

SB-1038 State government (2011-2012) [EXCERPTED]

[Approved by Governor June 27, 2012. Filed with Secretary of State June 27, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

(5) The California Fair Employment and Housing Act establishes the Department of Fair Employment and Housing in the State and Consumer Services Agency, with the power and duties to, among other things, receive, investigate, and conciliate complaints relating to employment and housing discrimination. The California Fair Employment and Housing Act also establishes the Fair Employment and Housing Commission within the State and Consumer Services Agency, with the powers and duties to, among other things, conduct hearings, subpoena witnesses, create or provide financial or technical assistance to advisory agencies and conciliation councils, publish opinions and publications, and conduct mediations at the request of the Department of Fair Employment and Housing.

This bill would eliminate the Fair Employment and Housing Commission and would transfer the duties of the commission to the Department of Fair Employment and Housing. The bill would create within the department a Fair Employment and Housing Council that would succeed to the powers and duties of the former commission. The bill would establish the Fair Employment and Housing Enforcement and Litigation Fund in the State Treasury to be administered by the department, subject to appropriation, for purposes of deposit of attorney's fees and costs awarded to the department in specified civil actions. The bill would expand specified powers of the department related to complaints, mediations, and prosecutions, and would provide mandatory dispute resolution at no cost to the parties involved, as specified. The bill would eliminate a specified cap of actual damages under the act, and would instead require certain actions be brought in court by civil action, rather than by accusation by the department. The bill would make these provisions operative on January 1, 2013.

SEC. 18.

Section 11139.5 of the Government Code is amended to read:
11139.5.

The Secretary of California Health and Human Services, with the advice and concurrence of the Fair Employment and Housing Council of the Department of Fair Employment and Housing, shall establish standards for determining which persons are protected by this article and standards for determining what practices are discriminatory. The secretary, with the cooperation of the Fair Employment and Housing Council of the Department of Fair Employment and Housing, shall assist state agencies in coordinating their programs and activities and shall consult with such agencies, as necessary, so that consistent policies, practices, and procedures are adopted with respect to the enforcement of the provisions of the article.

SEC. 27.

Section 12804 of the Government Code is amended to read:
12804.

The Agriculture and Services Agency is hereby renamed the State and Consumer Services Agency. The State and Consumer Services Agency consists of the following: the Department of General Services; the Department of Consumer Affairs; the Franchise Tax Board; the Public Employees'

Retirement System; the State Teachers' Retirement System; the Department of Fair Employment and Housing; the California Science Center; the California Victim Compensation and Government Claims Board; the California African American Museum; the California Building and Standards Commission; the Alfred E. Alquist Seismic Safety Commission; and the Office of Privacy Protection.

SEC. 28.

Section 12901 of the Government Code is amended to read:

12901.

(a) There is in the state government, in the State and Consumer Services Agency, the Department of Fair Employment and Housing. The department is under the direction of an executive officer known as the Director of Fair Employment and Housing, who is appointed by the Governor, subject to confirmation by the Senate, and who holds office at the pleasure of the Governor. The annual salary of the director is provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2.

(b) Unless the context clearly requires otherwise, whenever the term "Fair Employment and Housing Commission" appears in any regulation, or contract, it shall be deemed to refer to the Fair Employment and Housing Council of the Department of Fair Employment and Housing.

SEC. 29.

Section 12903 of the Government Code is amended to read:

12903.

There is in the Department of Fair Employment and Housing the Fair Employment and Housing Council. The council shall consist of seven members, to be known as council members, who shall be appointed by the Governor, by and with the advice and consent of the Senate, and one of whom shall be designated as chairperson by the Governor. The term of office of each member of the council shall be for four years. The Director of the Department of Fair Employment and Housing shall serve as a nonvoting ex-officio member of the council.

SEC. 30.

Section 12904 of the Government Code is amended to read:

12904.

Any member chosen to fill a vacancy on the council occurring otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he or she is to succeed. Four members of the council shall constitute a quorum for the purpose of conducting the business thereof.

SEC. 31.

Section 12905 of the Government Code is amended to read:

12905.

Each member of the council shall serve without compensation but shall receive one hundred dollars (\$100) for each day actually spent in the performance of his or her duties under this part and shall also be entitled to his or her expenses actually and necessarily incurred in the performance of his or her duties.

SEC. 32.

Section 12906 of the Government Code is amended to read:

12906.

Any member of the council may be removed by the Governor for inefficiency, for neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard thereon.

SEC. 33.

Section 12907 is added to the Government Code, to read:

12907.

(a) The Fair Employment and Housing Enforcement and Litigation Fund is hereby established in the State Treasury, to be administered by the Department of Fair Employment and Housing.

(b) The fund shall consist of attorney's fees and costs awarded by a court to the Department of Fair Employment and Housing when the department is the prevailing party in a civil action brought under the California Fair Employment and Housing Act.

(c) Upon appropriation by the Legislature in the annual Budget Act, moneys in the fund may be used to offset the costs of the department.

SEC. 34.

Section 12925 of the Government Code is amended to read:

12925.

As used in this part, unless a different meaning clearly appears from the context:

(a) "Council" means the Fair Employment and Housing Council and "council member" means a member of the council.

