

ASSEMBLY BILL

No. 1684

Introduced by Assembly Member Mark Stone

January 20, 2016

An act to amend Section 52 of the Civil Code, and to amend Section 12930 of the Government Code, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1684, as introduced, Mark Stone. Civil actions: human trafficking.

Existing law authorizes a victim of human trafficking, as defined, to bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief, as specified. Existing law, whenever there is reasonable cause to believe that a person is engaged in conduct of resistance to the full enjoyment of certain civil rights, also authorizes the Attorney General, any district attorney or city attorney, or any person aggrieved by the conduct to bring a civil action in the appropriate court, as specified.

This bill would further authorize the Attorney General, a district attorney, a city attorney, or the Department of Fair Employment and Housing to bring a civil action for a victim of human trafficking, as described above. The bill would provide that a person that commits human trafficking is also liable for a \$25,000 civil penalty, regardless of whether the action is brought by the victim, the Attorney General, a district attorney, or a city attorney, and would require the civil penalty, and any damages awarded in a civil action brought by the department, to be awarded to the victim of human trafficking. The bill would also authorize the department to receive, investigate, conciliate, mediate, and prosecute complaints alleging human trafficking.

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 52 of the Civil Code is amended to read:
2 52. (a) Whoever denies, aids or incites a denial, or makes any
3 discrimination or distinction contrary to Section 51, 51.5, or 51.6,
4 is liable for each and every offense for the actual damages, and
5 any amount that may be determined by a jury, or a court sitting
6 without a jury, up to a maximum of three times the amount of
7 actual damage but in no case less than four thousand dollars
8 (\$4,000), and any attorney’s fees that may be determined by the
9 court in addition thereto, suffered by any person denied the rights
10 provided in Section 51, 51.5, or 51.6.
11 (b) Whoever denies the right provided by Section 51.7 or 51.9,
12 or aids, incites, or conspires in that denial, *or whoever violates*
13 *Section 236.1 of the Penal Code*, is liable for each and every
14 offense for the actual damages suffered by any person denied that
15 right *or harmed by that violation* and, in addition, the following:
16 (1) An amount to be determined by a jury, or a court sitting
17 without a jury, for exemplary damages.
18 (2) A civil penalty of twenty-five thousand dollars (\$25,000)
19 to be awarded to the person denied the right provided by Section
20 51.7 *or harmed by a violation of Section 236.1 of the Penal Code*
21 in any action brought by the person denied the ~~right~~, *right or*
22 *harmed by the violation*, or by the Attorney General, a district
23 attorney, or a city attorney. An action for that penalty brought
24 pursuant to Section 51.7 shall be commenced within three years
25 of the alleged practice.
26 (3) Attorney’s fees as may be determined by the court.
27 (c) Whenever there is reasonable cause to believe that any person
28 or group of persons is engaged in *harmful conduct, or* conduct of
29 resistance to the full enjoyment of any of the ~~rights~~ *rights*,
30 described in this section, and that conduct is of that nature and is
31 intended to *cause that harm or* deny the full exercise of those
32 rights, the Attorney General, any district attorney or city attorney,
33 or any person aggrieved by the conduct may bring a civil action
34 in the appropriate court by filing with it a complaint. The complaint
35 shall contain the following:

1 (1) The signature of the officer, or, in his or her absence, the
2 individual acting on behalf of the officer, or the signature of the
3 person aggrieved.

4 (2) The facts pertaining to the conduct.

5 (3) A request for preventive relief, including an application for
6 a permanent or temporary injunction, restraining order, or other
7 order against the person or persons responsible for the conduct, as
8 the complainant deems necessary to *prevent the harm*, or ensure
9 the full enjoyment of the ~~rights~~ *rights*, described in this section.

10 (d) Whenever an action has been commenced in any court
11 seeking relief from the denial of equal protection of the laws under
12 the Fourteenth Amendment to the Constitution of the United States
13 on account of race, color, religion, sex, national origin, or disability,
14 the Attorney General or any district attorney or city attorney for
15 or in the name of the people of the State of California may
16 intervene in the action upon timely application if the Attorney
17 General or any district attorney or city attorney certifies that the
18 case is of general public importance. In that action, the people of
19 the State of California shall be entitled to the same relief as if it
20 had instituted the action.

21 (e) Actions brought pursuant to this section are independent of
22 any other actions, remedies, or procedures that may be available
23 to an aggrieved party pursuant to any other law.

