

ASSEMBLY BILL

No. 276

Introduced by Assembly Member Migden

February 16, 2001

An act to amend Section 12965 of the Government Code, relating to employment discrimination.

LEGISLATIVE COUNSEL'S DIGEST

AB 276, as introduced, Migden. Discrimination: remedies.

Existing law specifies that all persons have the right to be free of violence or intimidation by threat of violence against their persons or property because of their race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, or position in a labor dispute or because another person perceives them to have one or more of these characteristics. Under existing law, these provisions do not apply to statements concerning positions in a labor dispute that are made during lawful labor picketing.

Existing law makes violation of these provisions subject to an award of damages up to \$150,000 in an administrative proceeding brought under the California Fair Employment and Housing Act. Existing law specifies that the Director of Fair Employment and Housing must issue an accusation in those administrative proceedings within one year after the complaint is filed with the Department of Fair Employment and Housing, except for complaints treated by the director as group or class complaints, with respect to which the accusation must be issued within two years of the filing of the complaint.

This bill would make a two-year limitation applicable to the issuance of all accusations for violation of the above-described right to be free of violence or intimidation or threats of violence.

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 12965 of the Government Code is
2 amended to read:
3 12965. (a) In the case of failure to eliminate an unlawful
4 practice under this part through conference, conciliation, or
5 persuasion, or in advance thereof if circumstances warrant, the
6 director in his or her discretion may cause to be issued in the name
7 of the department a written accusation. The accusation shall
8 contain the name of the person, employer, labor organization, or
9 employment agency accused, which shall be known as the
10 respondent, shall set forth the nature of the charges, shall be served
11 upon the respondent together with a copy of the verified
12 complaint, as amended, and shall require the respondent to answer
13 the charges at a hearing.
14 For any complaint treated by the director as a group or class
15 complaint for purposes of investigation, conciliation, and
16 accusation pursuant to Section 12961, an accusation shall be
17 issued, if at all, within two years after the filing of the complaint.
18 *For any complaint alleging a violation of Section 51.7 of the Civil*
19 *Code, an accusation shall be issued, if at all, within two years after*
20 *the filing of the complaint.* For all other complaints, an accusation
21 shall be issued, if at all, within one year after the filing of a
22 complaint. If the director determines, pursuant to Section 12961,
23 that a complaint investigated as a group or class complaint under
24 Section 12961 is to be treated as a group or class complaint for
25 purposes of conciliation and accusation as well, that determination
26 shall be made and shall be communicated in writing within one
27 year after the filing of the complaint to each person, employer,
28 labor organization, employment agency, or public entity alleged in
29 the complaint to have committed an unlawful practice.
30 (b) If an accusation is not issued within 150 days after the filing
31 of a complaint, or if the department earlier determines that no
32 accusation will issue, the department shall promptly notify, in
33 writing, the person claiming to be aggrieved that the department
34 shall issue, on his or her request, the right-to-sue notice. This
35 notice shall indicate that the person claiming to be aggrieved may



1 bring a civil action under this part against the person, employer,
2 labor organization, or employment agency named in the verified
3 complaint within one year from the date of that notice. If the
4 person claiming to be aggrieved does not request a right-to-sue
5 notice, the department shall issue the notice upon completion of its
6 investigation, and not later than one year after the filing of the
7 complaint. A city, county, or district attorney in a location having
8 an enforcement unit established on or before March 1, 1991,
9 pursuant to a local ordinance enacted for the purpose of
10 prosecuting HIV/AIDS discrimination claims, acting on behalf of
11 any person claiming to be aggrieved due to HIV/AIDS
12 discrimination, may also bring a civil action under this part against
13 the person, employer, labor organization, or employment agency
14 named in the notice. The superior and municipal courts of the State
15 of California shall have jurisdiction of those actions, and the
16 aggrieved person may file in any of these courts. Such an action
17 may be brought in any county in the state in which the unlawful
18 practice is alleged to have been committed, in the county in which
19 the records relevant to the practice are maintained and
20 administered, or in the county in which the aggrieved person
21 would have worked or would have had access to the public
22 accommodation but for the alleged unlawful practice, but if the
23 defendant is not found within any of these counties, an action may
24 be brought within the county of the defendant's residence or
25 principal office. A copy of any complaint filed pursuant to this part
26 shall be served on the principal offices of the department and of the
27 commission. The remedy for failure to send a copy of a complaint
28 is an order to do so. Those actions may not be filed as class actions
29 or may not be maintained as class actions by the person or persons
30 claiming to be aggrieved where those persons have filed a civil
31 class action in the federal courts alleging a comparable claim of
32 employment discrimination against the same defendant or
33 defendants. In actions brought under this section, the court, in its
34 discretion, may award to the prevailing party reasonable attorney's
35 fees and costs, including expert witness fees, except where the
36 action is filed by a public agency or a public official, acting in an
37 official capacity.

38 (c) (1) If an accusation includes a prayer either for damages for
39 emotional injuries as a component of actual damages, or for
40 administrative fines, or for both, or if an accusation is amended for



1 the purpose of adding a prayer either for damages for emotional
2 injuries as a component of actual damages, or for administrative
3 fines, or both, the respondent may within 30 days after service of
4 the accusation or amended accusation, elect to transfer the
5 proceedings to a court in lieu of a hearing pursuant to subdivision
6 (a) by serving a written notice to that effect on the department, the
7 commission, and the person claiming to be aggrieved. The
8 commission shall prescribe the form and manner of giving written
9 notice.

10 (2) No later than 30 days after the completion of service of the
11 notice of election pursuant to paragraph (1), the department shall
12 dismiss the accusation and shall, either itself or, at its election,
13 through the Attorney General, file in the appropriate court an
14 action in its own name on behalf of the person claiming to be
15 aggrieved as the real party in interest. In this action, the person
16 claiming to be aggrieved shall be the real party in interest and shall
17 have the right to participate as a party and be represented by his or
18 her own counsel. Complaints filed pursuant to this section shall be
19 filed in the appropriate superior or municipal court in any county
20 in which unlawful practices are alleged to have been committed,
21 in the county in which records relevant to the alleged unlawful
22 practices are maintained and administered, or in the county in
23 which the person claiming to be aggrieved would have worked or
24 would have had access to public accommodation, but for the
25 alleged unlawful practices. If the defendant is not found in any of
26 these counties, the action may be brought within the county of the
27 defendant's residence or principal office. Those actions shall be
28 assigned to the court's delay reduction program, or otherwise
29 given priority for disposition by the court in which the action is
30 filed.

31 (3) A court may grant as relief in any action filed pursuant to
32 this subdivision any relief a court is empowered to grant in a civil
33 action brought pursuant to subdivision (b), in addition to any other
34 relief that, in the judgment of the court, will effectuate the purpose
35 of this part. This relief may include a requirement that the
36 employer conduct training for all employees, supervisors, and
37 management on the requirements of this part, the rights and
38 remedies of those who allege a violation of this part, and the
39 employer's internal grievance procedures.



1 (4) The department may amend an accusation to pray for either
2 damages for emotional injury or for administrative fines, or both,
3 provided that the amendment is made within 30 days of the
4 issuance of the original accusation.

O