(b) "Department" means the Department of Fair Employment and Housing.

(c) "Director" means the Director of Fair Employment and Housing.

(d) "Person" includes one or more individuals, partnerships, associations, corporations, limited liability companies, legal representatives, trustees, trustees in bankruptcy, and receivers or other fiduciaries.

SEC. 35.

Section 12930 of the Government Code is amended to read:

12930.

The department shall have the following functions, powers, and duties:

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

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

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

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

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

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

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

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

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

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

(3) To issue written interrogatories.

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

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

- (h) To bring civil actions pursuant to Section 12965 or 12981 and to prosecute those civil actions before state and federal trial courts.
- (i) To issue those publications and those results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination in employment on the bases enumerated in this part and discrimination in housing because of race, religious creed, color, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, familial status, disability, genetic information, or sexual orientation.
- (j) To investigate, approve, certify, decertify, monitor, and enforce nondiscrimination programs proposed by a contractor to be engaged in pursuant to Section 12990.
- (k) To render annually to the Governor and to the Legislature a written report of its activities and of its recommendations.
- (l) To conduct mediations at any time after a complaint is filed pursuant to Section 12960, 12961, or 12980. The department may end mediation at any time.
- (m) The following shall apply with respect to any accusation pending before the former Fair Employment and Housing Commission on or after January 1, 2013:
 - (1) If an accusation issued under former Section 12965 includes a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or both, or if an accusation is amended for the purpose of adding a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or both, with the consent of the party accused of engaging in unlawful practices, the department may withdraw an accusation and bring a civil action in superior court.
 - (2) If an accusation was issued under former Section 12981, with the consent of the aggrieved party filing the complaint an aggrieved person on whose behalf a complaint is filed, or the party accused of engaging in unlawful practices, the department may withdraw the accusation and bring a civil action in superior court.
 - (3) Where removal to court is not feasible, the department shall retain the services of the Office of Administrative Hearings to adjudicate the administrative action pursuant to Sections 11370.3 and 11502.
- (n) On any Section 1094.5 Code of Civil Procedure challenge to a decision of the former Fair Employment and Housing Commission pending on or after January 1, 2013, the director or his or her designee shall consult with the Attorney General regarding the defense of that writ petition.

SEC. 36.

Section 12935 of the Government Code is amended to read:

12935.

The council shall have the following functions, powers, and duties:

- (a) To adopt, promulgate, amend, and rescind suitable rules, regulations, and standards that do either of the following:
 - (1) Interpret, implement, and apply all provisions of this part.
 - (2) Carry out all other functions and duties of the council pursuant to this part.
 - (3) To meet at any place within the state and function in any office of the department.
- (b) To create or provide technical assistance to any advisory agencies and conciliation councils, local or otherwise, as in its judgment will aid in effectuating the purposes of this part, and to empower them to study the problems of discrimination in all or specific fields of human relationships or in particular instances of employment discrimination on the bases enumerated in this part or in specific instances of housing discrimination on the bases enumerated in this part and to foster, through community effort or otherwise, good will, cooperation, and conciliation among the groups and elements of the population of the state and to make recommendations to the Fair Employment and Housing Council for the development of policies and procedures in general except for procedural rules and regulations that carry out the investigation, prosecution, and dispute resolution functions

and duties of the department. These advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay.

(c) To hold hearings, issue publications, results of inquiries and research, and reports to the Governor and the Legislature that, in its judgment, will tend to aid in the effectuating the purpose of this part, promote good will, cooperation and conciliation, and minimize or eliminate unlawful discrimination, or advance civil rights in the State of California.

SEC. 37.

Section 12944 of the Government Code is amended to read:

12944.

(a) It shall be unlawful for a licensing board to require any examination or establish any other qualification for licensing that has an adverse impact on any class by virtue of its race, creed, color, national origin or ancestry, sex, gender, gender identity, gender expression, age, medical condition, genetic information, physical disability, mental disability, or sexual orientation, unless the practice can be demonstrated to be job related.

If an examination or other qualification for licensing is determined to be unlawful under this section, that determination shall not void, limit, repeal, or otherwise affect any right, privilege, status, or responsibility previously conferred upon any person by the examination or by a license issued in reliance on the examination or qualification.

(b) It shall be unlawful for a licensing board to fail or refuse to make reasonable accommodation to an individual's mental or physical disability or medical condition.

(c) It shall be unlawful for any licensing board, unless specifically acting in accordance with federal equal employment opportunity guidelines or regulations approved by the council, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, sex, gender, gender identity, gender expression, age, or sexual orientation or any intent to make any such limitation, specification, or discrimination. Nothing in this subdivision shall prohibit any licensing board from making, in connection with prospective licensure or certification, an inquiry as to, or a request for information regarding, the physical fitness of applicants if that inquiry or request for information is directly related and pertinent to the license or the licensed position the applicant is applying for. Nothing in this subdivision shall prohibit any licensing board, in connection with prospective examinations, licensure, or certification, from inviting individuals with physical or mental disabilities to request reasonable accommodations or from making inquiries related to reasonable accommodations.

