

AMENDED IN SENATE AUGUST 4, 2016

AMENDED IN ASSEMBLY APRIL 26, 2016

AMENDED IN ASSEMBLY APRIL 11, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2707

**Introduced by Assembly Member Ridley-Thomas
(Coauthor: Assembly Member Wilk)**

February 19, 2016

An act to add Section 51.14 to the Civil Code, and to amend Section 12930 of the Government Code, relating to civil rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 2707, as amended, Ridley-Thomas. Stop Consumer Racial Profiling Act of 2016.

Existing law, the Unruh Civil Rights Act, states that all persons within this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments. Under existing law, the Department of Fair Employment and Housing is responsible for receiving, investigating, conciliating, mediating, and prosecuting complaints alleging a violation of the act.

This bill would enact the Stop Consumer Racial Profiling Act of 2016, which would prohibit a business establishment from using consumer racial profiling, as defined. The bill would also make the Department

of Fair Employment and Housing responsible for the enforcement of the act.

This bill would incorporate additional changes to Section 12930 of the Government Code, proposed by SB 1442, to be operative only if SB 1442 and this bill are both chaptered and become effective on or before January 1, 2017, and this bill is chaptered last.

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 51.14 is added to the Civil Code, to read:
2 51.14. (a) This act shall be known, and may be cited, as the
3 Stop Consumer Racial Profiling Act of 2016.

4 (b) No business establishment shall use consumer racial
5 profiling.

6 (c) For purposes of this section, “consumer racial profiling”
7 shall mean the profiling or targeting of a person that results in
8 differential treatment based on his or her race or ethnicity and that
9 constitutes a denial or degradation in the product or service offered
10 to customers. “Consumer racial profiling” includes, but is not
11 limited to, refusal to serve, removal from the business
12 establishment premises, segregated seating, requiring additional
13 forms of identification, and surveillance practices based on race
14 or ethnicity.

15 ~~SEC. 2.—Section 12930 of the Government Code is amended~~
16 ~~to read:~~

17 ~~12930.—The department shall have the following functions,~~
18 ~~powers, and duties:~~

19 ~~(a) To establish and maintain a principal office and any other~~
20 ~~offices within the state as are necessary to carry out the purposes~~
21 ~~of this part.~~

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

23 ~~(c) To appoint attorneys, investigators, conciliators, mediators,~~
24 ~~and other employees as it may deem necessary, fix their~~
25 ~~compensation within the limitations provided by law, and prescribe~~
26 ~~their duties.~~

27 ~~(d) To obtain upon request and utilize the services of all~~
28 ~~governmental departments and agencies and, in addition, with~~
29 ~~respect to housing discrimination, of conciliation councils.~~

1 ~~(e) To adopt, promulgate, amend, and rescind suitable procedural~~
2 ~~rules and regulations to carry out the investigation, prosecution,~~
3 ~~and dispute resolution functions and duties of the department~~
4 ~~pursuant to this part.~~

5 ~~(f) (1) To receive, investigate, conciliate, mediate, and prosecute~~
6 ~~complaints alleging practices made unlawful pursuant to Chapter~~
7 ~~6 (commencing with Section 12940).~~

8 ~~(2) To receive, investigate, conciliate, mediate, and prosecute~~
9 ~~complaints alleging a violation of Section 51, 51.5, 51.7, 51.14,~~
10 ~~54, 54.1, or 54.2 of the Civil Code. The remedies and procedures~~
11 ~~of this part shall be independent of any other remedy or procedure~~
12 ~~that might apply.~~

13 ~~(g) In connection with any matter under investigation or in~~
14 ~~question before the department pursuant to a complaint filed under~~
15 ~~Section 12960, 12961, or 12980:~~

16 ~~(1) To issue subpoenas to require the attendance and testimony~~
17 ~~of witnesses and the production of books, records, documents, and~~
18 ~~physical materials.~~

19 ~~(2) To administer oaths, examine witnesses under oath and take~~
20 ~~evidence, and take depositions and affidavits.~~

21 ~~(3) To issue written interrogatories.~~

22 ~~(4) To request the production for inspection and copying of~~
23 ~~books, records, documents, and physical materials.~~

24 ~~(5) To petition the superior courts to compel the appearance~~
25 ~~and testimony of witnesses, the production of books, records,~~
26 ~~documents, and physical materials, and the answering of~~
27 ~~interrogatories.~~

28 ~~(h) To bring civil actions pursuant to Section 12965 or 12981~~
29 ~~and to prosecute those civil actions before state and federal trial~~
30 ~~courts.~~

31 ~~(i) To issue those publications and those results of investigations~~
32 ~~and research as in its judgment will tend to promote good will and~~
33 ~~minimize or eliminate discrimination in employment on the bases~~
34 ~~enumerated in this part and discrimination in housing because of~~
35 ~~race, religious creed, color, sex, gender, gender identity, gender~~
36 ~~expression, marital status, national origin, ancestry, familial status,~~
37 ~~disability, genetic information, or sexual orientation.~~

