

SUBMITTED TO ATTORNEY GENERAL 9/28/2001
APPROVED FOR CIRCULATION 11/20/2001

Prohibition Against Classifying by Race by State and Other Public Entities

Section 32 is added to Article I of the California Constitution as follows:

Sec. 32. (a) The state shall not classify any individual by race, ethnicity, color or national origin in the operation of public education, public contracting or public employment.

(b) The state shall not classify any individual by race, ethnicity, color or national origin in the operation of any other state operations, unless the legislature specifically determines that said classification serves a compelling state interest and approves said classification by a 2/3 majority in both houses of the legislature, and said classification is subsequently approved by the governor.

(c) For purposes of this section, "classifying" by race, ethnicity, color or national origin shall be defined as the act of separating, sorting or organizing by race, ethnicity, color or national origin including, but not limited to, inquiring, profiling, or collecting such data on government forms.

(d) For purposes of subsection (a), "individual" refers to current or prospective students, contractors or employees. For purposes of subsection (b), "individual" refers to persons subject to the state operations referred to in subsection (b).

(e) The Department of Fair Employment and Housing (DFEH) shall be exempt from this section with respect to DFEH-conducted classifications in place as of March 5, 2002.

(1) Unless specifically extended by the legislature, this exemption shall expire ten years after the effective date of this measure.

(2) Notwithstanding DFEH's exemption from this section, DFEH shall not impute a race, color, ethnicity or national origin to any individual.

(f) Otherwise lawful classification of medical research subjects and patients shall be exempt from this section.

(g) Nothing in this section shall prevent law enforcement officers, while carrying out their law enforcement duties, from describing particular persons in otherwise lawful ways. Neither the governor, the legislature nor any statewide agency shall require law enforcement officers to maintain records that track individuals on the basis of said classifications, nor shall the governor, the legislature or any statewide agency withhold funding to law enforcement agencies on the basis of the failure to maintain such records.

(h) Otherwise lawful assignment of prisoners and undercover law enforcement officers shall be exempt from this section.

(i) Nothing in this section shall be interpreted as prohibiting action which must be taken to comply with federal law, or establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the state.

(j) Nothing in this section shall be interpreted as invalidating any valid consent decree or court order which is in force as of the effective date of this section.

(k) For the purposes of this section, "state" shall include, but not necessarily be limited to, the state itself, any city, county, city and county, public university system, including the University of California, California State University, community college district,

school district, special district, or any other political subdivision or governmental instrumentality of or within the state.

(l) This section shall become effective January 1, 2005.

(m) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law or the United States Constitution, the section shall be implemented to the maximum extent that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.