(d) It is unlawful for a licensing board to discriminate against any person because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(e) It is unlawful for any licensing board to fail to keep records of applications for licensing or certification for a period of two years following the date of receipt of the applications.

(f) As used in this section, "licensing board" means any state board, agency, or authority in the State and Consumer Services Agency that has the authority to grant licenses or certificates which are prerequisites to employment eligibility or professional status.

SEC. 38.

Section 12946 of the Government Code is amended to read:

12946.

It shall be an unlawful practice for employers, labor organizations, and employment agencies subject to the provisions of this part to fail to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received, or for employers to fail to retain personnel files of applicants or terminated employees for a minimum period of two years after the date of the

employment action taken. For the purposes of this section, the State Personnel Board is exempt from the two-year retention requirement and shall instead, maintain the records and files for a period of one year. Upon notice that a verified complaint against it has been filed under this part, any such employer, labor organization, or employment agency shall maintain and preserve any and all records and files until the complaint is fully and finally disposed of and all appeals or related proceedings terminated. The council shall adopt suitable rules, regulations, and standards to carry out the purposes of this section. Where necessary, the department, pursuant to its powers under Section 12974, may seek temporary or preliminary judicial relief to enforce this section.

SEC. 39.

Section 12947.5 of the Government Code is amended to read:

12947.5.

(a) It shall be an unlawful employment practice for an employer to refuse to permit an employee to wear pants on account of the sex of the employee.

(b) Nothing in this section shall prohibit an employer from requiring employees in a particular occupation to wear a uniform.

(c) Nothing in this section shall prohibit an employer from requiring an employee to wear a costume while that employee is portraying a specific character or dramatic role.

(d) The council may exempt an employer from the requirements of this section for good cause shown and shall adopt standards and procedures for granting exemptions.

SEC. 40.

Section 12950 of the Government Code is amended to read:

12950.

In addition to employer responsibilities set forth in subdivisions (j) and (k) of Section 12940 and in rules adopted by the department and the council, every employer shall act to ensure a workplace free of sexual harassment by implementing the following minimum requirements:

(a) The department shall amend its current poster on discrimination in employment to include information relating to the illegality of sexual harassment. This amended poster shall be distributed to employers when the supply of the current poster is exhausted. One copy of the amended poster shall be provided by the department to an employer upon request. The amended poster shall be available at each office of the department, and shall be mailed if the request includes a self-addressed envelope with postage affixed. Multiple copies of the amended poster shall be made available online by the Department of Fair Employment and Housing. Each employer shall post the amended poster in a prominent and accessible location in the workplace.

(b) Each employer shall obtain from the department its information sheet on sexual harassment, which the department shall make available to employers for reproduction and distribution to employees. One copy of the information sheet shall be provided by the department to an employer upon request. The information sheets shall be available at each office of the department, and shall be mailed if the request includes a self-addressed envelope with postage affixed. Multiple copies of the information sheet shall be made available online by the Department of Fair Employment and Housing. Each employer shall distribute this information sheet to its employees, unless the employer provides equivalent information to its employees that contains, at a minimum, components on the following:

(1) The illegality of sexual harassment.

(2) The definition of sexual harassment under applicable state and federal law.

(3) A description of sexual harassment, utilizing examples.

(4) The internal complaint process of the employer available to the employee.

(5) The legal remedies and complaint process available through the department.

(6) Directions on how to contact the department.

(7) The protection against retaliation provided by Title 2 of the California Code of Regulations for opposing the practices prohibited by this article or for filing a complaint with, or otherwise participating in an investigation, proceeding, or hearing conducted by, the department or the council.

(c) The information sheet or information required to be distributed to employees pursuant to subdivision (b) shall be delivered in a manner that ensures distribution to each employee, such as including the information sheet or information with an employee's pay.

(d) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the information sheet or information required to be distributed pursuant to this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(e) If an employer violates the requirements of this section, the department may seek an order requiring the employer to comply with these requirements.

SEC. 41.

Section 12950.1 of the Government Code is amended to read:

12950.1.

(a) By January 1, 2006, an employer having 50 or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees in California who are employed as of July 1, 2005, and to all new supervisory employees within six months of their assumption of a supervisory position. Any employer who has provided this training and education to a supervisory employee after January 1, 2003, is not required to provide training and education by the January 1, 2006, deadline. After January 1, 2006, each employer covered by this section shall provide sexual harassment training and education to each supervisory employee in California once every two years. The training and education required by this section shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation.

(b) The state shall incorporate the training required by subdivision (a) into the 80 hours of training provided to all new supervisory employees pursuant to subdivision (b) of Section 19995.4, using existing resources.

(c) For purposes of this section only, "employer" means any person regularly employing 50 or more persons or regularly receiving the services of 50 or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.

(d) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the training and education required by this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(e) If an employer violates this section, the department may seek an order requiring the employer to comply with these requirements.

(f) The training and education required by this section is intended to establish a minimum threshold and should not discourage or relieve any employer from providing for longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful

discrimination in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination.

SEC. 42.

Section 12961 of the Government Code is amended to read:

12961.

