

AMENDED IN ASSEMBLY JANUARY 28, 2002

AMENDED IN ASSEMBLY JANUARY 14, 2002

AMENDED IN ASSEMBLY MAY 3, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1146**

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**Introduced by Assembly Member Chan**

February 23, 2001

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1146, as amended, Chan. Fair Employment and Housing Act.

Existing provisions of the Fair Employment and Housing Act require that an individual wishing to pursue a civil action file suit within one year of ~~the issuance of~~ a right-to-sue notice from the Department of Fair Employment and Housing.

This bill would toll the limitations period within which the civil action must be filed, in cases where the Department of Fair Employment and Housing has deferred its investigation of the individual's complaint to the United States Equal Employment Opportunity Commission, ~~during the period that the Equal Employment Opportunity Commission is pursuing administrative remedies~~ *until the federal right-to-sue period commences.*

Vote: majority. Appropriation: no. Fiscal committee: no. 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  
36 bring a civil action under this part against the person, employer,  
37 labor organization, or employment agency named in the verified  
38 complaint within one year from the date of that notice. If the



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

35 (c) (1) If an accusation includes a prayer either for damages for  
36 emotional injuries as a component of actual damages, or for  
37 administrative fines, or for both, or if an accusation is amended for  
38 the purpose of adding a prayer either for damages for emotional  
39 injuries as a component of actual damages, or for administrative  
40 fines, or both, the respondent may within 30 days after service of



1 the accusation or amended accusation, elect to transfer the  
2 proceedings to a court in lieu of a hearing pursuant to subdivision  
3 (a) by serving a written notice to that effect on the department, the  
4 commission, and the person claiming to be aggrieved. The  
5 commission shall prescribe the form and manner of giving written  
6 notice.

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

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

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



1 (d) (1) Notwithstanding subdivision (b), the one-year statute  
2 of limitations, commencing from the date *of* the right-to-sue notice  
3 ~~is issued~~ by the Department of Fair Employment and Housing, to  
4 the person claiming to be aggrieved, shall be tolled ~~through the~~  
5 ~~period that the federal administrative remedies with the United~~  
6 ~~States Equal Employment Opportunity Commission are being~~  
7 ~~pursued~~ *until the federal right-to-sue period commences*, when all  
8 of the following requirements have been met:

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

13 (B) The investigation of the charge is deferred by the  
14 Department of Fair Employment and Housing to the Equal  
15 Employment Opportunity Commission ~~under the Worksharing~~  
16 ~~Agreement.~~

17 ~~(C) The Department of Fair Employment and Housing issues~~  
18 ~~a right-to-sue notice upon deferral of the charge of the Equal~~

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

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

