

Date of Hearing: March 29, 2022

Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 2229 (Luz Rivas) – As Introduced February 15, 2022

SUMMARY: Reenacts the requirement that peace officers be found to be free from any physical, emotional, or mental condition that might adversely affect the exercise of their powers, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation.

EXISTING LAW: Requires each class of public officers or employees declared by law to be peace officers to meet all of the following minimum standards:

- 1) Be a citizen of the United States or a permanent resident who is eligible for and has applied for citizenship, except specified;
- 2) Be at least 18 years of age;
- 3) Be fingerprinted for purposes of search of local, state, and national fingerprint files to disclose a criminal record;
- 4) Be of good moral character, as determined by a thorough background investigation;
- 5) Be a high school graduate, pass the General Education Development Test or other high school equivalency test or have attained a two-year, four-year, or advanced degree from an accredited college or university, as specified;
- 6) Be found to be free from any physical, emotional, or mental condition. (Gov. Code, § 1031, subs. (a)-(f).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Last year, I authored AB 1096, Chapter 296, Statutes of 2021. My intent with authoring AB 1096 was strictly to remove the term 'alien' from state laws and replace the term with more appropriate language. It recently came to my attention that AB 1096 unintentionally eliminated a bias requirement in Gov. Code 1031. Upon further review, it seems AB 1096 was introduced with an outdated version of Gov. Code 1031, which did not include the additional language from AB 846, which created the bias requirement in Gov. Code 1031. As such, AB 1096 inadvertently reverted GC 1031 to the pre-AB 846 version. AB 2229 is a clean-up bill that seeks to reenact the bias requirement training in Govt' Code Section 1031 that AB 1096 unintentionally eliminated. Additionally,

AB 2229 contains an urgency clause, so that the bias requirements go into effect immediately and POST is not left without guidance from the state.”

- 2) **This Bill Provides Technical Cleanup Only:** Prior to January 1, 2021, Government Code section 1031, which sets forth the minimum standards for peace officers, provided in pertinent part:

1031. Each class of public officers or employees declared by law to be peace officers shall meet all of the following minimum standards:

(a) Be a citizen of the United States or a permanent resident alien who is eligible for and has applied for citizenship, except as provided in Section 2267 of the Vehicle Code.

[...]

(f) Be found to be free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer.

AB 846 (Burke) Chapter 322, Statutes of 2020, amended Government Code § 1031 by adding a bias requirement for the evaluations of peace officers, as follows:

SECTION 1. Section 1031 of the Government Code is amended to read:

1031. Each class of public officers or employees declared by law to be peace officers shall meet all of the following minimum standards:

(a) Be a citizen of the United States or a permanent resident alien who is eligible for and has applied for citizenship, except as provided in Section 2267 of the Vehicle Code.

[...]

(f) Be found to be free from any physical, emotional, or mental ~~condition~~ **condition, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation**, that might adversely affect the exercise of the powers of a peace officer.

AB 846 was passed by a vast majority of the Legislature (67 ayes/12 noes in the Assembly; 30 ayes/10 noes in the Senate), approved by Governor Newsom on September 30, 2020, and took effect on January 1, 2021. Prior to its effective date, Government Code section 1031 did not contain the language in subdivision (f) requiring an evaluation of bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation.

The following year, Governor Newsom approved AB 1096 (L. Rivas), Chapter 296, Statutes of 2021, on September 24, 2021. AB 1096 eliminated the term “alien” from all relevant state codes and instead replaced it with more appropriate terminology, including from subdivision

(a) of Government Code § 1031. In pertinent part, AB 1096 provides:

SEC. 27. Section 1031 of the Government Code is amended to read:

1031. Each class of public officers or employees declared by law to be peace officers shall meet all of the following minimum standards:

(a) Be a citizen of the United States or a permanent resident ~~alien~~ who is eligible for and has applied for citizenship, except as provided in Section 2267 of the Vehicle Code.

[...]

(f) Be found to be free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer.

The intent of the Legislature in enacting AB 1096 was “to make only nonsubstantive changes that remove the dehumanizing term “alien” from all California code sections; and that nothing in [AB 1096] shall be interpreted to make any substantive change to existing law...” (See, Assembly Judiciary Committee Analysis of AB 1096). According to the author, the original draft version of AB 1096, which was introduced in the Legislature on February 18, 2021, was mistakenly based on the old version of Government Code § 1031, given that the changes from AB 846 had just gone into effect on January 1, 2021. Therefore, AB 1096 inadvertently reverted Government Code section 1031 back to the pre-AB 846 version, and unintentionally eliminated the bias requirement added by AB 846 in 2020.

This bill addresses the inadvertent removal of statutory language by re-adding the same, identical language that was passed by the Legislature and approved by the Governor back into Government Code section 1031 subdivision (f). This bill does not make any other substantive changes.

- 3) **Urgency:** POST is currently developing the bias requirements through its regulatory process. To ensure the bias requirements enacted by the Legislature in AB 846 are implemented, an urgent statutory fix is necessary. Accordingly, this bill contains an urgency clause and requires a two-thirds vote of each house.
- 4) **Argument in Support:** According to the *California Public Defenders Association*, “Members of law enforcement are charged with protecting the constitutional rights of all people and to treat all people with respect, regardless of race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, mental or physical ability or socio-economic status. It is crucial for members of law enforcement to carry out their duties in a manner free from bias to eliminate any real and/or perceived perception of biased policing. Police action that is biased is illegal and violates a person’s constitutional rights. Biased policing is unsafe, unjust and ineffective. It also alienates the public, fosters distrust of police in the community and undermines legitimate law enforcement efforts by other officers.

“AB 2229 is another step in the right direction to help law enforcement agencies make better determinations as they consider whether to hire a potential candidate and to prevent unfit

candidates from entering policing.”

- 5) **Argument in Opposition:** According to *Real Impact* “This proposed legislation will require peace officers to pass an evaluation that would include bias against ‘race or ethnicity, gender, nationality, religion, disability, or sexual orientation.’ The term ‘bias’ is not defined in the text, therefore placing those who adhere to a Biblical view of gender, religion, and sexual orientation at high risk of discrimination and can be used as litmus test for advancement in the workplace. These evaluations often bring about division and frustration, which is not what officers need at this time in which they are being harshly criticized by politicians and public officials.”
- 6) **Related Legislation:** SB 960 (Skinner), would remove provisions of existing law requiring peace officers to either be a citizen of the United States or be a permanent resident who is eligible for and has applied for citizenship. SB 960 is pending in Senate Public Safety Committee.
- 7) **Prior Legislation:**
 - a) AB 846 (Burke), Chapter 322, Statutes of 2020, required that evaluations of peace officers include an evaluation of bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation.
 - b) AB 1096 (L. Rivas), Chapter 296, Statutes of 2021, removed the term “alien” from various sections of the California Code where it appears, and replaced it with other more appropriate terms, depending on the context.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice
California Public Defenders Association

Opposition

Real Impact

9 Individuals

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