Where an unlawful practice alleged in a verified complaint adversely affects, in a similar manner, a group or class of persons of which the aggrieved person filing the complaint is a member, or where such an unlawful practice raises questions of law or fact which are common to such a group or class, the aggrieved person or the director may file the complaint on behalf and as representative of such a group or class. Any complaint so filed may be investigated as a group or class complaint, and, if in the judgment of the director circumstances warrant, shall be treated as such for purposes of conciliation, dispute resolution, and civil action.

SEC. 43.

Section 12963.5 of the Government Code is amended to read:

12963.5.

(a) The superior courts shall have jurisdiction to compel the attendance and testimony of witnesses, the production of books, records, documents, and physical materials, and the answering of interrogatories. If an individual or organization fails to comply with a subpoena, interrogatory, request for production, or examination under oath by refusing to respond fully or objecting thereto, or by obstructing any proceeding before the department, the department may file with a superior court a petition for an order compelling compliance, naming as respondent the individual or organization that has failed to comply. Such an action may be brought in any county in which the department's investigation or inquiry takes place, but if the respondent is not found within any such county, such an action may be brought in the county of the respondent's residence or principal office.

(b) The petition shall describe the inquiry or investigation before the department, the basis for its jurisdiction therein, and state facts showing that the subpoena, interrogatory, request for production, or examination under oath was issued or carried out in accordance with the requirements of this part, that the information sought was identified with sufficient particularity to permit response and is reasonably relevant to the inquiry or investigation before the department, and that the respondent has failed to comply. If the petition sets forth good cause for relief, the court shall issue an order to show cause to the respondent; otherwise the court shall enter an order denying the petition. The order to show cause shall be served, along with the department's petition, on the respondent in the same manner as summons must be served in civil actions, and the order shall be returnable not less than 10 days from its issuance nor later than 45 days after the filing of the petition. The respondent shall have the right to serve and file a written answer or other response to the petition and order to show cause.

(c) Unless otherwise stipulated by the parties, the court shall no later than 30 days after the filing of the petition file its order granting or denying the petition. However, the court may on its own motion for good cause extend such time an additional 30 days. If the order grants the petition in whole or part, the order shall set forth the manner in which the respondent shall comply and the period of time following the effective date of the order within which such compliance is required. A copy of the order shall be served by mail by the clerk upon the parties. If the order grants the petition in whole or in part, the order shall not become effective until 10 days after it is served. If the order denies the petition, it shall become effective on the date it is served.

(d) The order of the superior court shall be final and not subject to review by appeal. A party aggrieved by such order, or any part thereof, may within 15 days after the service of the superior court's order, serve and file in the appropriate court of appeal a petition for a writ of mandamus to compel the superior court to set aside or otherwise modify its order. If or whenever such review is sought from an order granting discovery, the order of the trial court shall be stayed upon the filing of the petition for a writ of mandamus, provided, however, the court of appeal may dissolve or modify

the stay thereafter if it is in the public interest to do so. If or whenever such review is sought from a denial of discovery, the trial court's order shall not be stayed by the court of appeal except upon a clear showing of probable error.

(e) Within 15 days after the end of the compliance period specified in the final order of the superior court, after the exhaustion of any challenges to the order in higher courts, the department shall in writing certify to the court either that the order has been complied with or that the respondent has failed to comply. A copy of the certified statement shall be served on the respondent by personal delivery or certified mail. After receipt of a certified statement indicating the respondent's failure to comply with the order, the court may compel obedience to its order by contempt proceedings, and by making such additional orders as may be appropriate. Following such proceedings, the department shall, within 15 days after the respondent complies with the original order of the court, certify in writing to the court that such order has been complied with. A copy of the certified statement shall be served on the respondent by personal delivery or certified mail.

(f) The period of time within which the department is directed to initiate a civil action by Section 12965 shall be extended by the length of the period between the filing of a petition under this section and either (1) the final effective date, after the exhaustion of any challenges to the original order in higher courts, of an order of the superior court denying the petition, or (2) the filing by the department of a certified statement, pursuant to subdivision (e), indicating the respondent's compliance with the order of the superior court granting the petition in whole or in part, whichever occurs later.

SEC. 44.

Section 12964 of the Government Code is amended to read:

12964.

Any agreement entered into by conference, conciliation, persuasion, or other dispute resolution shall be reduced to writing, signed by all parties, and, where the department is a signatory, approved by the director or the authorized representative of the director. Within one year of the effective date of every agreement signed by the department, the department shall conduct a compliance review to determine whether the agreement has been fully obeyed and implemented. Whenever the department believes, on the basis of evidence presented to it, that any person is violating or about to violate any agreement, the department may bring an action in the superior court against the person to enjoin him or her from continuing or engaging in the violation, or from doing anything in furtherance of the violation. In the action an order or judgment may be entered awarding a temporary restraining order or a preliminary or final injunction as may be proper. The action may be brought in any county in which actions may be brought under subdivision (a) of Section 12965. In resolving allegedly unlawful practices through conciliation the resolutions may be in the nature of, but are not limited to, types of remedies that might be ordered after in a civil action.

SEC. 45.

Section 12965 of the Government Code is amended to read:

12965.