38 ~~(j) To investigate, approve, certify, decertify, monitor, and~~
39 ~~enforce nondiscrimination programs proposed by a contractor to~~
40 ~~be engaged in pursuant to Section 12990.~~

1 ~~(k) To render annually to the Governor and to the Legislature~~
2 ~~a written report of its activities and of its recommendations.~~

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

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

9 ~~(1) If an accusation issued under former Section 12965 includes~~
10 ~~a prayer either for damages for emotional injuries as a component~~
11 ~~of actual damages, or for administrative fines, or both, or if an~~
12 ~~accusation is amended for the purpose of adding a prayer either~~
13 ~~for damages for emotional injuries as a component of actual~~
14 ~~damages, or for administrative fines, or both, with the consent of~~
15 ~~the party accused of engaging in unlawful practices, the department~~
16 ~~may withdraw an accusation and bring a civil action in superior~~
17 ~~court.~~

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

23 ~~(3) Where removal to court is not feasible, the department shall~~
24 ~~retain the services of the Office of Administrative Hearings to~~
25 ~~adjudicate the administrative action pursuant to Sections 11370.3~~
26 ~~and 11502.~~

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

32 *SEC. 2. Section 12930 of the Government Code, as amended*
33 *by Chapter 63 of the Statutes of 2016, is amended to read:*

34 12930. The department shall have the following functions,
35 powers, and duties:

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

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

1 (c) To appoint attorneys, investigators, conciliators, mediators,
2 and other employees as it may deem necessary, fix their
3 compensation within the limitations provided by law, and prescribe
4 their duties.

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

8 (e) To adopt, promulgate, amend, and rescind suitable procedural
9 rules and regulations to carry out the investigation, prosecution,
10 and dispute resolution functions and duties of the department
11 pursuant to this part.

12 (f) (1) To receive, investigate, conciliate, mediate, and prosecute
13 complaints alleging practices made unlawful pursuant to Chapter
14 6 (commencing with Section 12940).

15 (2) To receive, investigate, conciliate, mediate, and prosecute
16 complaints alleging a violation of Section 51, 51.5, 51.7, *51.14*,
17 54, 54.1, or 54.2 of the Civil Code. The remedies and procedures
18 of this part shall be independent of any other remedy or procedure
19 that might apply.

20 (3) To receive, investigate, conciliate, mediate, and prosecute
21 complaints alleging, and to bring civil actions pursuant to Section
22 52.5 of the Civil Code for, a violation of Section 236.1 of the Penal
23 Code. Damages awarded in any action brought by the department
24 pursuant to Section 52.5 of the Civil Code shall be awarded to the
25 person harmed by the violation of Section 236.1 of the Penal Code.
26 Costs and attorney's fees awarded in any action brought by the
27 department pursuant to Section 52.5 of the Civil Code shall be
28 awarded to the department. The remedies and procedures of this
29 part shall be independent of any other remedy or procedure that
30 might apply.

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

34 (1) To issue subpoenas to require the attendance and testimony
35 of witnesses and the production of books, records, documents, and
36 physical materials.

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

39 (3) To issue written interrogatories.

- 1 (4) To request the production for inspection and copying of
2 books, records, documents, and physical materials.
- 3 (5) To petition the superior courts to compel the appearance
4 and testimony of witnesses, the production of books, records,
5 documents, and physical materials, and the answering of
6 interrogatories.
- 7 (h) To bring civil actions pursuant to Section 12965 or 12981
8 and to prosecute those civil actions before state and federal trial
9 courts.
- 10 (i) To issue those publications and those results of investigations
11 and research as in its judgment will tend to promote good will and
12 minimize or eliminate discrimination in employment on the bases
13 enumerated in this part and discrimination in housing because of
14 race, religious creed, color, sex, gender, gender identity, gender
15 expression, marital status, national origin, ancestry, familial status,
16 disability, genetic information, or sexual orientation.
- 17 (j) To investigate, approve, certify, decertify, monitor, and
18 enforce nondiscrimination programs proposed by a contractor to
19 be engaged in pursuant to Section 12990.
- 20 (k) To render annually to the Governor and to the Legislature
21 a written report of its activities and of its recommendations.
- 22 (l) To conduct mediations at any time after a complaint is filed
23 pursuant to Section 12960, 12961, or 12980. The department may
24 end mediation at any time.
- 25 (m) The following shall apply with respect to any accusation
26 pending before the former Fair Employment and Housing
27 Commission on or after January 1, 2013:
 - 28 (1) If an accusation issued under former Section 12965 includes
29 a prayer either for damages for emotional injuries as a component
30 of actual damages, or for administrative fines, or both, or if an
31 accusation is amended for the purpose of adding a prayer either
32 for damages for emotional injuries as a component of actual
33 damages, or for administrative fines, or both, with the consent of
34 the party accused of engaging in unlawful practices, the department
35 may withdraw an accusation and bring a civil action in superior
36 court.
 - 37 (2) If an accusation was issued under former Section 12981,
38 with the consent of the aggrieved party filing the complaint an
39 aggrieved person on whose behalf a complaint is filed, or the party

1 accused of engaging in unlawful practices, the department may
2 withdraw the accusation and bring a civil action in superior court.

