless of race or ethnicity, are entitled to fair and equal treatment.”

Consumer Federation of California (CFC) states in support that the bill would prohibit businesses from "profiling consumers in a way that results in differential treatment based on race or ethnicity and a denial or diminution in the product or service offered to consumers." CFC further notes that customers of color "are followed, stopped, searched, harassed, and confronted with differential security measures almost entirely because of their race ... and that no consumer should be made to feel marginalized or persecuted.”

- 7) Related legislation. AB 1684 (Stone) authorizes DFEH to investigate and prosecute complaints of human trafficking and to bring a civil action on behalf of a person harmed by human trafficking and stipulates that damages awarded pursuant to a civil action must be awarded to the person harmed, and that any costs and attorney's fees awarded must be awarded to DFEH. This bill is currently pending referral in the Senate Rules Committee.

SB 1442 (Liu) reorganizes various statutes regarding discrimination and removes the authority of DFEH and the Business, Consumer Services, and Housing Agency to promulgate regulations to prohibit discrimination. This bill is currently pending in the Senate Judiciary Committee.

8) Double-referral. This bill was double-referred to the Assembly Judiciary Committee where it passed 10-0 on April 5, 2016.

REGISTERED SUPPORT / OPPOSITION:

Support

Lawyers' Committee for Civil Rights of the San Francisco Bay Area (sponsor)
Black Women Organized for Political Action
California State Conference of the National Association for the Advancement of Colored People
Consumer Attorneys of California
Consumer Federation of California

Opposition

None on file.

Analysis Prepared by: Jennie Bretschneider / P. & C.P. / (916) 319-2200

AMENDED IN ASSEMBLY APRIL 26, 2016

AMENDED IN ASSEMBLY APRIL 11, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2707

Introduced by Assembly Member Ridley-Thomas
(Coauthor: Assembly Member Wilk)

February 19, 2016

An act to add Section 51.14 to the Civil Code, and to amend Section 12930 of the Government Code, relating to civil rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 2707, as amended, Ridley-Thomas. Stop Consumer Racial Profiling Act of 2016.

Existing law, the Unruh Civil Rights Act, states that all persons within 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. Under existing law, the Department of Fair Employment and Housing is responsible for receiving, investigating, conciliating, mediating, and prosecuting complaints alleging a violation of the act.

This bill would enact the Stop Consumer Racial Profiling Act of 2016, which would prohibit a business establishment from using consumer racial profiling, as defined. The bill would also make the Department of Fair Employment and Housing responsible for the enforcement of the act.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 51.14 is added to the Civil Code, to read:
2 51.14. (a) This act shall be known, and may be cited, as the
3 Stop Consumer Racial Profiling Act of 2016.

4 (b) No business establishment shall use consumer racial
5 profiling.

6 (c) For the purposes of this section, “consumer racial profiling”
7 shall mean the profiling or targeting of a person that results in
8 differential treatment based on his or her race or ethnicity and that
9 constitutes a denial or degradation in the product or service offered
10 to customers. “Consumer racial profiling” includes, but is not
11 limited to, refusal to serve, removal from the business
12 establishment premises, segregated seating, requiring additional
13 forms of identification, and surveillance practices based on race
14 or ethnicity.

15 SEC. 2. Section 12930 of the Government Code is amended
16 to read:

17 12930. The department shall have the following functions,
18 powers, and duties:

19 (a) To establish and maintain a principal office and any other
20 offices within the state as are necessary to carry out the purposes
21 of this part.

22 (b) To meet and function at any place within the state.

23 (c) To appoint attorneys, investigators, conciliators, mediators,
24 and other employees as it may deem necessary, fix their
25 compensation within the limitations provided by law, and prescribe
26 their duties.

27 (d) To obtain upon request and utilize the services of all
28 governmental departments and agencies and, in addition, with
29 respect to housing discrimination, of conciliation councils.

30 (e) To adopt, promulgate, amend, and rescind suitable procedural
31 rules and regulations to carry out the investigation, prosecution,
32 and dispute resolution functions and duties of the department
33 pursuant to this part.

1 (f) (1) To receive, investigate, conciliate, mediate, and prosecute
2 complaints alleging practices made unlawful pursuant to Chapter
3 6 (commencing with Section 12940).

4 (2) To receive, investigate, conciliate, mediate, and prosecute
5 complaints alleging a violation of Section 51, 51.5, 51.7, 51.14,
6 54, 54.1, or 54.2 of the Civil Code. The remedies and procedures
7 of this part shall be independent of any other remedy or procedure
8 that might apply.