(a) In the case of failure to eliminate an unlawful practice under this part through conference, conciliation, mediation, or persuasion, or in advance thereof if circumstances warrant, the director in his or her discretion may bring a civil action in the name of the department on behalf of the person claiming to be aggrieved. Prior to filing a civil action, the department shall require all parties to participate in mandatory dispute resolution in the department's internal dispute resolution division free of charge to the parties in an effort to resolve the dispute without litigation. In any civil action, the person claiming to be aggrieved shall be the real party in interest and shall have the right to participate as a party and be represented by his or her own counsel. The civil action shall be brought in any county in which unlawful practices are alleged to have been committed, in the county in which records relevant to the alleged unlawful practices are maintained and administered, or in the county in which the person claiming to be aggrieved would have worked or would have had access to public

accommodation, but for the alleged unlawful practices. If the defendant is not found in any of these counties, the action may be brought within the county of the defendant's residence or principal office. For any complaint treated by the director as a group or class complaint for purposes of investigation, conciliation, mediation, or civil action pursuant to Section 12961, a civil action shall be brought, if at all, within two years after the filing of the complaint. For any complaint alleging a violation of Section 51.7 of the Civil Code, a civil action shall be brought, if at all, within two years after the filing of the complaint. For all other complaints, a civil action shall be brought, if at all, within one year after the filing of a complaint. If the director determines, pursuant to Section 12961, that a complaint investigated as a group or class complaint under Section 12961 is to be treated as a group or class complaint for purposes of conciliation, mediation, or civil action as well, that determination shall be made and shall be communicated in writing within one year after the filing of the complaint to each person, employer, labor organization, employment agency, or public entity alleged in the complaint to have committed an unlawful practice.

(b) If a civil action is not brought by the department within 150 days after the filing of a complaint, or if the department earlier determines that no civil action will be brought, the department shall promptly notify, in writing, the person claiming to be aggrieved that the department shall issue, on his or her request, the right-to-sue notice. This notice shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person, employer, labor organization, or employment agency named in the verified complaint within one year from the date of that notice. If the person claiming to be aggrieved does not request a right-to-sue notice, the department shall issue the notice upon completion of its investigation, and not later than one year after the filing of the complaint. A city, county, or district attorney in a location having an enforcement unit established on or before March 1, 1991, pursuant to a local ordinance enacted for the purpose of prosecuting HIV/AIDS discrimination claims, acting on behalf of any person claiming to be aggrieved due to HIV/AIDS discrimination, may also bring a civil action under this part against the person, employer, labor organization, or employment agency named in the notice. The superior courts of the State of California shall have jurisdiction of those actions, and the aggrieved person may file in these courts. An action may be brought in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to the practice are maintained and administered, or in the county in which the aggrieved person would have worked or would have had access to the public accommodation but for the alleged unlawful practice, but if the defendant is not found within any of these counties, an action may be brought within the county of the defendant's residence or principal office. A copy of any complaint filed pursuant to this part shall be served on the principal offices of the department. The remedy for failure to send a copy of a complaint is an order to do so. Those actions may not be filed as class actions or may not be maintained as class actions by the person or persons claiming to be aggrieved where those persons have filed a civil class action in the federal courts alleging a comparable claim of employment discrimination against the same defendant or defendants. In civil actions brought under this section, the court, in its discretion, may award to the prevailing party, including the department, reasonable attorney's fees and costs, including expert witness fees.

(c) A court may grant as relief in any action filed pursuant to subdivision (a) any relief a court is empowered to grant in a civil action brought pursuant to subdivision (b), in addition to any other relief that, in the judgment of the court, will effectuate the purpose of this part. This relief may include a requirement that the employer conduct training for all employees, supervisors, and management on the requirements of this part, the rights and remedies of those who allege a violation of this part, and the employer's internal grievance procedures. In addition, in order to vindicate the purposes and policies of this part, a court may assess against the defendant, if the civil complaint or amended civil complaint so prays, a civil penalty of up to twenty-five thousand dollars (\$25,000) to be awarded to a person denied any right provided for by Section 51.7 of the Civil Code, as an unlawful practice prohibited under this part.

(d) (1) Notwithstanding subdivision (b), the one-year statute of limitations, commencing from the date of the right-to-sue notice by the Department of Fair Employment and Housing, to the person claiming to be aggrieved, shall be tolled when all of the following requirements have been met:

(A) A charge of discrimination or harassment is timely filed concurrently with the Equal Employment Opportunity Commission and the Department of Fair Employment and Housing.

(B) The investigation of the charge is deferred by the Department of Fair Employment and Housing to the Equal Employment Opportunity Commission.

(C) A right-to-sue notice is issued to the person claiming to be aggrieved upon deferral of the charge by the Department of Fair Employment and Housing to the Equal Employment Opportunity Commission.

(2) The time for commencing an action for which the statute of limitations is tolled under paragraph (1) expires when the federal right-to-sue period to commence a civil action expires, or one year from the date of the right-to-sue notice by the Department of Fair Employment and Housing, whichever is later.

(3) This subdivision is intended to codify the holding in *Downs v. Department of Water and Power of City of Los Angeles* (1997) 58 Cal.App.4th 1093.

