

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2667**

---

---

**Introduced by Assembly Member Thurmond**

February 19, 2016

---

---

~~An act to amend Section 1294 of the Code of Civil Procedure, relating to civil procedure. An act to amend Section 51 of the Civil Code, relating to civil rights.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2667, as amended, Thurmond. ~~Civil procedure: appeals. Civil rights: Unruh Civil Rights Act: waivers.~~

*The Unruh Civil Rights Act provides that all persons within the jurisdiction of this state are entitled to full and equal accommodations in all business establishments regardless of their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status.*

*This bill would require a waiver of a legal right, penalty, remedy, forum, or procedure for a violation of the Unruh Civil Rights Act, including the right to file and pursue a civil action or complaint with, or otherwise notify, the Attorney General or any other public prosecutor, or law enforcement agency, the Department of Fair Employment and Housing, or any other governmental entity, to be knowing and voluntary, in writing, and expressly not made as a condition of entering into a contract for goods or services or as a condition of providing or receiving goods and services. The bill, among other things, would require a person who seeks to enforce a waiver of any legal right, penalty, remedy, forum, or procedure for a violation of the act to have the burden of proving*

that the waiver was knowing and voluntary and not made as a condition of the contract or of providing or receiving the goods or services. The bill would provide that, with certain exceptions, it applies to any agreement to waive a legal right, penalty, remedy, forum, or procedure for a violation of the act, including an agreement to accept private arbitration, entered into, altered, modified, renewed, or extended on or after January 1, 2017.

The bill also would make findings and declarations.

~~Existing law specifies those types of orders and judgments from which an appeal may be taken in arbitration proceedings.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

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. (a) The Legislature finds and declares that it is  
2 the policy of the State of California to ensure that all persons have  
3 the full benefit of the rights, penalties, remedies, forums, and  
4 procedures established by the Unruh Civil Rights Act and that  
5 individuals shall not be deprived of those rights, penalties,  
6 remedies, forums, or procedures through the use of involuntary  
7 or coerced waivers.

8 (b) It is the purpose of this act to ensure that a contract to waive  
9 any of the rights, penalties, remedies, forums, or procedures under  
10 the Unruh Civil Rights Act, including any provision that has the  
11 effect of limiting the full application or enforcement of any right,  
12 remedy, forum, or procedure available under the Unruh Civil  
13 Rights Act, is a matter of voluntary consent, not coercion.

14 SEC. 2. Section 51 of the Civil Code is amended to read:

15 51. (a) This section shall be known, and may be cited, as the  
16 Unruh Civil Rights Act.

17 (b) All persons within the jurisdiction of this state are free and  
18 equal, and no matter what their sex, race, color, religion, ancestry,  
19 national origin, disability, medical condition, genetic information,  
20 marital status, sexual orientation, citizenship, primary language,  
21 or immigration status are entitled to the full and equal  
22 accommodations, advantages, facilities, privileges, or services in  
23 all business establishments of every kind whatsoever.

1 (c) This section shall not be construed to confer any right or  
2 privilege on a person that is conditioned or limited by law or that  
3 is applicable alike to persons of every sex, color, race, religion,  
4 ancestry, national origin, disability, medical condition, marital  
5 status, sexual orientation, citizenship, primary language, or  
6 immigration status, or to persons regardless of their genetic  
7 information.

8 (d) Nothing in this section shall be construed to require any  
9 construction, alteration, repair, structural or otherwise, or  
10 modification of any sort whatsoever, beyond that construction,  
11 alteration, repair, or modification that is otherwise required by  
12 other provisions of law, to any new or existing establishment,  
13 facility, building, improvement, or any other structure, nor shall  
14 anything in this section be construed to augment, restrict, or alter  
15 in any way the authority of the State Architect to require  
16 construction, alteration, repair, or modifications that the State  
17 Architect otherwise possesses pursuant to other laws.

18 (e) For purposes of this section:

19 (1) "Disability" means any mental or physical disability as  
20 defined in Sections 12926 and 12926.1 of the Government Code.

21 (2) (A) "Genetic information" means, with respect to any  
22 individual, information about any of the following:

23 (i) The individual's genetic tests.

24 (ii) The genetic tests of family members of the individual.

25 (iii) The manifestation of a disease or disorder in family  
26 members of the individual.

27 (B) "Genetic information" includes any request for, or receipt  
28 of, genetic services, or participation in clinical research that  
29 includes genetic services, by an individual or any family member  
30 of the individual.

31 (C) "Genetic information" does not include information about  
32 the sex or age of any individual.

33 (3) "Medical condition" has the same meaning as defined in  
34 subdivision (i) of Section 12926 of the Government Code.

35 (4) "Religion" includes all aspects of religious belief,  
36 observance, and practice.

