

AMENDED IN ASSEMBLY APRIL 22, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1680

Introduced by Assembly Member Saldana
(Coauthors: Assembly Members Ammiano, Blumenfield, Brownley,
Jones, Lieu, Nava, John A. Perez, and Skinner, and Torrico)
(Coauthors: Senators Hancock, Leno, and Pavley)

January 25, 2010

An act to amend Sections 51.7, 52, and 52.1 of the Civil Code, relating to civil rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 1680, as amended, Saldana. ~~Unruh Civil Rights Act: Civil rights:~~ *Civil rights:* waiver of rights.

~~The Unruh Civil Rights Act generally prohibits business establishments from discriminating on the basis of sex, race, color, religion, ancestry, national origin, disability, or medical condition. The Unruh Civil Rights Act provides civil remedies for violations of its provisions. Existing law provides~~ *Existing civil rights provisions provide* that all persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of political affiliation, or on account of ~~any of those characteristics, or position in a labor dispute, or sex, race, color, religion, ancestry, national origin, disability, or medical condition, or because another person perceives them to have one or more of those characteristics. Those civil rights provisions provide civil remedies for violations of their provisions.~~

This bill would prohibit a person from requiring a waiver of the protections afforded under ~~this act~~ *those provisions* as a condition of entering into a contract for the provision of goods or services, 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 court or other governmental entity. This bill would require any waiver of the protections afforded under ~~the act~~ *those provisions* to be knowing and voluntary, and in writing, and expressly not made as a condition of entering into the contract or as a condition of providing or receiving goods or services. This bill would provide that any person seeking the enforcement of a waiver of the protections afforded under ~~the act~~ *those civil rights provisions* shall 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. ~~These~~ *The bill's* provisions would apply to contracts entered into, removed, altered, modified, or extended on and after January 1, 2011.

This bill would include legislative findings and declarations with respect to the public policy underlying its 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 Ralph Civil Rights Act and the Bane
- 5 Civil Rights Act, and that individuals shall not be deprived of those
- 6 rights, penalties, remedies, forums, or procedures through the use
- 7 of involuntary 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 Ralph Civil Rights Act or the Bane Civil Rights Act, including
- 11 any provision that has the effect of limiting the full application or
- 12 enforcement of any right, remedy, forum, or procedure available
- 13 under the Ralph Civil Rights Act or the Bane Civil Rights Act, is
- 14 a matter of voluntary consent, not coercion.
- 15 SEC. 2. Section 51.7 of the Civil Code is amended to read:

51.7. (a) All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of political affiliation, or on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51, or position in a labor dispute, or because another person perceives them to have one or more of those characteristics. The identification in this subdivision of particular bases of discrimination is illustrative rather than restrictive.

(b) (1) No person shall require another person to waive any legal right, penalty, remedy, forum, or procedure for a violation of this section, as a condition of entering into a contract for goods or services, 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 court or other governmental entity.

(2) No person shall refuse to enter into a contract with, or refuse to provide goods or services to, another person on the basis that the other person refuses to waive any legal right, penalty, remedy, forum, or procedure for ~~any~~ a violation of this section, 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.

(3) Any waiver of any legal right, penalty, remedy, forum, or procedure for a violation of this section, 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 shall be knowing and voluntary, and 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.

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

(5) Any person who seeks to enforce a waiver of any *legal* right, penalty, remedy, forum, or procedure for a violation of this section shall 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.

(6) The exercise of a person's right to refuse to waive any legal right, penalty, remedy, forum, or procedure for a violation of this section, including a rejection of a contract requiring a waiver, shall not affect any otherwise legal terms of a contract or an agreement.

(7) This subdivision shall not apply to any agreement to waive any legal rights, penalties, remedies, forums, or procedures for a violation of this section after a legal claim has arisen.

(8) This subdivision shall apply to any agreement to waive any legal right, penalty, remedy, forum, or procedure for a violation of this section, including an agreement to accept private arbitration, entered into, altered, modified, renewed, or extended on or after January 1, 2011.

(c) This section does not apply to statements concerning positions in a labor dispute that are made during otherwise lawful labor picketing.

SEC. 3. Section 52 of the Civil Code is amended to read:

52. (a) Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000), and any attorney's fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51, 51.5, or 51.6.

(b) Whoever denies the right provided by Section 51.7 or 51.9, or aids, incites, or conspires in that denial, is liable for each and every offense for the actual damages suffered by any person denied that right and, in addition, the following:

(1) An amount to be determined by a jury, or a court sitting without a jury, for exemplary damages.

(2) A civil penalty of twenty-five thousand dollars (\$25,000) to be awarded to the person denied the right provided by Section 51.7 in any action brought by the person denied the right, or by the Attorney General, a district attorney, or a city attorney. An

1 action for that penalty brought pursuant to Section 51.7 shall be
2 commenced within three years of the alleged practice.

3 (3) Attorney's fees as may be determined by the court.