(e) (1) Notwithstanding subdivision (b), the one-year statute of limitations, commencing from the date of the right-to-sue notice by the Department of Fair Employment and Housing, to the person claiming to be aggrieved, shall be tolled when all of the following requirements have been met:

(A) A charge of discrimination or harassment is timely filed concurrently with the Equal Employment Opportunity Commission and the Department of Fair Employment and Housing.

(B) The investigation of the charge is deferred by the Equal Employment Opportunity Commission to the Department of Fair Employment and Housing.

(C) After investigation and determination by the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission agrees to perform a substantial weight review of the determination of the department or conducts its own investigation of the claim filed by the aggrieved person.

(2) The time for commencing an action for which the statute of limitations is tolled under paragraph (1) shall expire when the federal right-to-sue period to commence a civil action expires, or one year from the date of the right-to-sue notice by the Department of Fair Employment and Housing, whichever is later.

SEC. 46.

Section 12966 of the Government Code is amended to read:

12966.

Where the department initiates a civil action, or is about to do so, and the party accused of engaging in unlawful practices under this part is a state contractor or is a supplier of goods and services to the state, the director shall send a written notice of the civil action and a copy of the civil complaint to the appropriate awarding agency and request a report of any action which the awarding agency takes in response to the department's notification and filing of a civil action.

SEC. 47.

Section 12967 of the Government Code is repealed.

SEC. 48.

Section 12968 of the Government Code is repealed.

SEC. 49.

Section 12969 of the Government Code is repealed.

SEC. 50.

Section 12970 of the Government Code is repealed.

SEC. 51.

Section 12972 of the Government Code is repealed.

SEC. 52.

Section 12973 of the Government Code is amended to read:

12973.

Within one year of the effective date of every final order or decision issued pursuant to this part, the department shall conduct a compliance review to determine whether the order or decision has been fully obeyed and implemented.

SEC. 53.

Section 12974 of the Government Code is amended to read:

12974.

Whenever a complaint is filed with the department and the department concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this part, the director or his authorized representative may bring a civil action for appropriate temporary or preliminary relief pending final disposition of such complaint. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with Section 527 of the Code of Civil Procedure. An action seeking such temporary or preliminary relief may be brought in any county in which actions may be brought under subdivision (b) of Section 12965. In civil actions brought under this section, the court, in its discretion, may award to the department reasonable attorney's fees and costs, including expert witness fees, when it is the prevailing party for the purposes of the order granting temporary or preliminary relief.

SEC. 54.

Section 12975 of the Government Code is amended to read:

12975.

Any person who shall willfully resist, prevent, impede, or interfere with any member of the department or the council or any of its agents or employees in the performance of duties pursuant to the provisions of this part relating to employment discrimination, or who shall in any manner willfully violate an order of the court relating to such matter, is guilty of a misdemeanor, punishable by imprisonment in a county jail, not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or both.

SEC. 55.

Section 12980 of the Government Code is amended to read:

12980.

This article governs the procedure for the prevention and elimination of discrimination in housing made unlawful pursuant to Article 2 (commencing with Section 12955) of Chapter 6.

(a) Any person claiming to be aggrieved by an alleged violation of Section 12955, 12955.1, or 12955.7 may file with the department a verified complaint in writing that shall state the name and address of the person alleged to have committed the violation complained of, and that shall set forth the particulars of the alleged violation and contain any other information required by the department.

The filing of a complaint and pursuit of conciliation or remedy under this part shall not prejudice the complainant's right to pursue effective judicial relief under other applicable laws, but if a civil action has been filed under Section 52 of the Civil Code, the department shall terminate proceedings upon notification of the entry of final judgment unless the judgment is a dismissal entered at the complainant's request.

(b) The Attorney General or the director may, in a like manner, make, sign, and file complaints citing practices that appear to violate the purpose of this part or any specific provisions of this part relating to housing discrimination.

No complaint may be filed after the expiration of one year from the date upon which the alleged violation occurred or terminated.

(c) The department may thereupon proceed upon the complaint in the same manner and with the same powers as provided in this part in the case of an unlawful practice, except that where the

provisions of this article provide greater rights and remedies to an aggrieved person than the provisions of Article 1 (commencing with Section 12960), the provisions of this article shall prevail.

(d) Upon the filing of a complaint, the department shall serve notice upon the complainant of the time limits, rights of the parties, and choice of forums provided for under the law.

(e) The department shall commence proceedings with respect to a complaint within 30 days of filing of the complaint.

(f) An investigation of allegations contained in any complaint filed with the department shall be completed within 100 days after receipt of the complaint, unless it is impracticable to do so. If the investigation is not completed within 100 days, the complainant and respondent shall be notified, in writing, of the department's reasons for not doing so.

(g) Upon the conclusion of each investigation, the department shall prepare a final investigative report containing all of the following:

(1) The names of any witnesses and the dates of any contacts with those witnesses.

(2) A summary of the dates of any correspondence or other contacts with the aggrieved persons or the respondent.

(3) A summary of witness statements.

(4) Answers to interrogatories.

(5) A summary description of other pertinent records.

A final investigative report may be amended if additional evidence is later discovered.