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

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

12 *SEC. 2.5. Section 12930 of the Government Code, as amended*
13 *by Chapter 63 of the Statutes of 2016, is amended to read:*

14 12930. The department shall have the following functions,
15 powers, and duties:

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

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

20 (c) To appoint attorneys, investigators, conciliators, mediators,
21 and other employees as it may deem necessary, fix their
22 compensation within the limitations provided by law, and prescribe
23 their duties.

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

27 (e) To adopt, promulgate, amend, and rescind suitable procedural
28 rules and regulations to carry out the investigation, prosecution,
29 and dispute resolution functions and duties of the department
30 pursuant to this part.

31 (f) (1) To receive, investigate, conciliate, mediate, and prosecute
32 complaints alleging practices made unlawful pursuant to Chapter
33 6 (commencing with Section 12940).

34 (2) To receive, investigate, conciliate, mediate, and prosecute
35 complaints alleging a violation of Section 51, 51.5, 51.7, 51.14,
36 54, 54.1, or 54.2 of the Civil Code. The remedies and procedures
37 of this part shall be independent of any other remedy or procedure
38 that might apply.

39 (3) To receive, investigate, conciliate, mediate, and prosecute
40 complaints alleging, and to bring civil actions pursuant to Section

1 52.5 of the Civil Code for, a violation of Section 236.1 of the Penal
2 Code. Damages awarded in any action brought by the department
3 pursuant to Section 52.5 of the Civil Code shall be awarded to the
4 person harmed by the violation of Section 236.1 of the Penal Code.
5 Costs and attorney's fees awarded in any action brought by the
6 department pursuant to Section 52.5 of the Civil Code shall be
7 awarded to the department. The remedies and procedures of this
8 part shall be independent of any other remedy or procedure that
9 might apply.

10 *(4) To receive, investigate, conciliate, mediate, and prosecute*
11 *complaints alleging practices made unlawful pursuant to Article*
12 *9.5 (commencing with Section 11135) of Chapter 1 of Part 1,*
13 *except for complaints relating to educational equity brought under*
14 *Chapter 2 (commencing with Section 200) of Part 1 of Division 1*
15 *of Title 1 of the Education Code and investigated pursuant to the*
16 *procedures set forth in Subchapter 5.1 of Title 5 of the California*
17 *Code of Regulations, and not otherwise within the jurisdiction of*
18 *the department.*

19 *(A) Nothing in this part prevents the director or his or her*
20 *authorized representative, in his or her discretion, from making,*
21 *signing, and filing a complaint pursuant to Section 12960 or 12961*
22 *alleging practices made unlawful under Section 11135.*

23 *(B) Remedies available to the department in conciliating,*
24 *mediating, and prosecuting complaints alleging these practices*
25 *are the same as those available to the department in conciliating,*
26 *mediating, and prosecuting complaints alleging violations of*
27 *Article 1 (commencing with Section 12940) of Chapter 6.*

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

31 (1) To issue subpoenas to require the attendance and testimony
32 of witnesses and the production of books, records, documents, and
33 physical materials.

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

36 (3) To issue written interrogatories.

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

39 (5) To petition the superior courts to compel the appearance
40 and testimony of witnesses, the production of books, records,

1 documents, and physical materials, and the answering of
2 interrogatories.

3 (h) To bring civil actions pursuant to Section 12965 or 12981
4 and to prosecute those civil actions before state and federal trial
5 courts.

6 (i) To issue those publications and those results of investigations
7 and research as in its judgment will tend to promote good will and
8 minimize or eliminate discrimination in employment on the bases
9 enumerated in this part and discrimination in housing because of
10 race, religious creed, color, sex, gender, gender identity, gender
11 expression, marital status, national origin, ancestry, familial status,
12 disability, genetic information, or sexual orientation.

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

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

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

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

24 (1) If an accusation issued under former Section 12965 includes
25 a prayer either for damages for emotional injuries as a component
26 of actual damages, or for administrative fines, or both, or if an
27 accusation is amended for the purpose of adding a prayer either
28 for damages for emotional injuries as a component of actual
29 damages, or for administrative fines, or both, with the consent of
30 the party accused of engaging in unlawful practices, the department
31 may withdraw an accusation and bring a civil action in superior
32 court.

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

38 (3) Where removal to court is not feasible, the department shall
39 retain the services of the Office of Administrative Hearings to

1 adjudicate the administrative action pursuant to Sections 11370.3
2 and 11502.

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

8 *SEC. 3. Section 2.5 of this bill incorporates amendments to*
9 *Section 12930 of the Government Code proposed by both this bill*
10 *and SB 1442. It shall only become operative if (1) both bills are*
11 *enacted and become effective on or before January 1, 2017, (2)*
12 *each bill amends Section 12930 of the Government Code, and (3)*
13 *this bill is enacted after SB 1442, in which case Section 2 of this*
14 *bill shall not become operative.*

O