9 (g) In connection with any matter under investigation or in
10 question before the department pursuant to a complaint filed under
11 Section 12960, 12961, or 12980:

12 (1) To issue subpoenas to require the attendance and testimony
13 of witnesses and the production of books, records, documents, and
14 physical materials.

15 (2) To administer oaths, examine witnesses under oath and take
16 evidence, and take depositions and affidavits.

17 (3) To issue written interrogatories.

18 (4) To request the production for inspection and copying of
19 books, records, documents, and physical materials.

20 (5) To petition the superior courts to compel the appearance
21 and testimony of witnesses, the production of books, records,
22 documents, and physical materials, and the answering of
23 interrogatories.

24 (h) To bring civil actions pursuant to Section 12965 or 12981
25 and to prosecute those civil actions before state and federal trial
26 courts.

27 (i) To issue those publications and those results of investigations
28 and research as in its judgment will tend to promote good will and
29 minimize or eliminate discrimination in employment on the bases
30 enumerated in this part and discrimination in housing because of
31 race, religious creed, color, sex, gender, gender identity, gender
32 expression, marital status, national origin, ancestry, familial status,
33 disability, genetic information, or sexual orientation.

34 (j) To investigate, approve, certify, decertify, monitor, and
35 enforce nondiscrimination programs proposed by a contractor to
36 be engaged in pursuant to Section 12990.

37 (k) To render annually to the Governor and to the Legislature
38 a written report of its activities and of its recommendations.

1 (l) To conduct mediations at any time after a complaint is filed
2 pursuant to Section 12960, 12961, or 12980. The department may
3 end mediation at any time.

4 (m) The following shall apply with respect to any accusation
5 pending before the former Fair Employment and Housing
6 Commission on or after January 1, 2013:

7 (1) If an accusation issued under former Section 12965 includes
8 a prayer either for damages for emotional injuries as a component
9 of actual damages, or for administrative fines, or both, or if an
10 accusation is amended for the purpose of adding a prayer either
11 for damages for emotional injuries as a component of actual
12 damages, or for administrative fines, or both, with the consent of
13 the party accused of engaging in unlawful practices, the department
14 may withdraw an accusation and bring a civil action in superior
15 court.

16 (2) If an accusation was issued under former Section 12981,
17 with the consent of the aggrieved party filing the complaint an
18 aggrieved person on whose behalf a complaint is filed, or the party
19 accused of engaging in unlawful practices, the department may
20 withdraw the accusation and bring a civil action in superior court.

21 (3) Where removal to court is not feasible, the department shall
22 retain the services of the Office of Administrative Hearings to
23 adjudicate the administrative action pursuant to Sections 11370.3
24 and 11502.

25 (n) On any Section 1094.5 Code of Civil Procedure challenge
26 to a decision of the former Fair Employment and Housing
27 Commission pending on or after January 1, 2013, the director or
28 his or her designee shall consult with the Attorney General
29 regarding the defense of that writ petition.

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Approved as to Form and Legality

DRAFT

City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER DAN KALB

RESOLUTION IN SUPPORT OF AB 2707 (RIDLEY-THOMAS) THAT WOULD PROHIBIT BUSINESSES FROM PROFILING OR TARGETING A PERSON THAT RESULTS IN DIFFERENTIAL TREATMENT BASED ON RACE OR ETHNICITY AND A DENIAL OR DEGRADATION OF THE PRODUCT OR SERVICE OFFERED TO CUSTOMERS

WHEREAS, Despite the enactment of the federal Civil Rights Act of 1964 legally entitling all people to equal to businesses and the right to service regardless of race or ethnicity and despite the enormous progress made since the enactment of civil rights laws, including the Unruh Civil Rights Act of 1959, marketplace discrimination remains a significant problem and has at times not been addressed by court results narrowly interpreting statutes to establish specific harms; and

WHEREAS, Across California, there have been numerous reports of consumer racial profiling, including targeting ethnic minority consumers as unworthy of service or unable to afford high-end merchandise, as well as profiling resulting in different standards being applied to minority consumers; and

WHEREAS, Assembly Bill (AB) 2707 (Ridley-Thomas) would prohibit consumer racial profiling, define consumer racial profiling as the profiling or targeting of a person that results in different treatment based on his or her race or ethnicity and that constitutes a denial or degradation in the product or service offered to consumers, and make the Department of Fair Employment and Housing responsible for enforcement; and

WHEREAS, AB 2707 is sponsored by the Lawyer's Committee for Civil Rights and endorsed by Black Women Organized for Political Action, Consumer Attorneys of California, Consumer Federation of California, CA NAACP, and others; and now, therefore, be it

RESOLVED: That the Oakland City Council hereby endorses AB 2707 and urges the California State Legislature and Governor Jerry Brown to support its enactment into law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, AND
PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California