(h) If a civil action is not brought by the department within 100 days after the filing of a complaint, or if the department earlier determines that no civil action will be brought, the department shall promptly notify the person claiming to be aggrieved. This notice shall, in any event, be issued no more than 30 days after the date of the determination or 30 days after the date of the expiration of the 100-day period, whichever date first occurs. The notice shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person named in the verified complaint within the time period specified in Section 12989.1. The notice shall also indicate, unless the department has determined that no civil action will be brought, that the person claiming to be aggrieved has the option of continuing to seek redress for the alleged discrimination through the procedures of the department if he or she does not desire to file a civil action. The superior courts of the State of California shall have jurisdiction of these actions, and the aggrieved person may file in these courts. The action may be brought in any county in the state in which the violation is alleged to have been committed, or in the county in which the records relevant to the alleged violation are maintained and administered, but if the defendant is not found within that county, the action may be brought within the county of the defendant's residence or principal office. A copy of any complaint filed pursuant to this part shall be served on the principal offices of the department. The remedy for failure to send a copy of a complaint is an order to do so. In a civil action brought under this section, the court, in its discretion, may award to the prevailing party reasonable attorney's fees.

(i) All agreements reached in settlement of any housing discrimination complaint filed pursuant to this section shall be made public, unless otherwise agreed by the complainant and respondent, and the department determines that the disclosure is not required to further the purposes of the act.

(j) All agreements reached in settlement of any housing discrimination complaint filed pursuant to this section shall be agreements between the respondent and complainant, and shall be subject to approval by the department.

SEC. 56.

Section 12981 of the Government Code is amended to read:

12981.

(a) In the case of failure to eliminate a violation of Section 12955, 12955.1, or 12955.7 that has occurred, or is about to occur, through conference, conciliation, mediation, or persuasion, or in advance thereof if circumstances warrant, the director shall bring a civil action in the name of the department on behalf of the aggrieved person as a real party in interest, notwithstanding Section

12971, in the same manner and with the same powers as provided in Section 12965, except that where the provisions of this article provide greater rights and remedies to an aggrieved person than Section 12965, the provisions of this article shall prevail. Prior to filing a civil action, the department shall require all parties to participate in the department's mandatory dispute resolution division free of charge to the parties in an effort to resolve the dispute without litigation. A civil action alleging an unfair housing practice shall be issued within 100 days after the filing of a complaint unless it is impracticable to do so. The civil action shall be filed in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to that practice are maintained and administered, or in the county in which the aggrieved person would have resided in the housing accommodation. If the defendant is not found within that county, the action may be filed in the county of the defendant's residence or principal office. Any aggrieved person may intervene as a matter of right in the proceeding, and the appeal or other judicial review of that proceeding.

(b) If the department determines that an allegation concerns the legality of any zoning or other land use law or ordinance, the department or the Attorney General shall take appropriate action with respect to the complaint according to the procedures established in this part for other complaints of housing discrimination.

(c) Within one year of the effective date of every final order or decision issued pursuant to this part, the department shall conduct a compliance review to determine whether the order or decision has been fully obeyed and implemented.

(d) Whenever the department has reasonable cause to believe that a respondent has breached a conciliation agreement signed by the department, the department shall initiate a civil action to enforce the agreement.

SEC. 57.

Section 12981.1 of the Government Code is amended to read:

12981.1.

The department shall not dismiss a complaint unless the complainant withdraws the complaint or the department determines after a thorough investigation that, based on the facts, no reasonable cause exists to believe that an unlawful housing practice, as prohibited by this part, has occurred or is about to occur.

SEC. 58.

Section 12983 of the Government Code is amended to read:

12983.

The department at any time after a complaint is filed with it and it has been determined that probable cause exists for believing that the allegations of the complaint are true and constitute a violation of this part, may bring an action in the superior court to enjoin the owner of the property from taking further action with respect to the rental, lease, or sale of the property, as well as to require compliance with Section 12956, until the department has completed its investigation and made its determination; but a temporary restraining order obtained under this section shall not, in any event, be in effect for more than 20 days. In this action an order or judgment may be entered awarding the temporary restraining order or the preliminary or final injunction in accordance with Section 527 of the Code of Civil Procedure. In civil actions brought under this section, the court, in its discretion, may award to the department reasonable attorney's fees and costs, including expert witness fees, when it is the prevailing party for the purposes of the order granting temporary or preliminary relief.

SEC. 59.

Section 12985 of the Government Code is amended to read:

12985.

When a person is contacted by the department or a member of the department's staff, following the filing of a complaint against that person, the person shall be informed whether the contact is for the

purpose of investigation or conference, conciliation, persuasion, or mediation, and if it is for conference, conciliation, persuasion, or mediation, the person shall be informed that all matters relating thereto are privileged and confidential.

SEC. 60.

Section 12987 of the Government Code is repealed.

SEC. 61.

Section 12987.1 of the Government Code is repealed.

SEC. 62.

Section 12988 of the Government Code is amended to read:

12988.

The department may engage in affirmative actions with owners in furtherance of the purpose of this part as expressed in Section 12920.

SEC. 63.

Section 12989 of the Government Code is repealed.

SEC. 64.

Section 12989.1 of the Government Code is amended to read:

12989.1.

