

AMENDED IN ASSEMBLY APRIL 24, 2001

AMENDED IN ASSEMBLY APRIL 5, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 276

Introduced by Assembly Member ~~Migden~~ Members *Migden and Koretz*

February 16, 2001

An act to amend Sections 12960 and 12965 of the Government Code, relating to employment discrimination.

LEGISLATIVE COUNSEL'S DIGEST

AB 276, as amended, 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 any violation of these provisions constituting an unlawful practice under the California Fair Employment and Housing Act subject to an award of damages up to \$150,000 in an administrative proceeding brought under that act. Existing law specifies that , with certain exceptions, a complaint alleging an unlawful practice subject to the act must be submitted to the Department of Fair Employment and Housing within one year, and that the director of the department must

issue an accusation in administrative proceedings under the act within one year after the complaint is filed with the department, 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 extend to 2 years the time within which a complaint may be filed for an unlawful practice under the act that is a violation of the above-described right to be free of violence or intimidation or threats of violence. The bill would also extend to 2 years the period within which an accusation may be issued by the director upon a complaint alleging a violation of this type.

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 12960 of the Government Code is
2 amended to read:

3 12960. The provisions of this article govern the procedure for
4 the prevention and elimination of practices made unlawful
5 pursuant to Article 1 (commencing with Section 12940) of
6 Chapter 6.

7 Any person claiming to be aggrieved by an alleged unlawful
8 practice may file with the department a verified complaint in
9 writing that shall state the name and address of the person,
10 employer, labor organization, or employment agency alleged to
11 have committed the unlawful practice complained of, and that
12 shall set forth the particulars thereof and contain other information
13 as may be required by the department. The director or his or her
14 authorized representative may, in like manner, on his or her own
15 motion, make, sign, and file a complaint. Any employer whose
16 employees, or some of them, refuse or threaten to refuse to
17 cooperate with the provisions of this part may file with the
18 department a verified complaint asking for assistance by
19 conciliation or other remedial action.

20 No complaint may be filed after the expiration of one year, or
21 after the expiration of two years in the case of a complaint alleging
22 a violation of Section 51.7 as an unlawful practice under this part,
23 from the date upon which the alleged unlawful practice or refusal
24 to cooperate occurred, except that this period may be extended as



1 follows: (a) for ~~not to exceed~~ *no more than* 90 days following the
2 expiration of that year, if a person allegedly aggrieved by an
3 unlawful practice first obtained knowledge of the facts of the
4 alleged unlawful practice after the expiration of one year from the
5 date of their occurrence, or (b) for ~~not to exceed~~ *no more than* one
6 year following a rebutted presumption of the identity of the
7 person's employer under Section 12928, in order to allow a person
8 allegedly aggrieved by an unlawful practice to make a substitute
9 identification of the actual employer.

10 SEC. 2. Section 12965 of the Government Code is amended
11 to read:

12 12965. (a) In the case of failure to eliminate an unlawful
13 practice under this part through conference, conciliation, or
14 persuasion, or in advance thereof if circumstances warrant, the
15 director in his or her discretion may cause to be issued in the name
16 of the department a written accusation. The accusation shall
17 contain the name of the person, employer, labor organization, or
18 employment agency accused, which shall be known as the
19 respondent, shall set forth the nature of the charges, shall be served
20 upon the respondent together with a copy of the verified
21 complaint, as amended, and shall require the respondent to answer
22 the charges at a hearing.

23 For any complaint treated by the director as a group or class
24 complaint for purposes of investigation, conciliation, and
25 accusation pursuant to Section 12961, an accusation shall be
26 issued, if at all, within two years after the filing of the complaint.
27 For any complaint alleging a violation of Section 51.7 of the Civil
28 Code, an accusation shall be issued, if at all, within two years after
29 the filing of the complaint. For all other complaints, an accusation
30 shall be issued, if at all, within one year after the filing of a
31 complaint. If the director determines, pursuant to Section 12961,
32 that a complaint investigated as a group or class complaint under
33 Section 12961 is to be treated as a group or class complaint for
34 purposes of conciliation and accusation as well, that determination
35 shall be made and shall be communicated in writing within one
36 year after the filing of the complaint to each person, employer,
37 labor organization, employment agency, or public entity alleged in
38 the complaint to have committed an unlawful practice.

39 (b) If an accusation is not issued within 150 days after the filing
40 of a complaint, or if the department earlier determines that no



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



1 action is filed by a public agency or a public official, acting in an
2 official capacity.

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

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

36 (3) A court may grant as relief in any action filed pursuant to
37 this subdivision any relief a court is empowered to grant in a civil
38 action brought pursuant to subdivision (b), in addition to any other
39 relief that, in the judgment of the court, will effectuate the purpose
40 of this part. This relief may include a requirement that the



1 employer conduct training for all employees, supervisors, and
2 management on the requirements of this part, the rights and
3 remedies of those who allege a violation of this part, and the
4 employer's internal grievance procedures.

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