24 (f) Any person claiming to be aggrieved by an alleged unlawful
25 practice in violation of Section 51 or 51.7 may also file a verified
26 complaint with the Department of Fair Employment and Housing
27 pursuant to Section 12948 of the Government Code.

28 (g) This section does not require any construction, alteration,
29 repair, structural or otherwise, or modification of any sort
30 whatsoever, beyond that construction, alteration, repair, or
31 modification that is otherwise required by other provisions of law,
32 to any new or existing establishment, facility, building,
33 improvement, or any other structure, nor does this section augment,
34 restrict, or alter in any way the authority of the State Architect to
35 require construction, alteration, repair, or modifications that the
36 State Architect otherwise possesses pursuant to other laws.

37 (h) For the purposes of this section, “actual damages” means
38 special and general damages. This subdivision is declaratory of
39 existing law.

1 (i) Subdivisions (b) to (f), inclusive, shall not be waived by
2 contract except as provided in Section 51.7.

3 SEC. 2. Section 12930 of the Government Code is amended
4 to read:

5 12930. The department shall have the following functions,
6 powers, and duties:

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

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

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

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

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

22 (f) (1) To receive, investigate, conciliate, mediate, and prosecute
23 complaints alleging practices made unlawful pursuant to Chapter
24 6 (commencing with Section 12940).

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

30 (3) *To receive, investigate, conciliate, mediate, and prosecute*
31 *complaints alleging, and to bring civil actions pursuant to Section*
32 *52.5 of the Civil Code for, a violation of Section 236.1 of the Penal*
33 *Code. Damages awarded in any action brought by the department*
34 *pursuant to Section 52.5 of the Civil Code shall be awarded to the*
35 *person harmed by the violation of Section 236.1 of the Penal Code.*
36 *Costs and attorney's fees awarded in any action brought by the*
37 *department pursuant to Section 52.5 of the Civil Code shall be*
38 *awarded to the department. The remedies and procedures of this*
39 *part shall be independent of any other remedy or procedure that*
40 *might apply.*

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

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

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

9 (3) To issue written interrogatories.

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

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

16 (h) To bring civil actions pursuant to Section 12965 or 12981
17 and to prosecute those civil actions before state and federal trial
18 courts.

19 (i) To issue those publications and those results of investigations
20 and research as in its judgment will tend to promote good will and
21 minimize or eliminate discrimination in employment on the bases
22 enumerated in this part and discrimination in housing because of
23 race, religious creed, color, sex, gender, gender identity, gender
24 expression, marital status, national origin, ancestry, familial status,
25 disability, genetic information, or sexual orientation.

26 (j) To investigate, approve, certify, decertify, monitor, and
27 enforce nondiscrimination programs proposed by a contractor to
28 be engaged in pursuant to Section 12990.

29 (k) To render annually to the Governor and to the Legislature
30 a written report of its activities and of its recommendations.

31 (l) To conduct mediations at any time after a complaint is filed
32 pursuant to Section 12960, 12961, or 12980. The department may
33 end mediation at any time.

34 (m) The following shall apply with respect to any accusation
35 pending before the former Fair Employment and Housing
36 Commission on or after January 1, 2013:

37 (1) If an accusation issued under former Section 12965 includes
38 a prayer either for damages for emotional injuries as a component
39 of actual damages, or for administrative fines, or both, or if an
40 accusation is amended for the purpose of adding a prayer either

1 for damages for emotional injuries as a component of actual
2 damages, or for administrative fines, or both, with the consent of
3 the party accused of engaging in unlawful practices, the department
4 may withdraw an accusation and bring a civil action in superior
5 court.

6 (2) If an accusation was issued under former Section 12981,
7 with the consent of the aggrieved party filing the complaint an
8 aggrieved person on whose behalf a complaint is filed, or the party
9 accused of engaging in unlawful practices, the department may
10 withdraw the accusation and bring a civil action in superior court.

11 (3) Where removal to court is not feasible, the department shall
12 retain the services of the Office of Administrative Hearings to
13 adjudicate the administrative action pursuant to Sections 11370.3
14 and 11502.

15 (n) On any Section 1094.5 Code of Civil Procedure challenge
16 to a decision of the former Fair Employment and Housing
17 Commission pending on or after January 1, 2013, the director or
18 his or her designee shall consult with the Attorney General
19 regarding the defense of that writ petition.