An aggrieved person may commence a civil action in an appropriate court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or breach. The computation of the two-year period shall not include any time during which an administrative proceeding under this part was pending with respect to a complaint under this part based upon the discriminatory housing practice or breach. An aggrieved person may commence a civil action whether or not a complaint has been filed under this part and without regard to the status of any complaint. Any aggrieved person who is aggrieved with respect to the issues to be determined in a civil action filed under this part, may intervene in that civil action. However, if the department has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this part by the aggrieved person with respect to the alleged discriminatory housing practice that forms the basis for the complaint, except for the purpose of enforcing the terms of the agreement.

An aggrieved person may not commence a civil action with respect to an alleged discriminatory housing practice that forms the basis of a civil action brought by the department.

SEC. 65.

Section 12989.2 of the Government Code is amended to read:

12989.2.

In a civil action brought under Section 12981 or 12989.1, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award the plaintiff actual and punitive damages and may grant other relief, including the issuance of a temporary or permanent injunction, or temporary restraining order, or other order, as it deems appropriate to prevent any defendant from engaging in or continuing to engage in an unlawful practice. In a civil action brought under this section, the court may, at its discretion, award the prevailing party, including the department, reasonable attorney's fees and costs, including expert witness fees, against any party other than the state. If the court finds that the defendant has engaged in an unlawful practice under this part and is liable for actual or punitive damages any amount due to the defendant by a state agency may be offset to satisfy the court's final order or decision.

SEC. 66.

Section 12990 of the Government Code is amended to read:

12990.

(a) Any employer who is, or wishes to become, a contractor with the state for public works or for goods or services is subject to the provisions of this part relating to discrimination in employment and to the nondiscrimination requirements of this section and any rules and regulations that implement it.

(b) Prior to becoming a contractor or subcontractor with the state, an employer may be required to submit a nondiscrimination program to the department for approval and certification and may be required to submit periodic reports of its compliance with that program.

(c) Every state contract and subcontract for public works or for goods or services shall contain a nondiscrimination clause prohibiting discrimination on the bases enumerated in this part by contractors or subcontractors. The nondiscrimination clause shall contain a provision requiring contractors and subcontractors to give written notice of their obligations under that clause to labor organizations with which they have a collective bargaining or other agreement. These contractual provisions shall be fully and effectively enforced. This subdivision does not apply to a credit card purchase of goods of two thousand five hundred dollars (\$2,500) or less. The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars (\$7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on these purchases.

(d) The department shall periodically develop rules and regulations for the application and implementation of this section, and submit them to the council for consideration and adoption in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1. Those rules and regulations shall describe and include, but not be limited to, all of the following:

(1) Procedures for the investigation, approval, certification, decertification, monitoring, and enforcement of nondiscrimination programs.

(2) The size of contracts or subcontracts below which any particular provision of this section shall not apply.

(3) The circumstances, if any, under which a contractor or subcontractor is not subject to this section.

(4) Criteria for determining the appropriate plant, region, division, or other unit of a contractor's or subcontractor's operation for which a nondiscrimination program is required.

(5) Procedures for coordinating the nondiscrimination requirements of this section and its implementing rules and regulations with the California Plan for Equal Opportunity in Apprenticeship, with the provisions and implementing regulations of Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1, and with comparable federal laws and regulations concerning nondiscrimination, equal employment opportunity, and affirmative action by those who contract with the United States.

(6) The basic principles and standards to guide the department in administering and implementing this section.

(e) Where a contractor or subcontractor is required to prepare an affirmative action, equal employment, or nondiscrimination program subject to review and approval by a federal compliance agency, that program may be filed with the department, instead of any nondiscrimination program regularly required by this section or its implementing rules and regulations. Such a program shall constitute a prima facie demonstration of compliance with this section. Where the department or a federal compliance agency has required the preparation of an affirmative action, equal employment, or nondiscrimination program subject to review and approval by the department or a federal compliance agency, evidence of such a program shall also constitute prima facie compliance with an ordinance or regulation of any city, city and county, or county that requires an employer to submit such a program to a local awarding agency for its approval prior to becoming a contractor or subcontractor with that agency.

(f) Where the department determines and certifies that the provisions of this section or its implementing rules and regulations are violated or determines a contractor or subcontractor is engaging in practices made unlawful under this part, the department may recommend appropriate sanctions to the awarding agency. Any such recommendation shall take into account the severity of the violation or violations and any other penalties, sanctions, or remedies previously imposed.

SEC. 67.

Chapter 1 (commencing with Section 14995) of Part 5.6 of Division 3 of Title 2 of the Government Code is repealed.

SEC. 68.

Section 19704 of the Government Code is amended to read:

19704.

(a) It is unlawful to require, permit, or suffer any notation or entry to be made upon or in any application, examination paper, or other paper, book, document, or record used under this part indicating or in any way suggesting or pertaining to any basis listed in subdivision (a) of Section 12940, as those bases are defined in Sections 12926 and 12926.1.

(b) Notwithstanding subdivision (a), subsequent to employment, ethnic, marital status, and gender data may be obtained and maintained for research and statistical purposes when safeguards preventing misuse of the information exist as approved by the Fair Employment and Housing Council, except that in no event shall any notation, entry, or record of that data be made on papers or records relating to the examination, appointment, or promotion of an individual.