37 (5) "Sex" includes, but is not limited to, pregnancy, childbirth,  
38 or medical conditions related to pregnancy or childbirth. "Sex"  
39 also includes, but is not limited to, a person's gender. "Gender"  
40 means sex, and includes a person's gender identity and gender

1 expression. “Gender expression” means a person’s gender-related  
2 appearance and behavior whether or not stereotypically associated  
3 with the person’s assigned sex at birth.

4 (6) “Sex, race, color, religion, ancestry, national origin,  
5 disability, medical condition, genetic information, marital status,  
6 sexual orientation, citizenship, primary language, or immigration  
7 status” includes a perception that the person has any particular  
8 characteristic or characteristics within the listed categories or that  
9 the person is associated with a person who has, or is perceived to  
10 have, any particular characteristic or characteristics within the  
11 listed categories.

12 (7) “Sexual orientation” has the same meaning as defined in  
13 subdivision (s) of Section 12926 of the Government Code.

14 (f) A violation of the right of any individual under the federal  
15 Americans with Disabilities Act of 1990 (Public Law 101-336)  
16 shall also constitute a violation of this section.

17 (g) Verification of immigration status and any discrimination  
18 based upon verified immigration status, where required by federal  
19 law, shall not constitute a violation of this section.

20 (h) Nothing in this section shall be construed to require the  
21 provision of services or documents in a language other than  
22 English, beyond that which is otherwise required by other  
23 provisions of federal, state, or local law, including Section 1632.

24 (i) (1) *A person shall not require another person to waive any  
25 legal right, penalty, remedy, forum, or procedure for a violation  
26 of this section, as a condition of entering into a contract for goods  
27 or services, including the right to file and pursue a civil action or  
28 complaint with, or otherwise notify, the Attorney General or any  
29 other public prosecutor, or law enforcement agency, the  
30 Department of Fair Employment and Housing, or any court or  
31 other governmental entity.*

32 (2) *A person shall not refuse to enter into a contract with, or  
33 refuse to provide goods or services to, another person on the basis  
34 that the other person refuses to waive any legal right, penalty,  
35 remedy, forum, or procedure for a violation of this section,  
36 including the right to file and pursue a civil action or complaint  
37 with, or otherwise notify, the Attorney General or any other public  
38 prosecutor, or law enforcement agency, the Department of Fair  
39 Employment and Housing, or any other governmental entity.*

1 (3) Any waiver of any legal right, penalty, remedy, forum, or  
2 procedure for a violation of this section, including the right to file  
3 and pursue a civil action or complaint with, or otherwise notify,  
4 the Attorney General or any other public prosecutor, or law  
5 enforcement agency, the Department of Fair Employment and  
6 Housing, or any other governmental entity shall be knowing and  
7 voluntary, and in writing, and expressly not made as a condition  
8 of entering into a contract for goods or services or as a condition  
9 of providing or receiving goods and services. This paragraph shall  
10 not affect any legal right, penalty, forum, or procedure for which  
11 state or federal law prohibits waiver.

12 (4) Any waiver of any legal right, penalty, remedy, forum, or  
13 procedure for a violation of this section that is required as a  
14 condition of entering into a contract for goods or services shall  
15 be deemed involuntary, unconscionable, against public policy,  
16 and unenforceable. Nothing in this subdivision shall affect the  
17 enforceability or validity of any other provision of the contract.

18 (5) Any person who seeks to enforce a waiver of any legal right,  
19 penalty, remedy, forum, or procedure for a violation of this section  
20 shall have the burden of proving that the waiver was knowing and  
21 voluntary and not made as a condition of the contract or of  
22 providing or receiving the goods or services.

23 (6) This subdivision shall apply to any agreement to waive any  
24 legal right, penalty, remedy, forum, or procedure for a violation  
25 of this section, including an agreement to accept private  
26 arbitration, entered into, altered, modified, renewed, or extended  
27 on or after January 1, 2017.

28 (7) In addition to injunctive relief and any other remedies  
29 available, a court may award a plaintiff enforcing his or her rights  
30 under this section reasonable attorney's fees.

31 (8) The provisions of this subdivision are severable. If any  
32 provision of this section or its application is held invalid, that  
33 invalidity shall not affect other provisions or applications that can  
34 be given effect without the invalid provision or application.

35 ~~SECTION 1. Section 1294 of the Code of Civil Procedure is~~  
36 ~~amended to read:~~

37 ~~1294. An aggrieved party may appeal from any of the~~  
38 ~~following:~~

39 ~~(a) An order dismissing or denying a petition to compel~~  
40 ~~arbitration.~~

- 1     ~~(b) An order dismissing a petition to confirm, correct, or vacate~~
- 2     ~~an award.~~
- 3     ~~(c) An order vacating an award unless a rehearing in arbitration~~
- 4     ~~is ordered.~~
- 5     ~~(d) A judgment entered pursuant to this title.~~
- 6     ~~(e) A special order after final judgment.~~