4 (c) Whenever there is reasonable cause to believe that any person
5 or group of persons is engaged in conduct of resistance to the full
6 enjoyment of any of the rights described in this section, and that
7 conduct is of that nature and is intended to deny the full exercise
8 of those rights, the Attorney General, any district attorney or city
9 attorney, or any person aggrieved by the conduct may bring a civil
10 action in the appropriate court by filing with it a complaint. The
11 complaint shall contain the following:

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

15 (2) The facts pertaining to the conduct.

16 (3) A request for preventive relief, including an application for
17 a permanent or temporary injunction, restraining order, or other
18 order against the person or persons responsible for the conduct, as
19 the complainant deems necessary to ensure the full enjoyment of
20 the rights described in this section.

21 (d) Whenever an action has been commenced in any court
22 seeking relief from the denial of equal protection of the laws under
23 the Fourteenth Amendment to the Constitution of the United States
24 on account of race, color, religion, sex, national origin, or disability,
25 the Attorney General or any district attorney or city attorney for
26 or in the name of the people of the State of California may
27 intervene in the action upon timely application if the Attorney
28 General or any district attorney or city attorney certifies that the
29 case is of general public importance. In that action, the people of
30 the State of California shall be entitled to the same relief as if it
31 had instituted the action.

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

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

39 (g) This section does not require any construction, alteration,
40 repair, structural or otherwise, or modification of any sort

1 whatsoever, beyond that construction, alteration, repair, or
2 modification that is otherwise required by other provisions of law,
3 to any new or existing establishment, facility, building,
4 improvement, or any other structure, nor does this section augment,
5 restrict, or alter in any way the authority of the State Architect to
6 require construction, alteration, repair, or modifications that the
7 State Architect otherwise possesses pursuant to other laws.

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

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

13 SEC. 4. Section 52.1 of the Civil Code is amended to read:

14 52.1. (a) If a person or persons, whether or not acting under
15 color of law, interferes by threats, intimidation, or coercion, or
16 attempts to interfere by threats, intimidation, or coercion, with the
17 exercise or enjoyment by any individual or individuals of rights
18 secured by the Constitution or laws of the United States, or of the
19 rights secured by the Constitution or laws of this state, the Attorney
20 General, or any district attorney or city attorney may bring a civil
21 action for injunctive and other appropriate equitable relief in the
22 name of the people of the State of California, in order to protect
23 the peaceable exercise or enjoyment of the right or rights secured.
24 An action brought by the Attorney General, any district attorney,
25 or any city attorney may also seek a civil penalty of twenty-five
26 thousand dollars (\$25,000). If this civil penalty is requested, it
27 shall be assessed individually against each person who is
28 determined to have violated this section and the penalty shall be
29 awarded to each individual whose rights under this section are
30 determined to have been violated.

31 (b) Any individual whose exercise or enjoyment of rights
32 secured by the Constitution or laws of the United States, or of
33 rights secured by the Constitution or laws of this state, has been
34 interfered with, or attempted to be interfered with, as described in
35 subdivision (a), may institute and prosecute in his or her own name
36 and on his or her own behalf a civil action for damages, including,
37 but not limited to, damages under Section 52, injunctive relief,
38 and other appropriate equitable relief to protect the peaceable
39 exercise or enjoyment of the right or rights secured.

(c) An action brought pursuant to subdivision (a) or (b) may be filed either in the superior court for the county in which the conduct complained of occurred or in the superior court for the county in which a person whose conduct complained of resides or has his or her place of business. An action brought by the Attorney General pursuant to subdivision (a) also may be filed in the superior court for any county wherein the Attorney General has an office, and in that case, the jurisdiction of the court shall extend throughout the state.

(d) If a court issues a temporary restraining order or a preliminary or permanent injunction in an action brought pursuant to subdivision (a) or (b), ordering a defendant to refrain from conduct or activities, the order issued shall include the following statement: VIOLATION OF THIS ORDER IS A CRIME PUNISHABLE UNDER SECTION 422.77 OF THE PENAL CODE.

(e) The court shall order the plaintiff or the attorney for the plaintiff to deliver, or the clerk of the court to mail, two copies of any order, extension, modification, or termination thereof granted pursuant to this section, by the close of the business day on which the order, extension, modification, or termination was granted, to each local law enforcement agency having jurisdiction over the residence of the plaintiff and any other locations where the court determines that acts of violence against the plaintiff are likely to occur. Those local law enforcement agencies shall be designated by the plaintiff or the attorney for the plaintiff. Each appropriate law enforcement agency receiving any order, extension, or modification of any order issued pursuant to this section shall serve forthwith one copy thereof upon the defendant. Each appropriate law enforcement agency shall provide to any law enforcement officer responding to the scene of reported violence, information as to the existence of, terms, and current status of, any order issued pursuant to this section.

(f) A court shall not have jurisdiction to issue an order or injunction under this section, if that order or injunction would be prohibited under Section 527.3 of the Code of Civil Procedure.

(g) An action brought pursuant to this section is independent of any other action, remedy, or procedure that may be available to an aggrieved individual under any other provision of law,

1 including, but not limited to, an action, remedy, or procedure
2 brought pursuant to Section 51.7.

3 (h) In addition to any damages, injunction, or other equitable
4 relief awarded in an action brought pursuant to subdivision (b),
5 the court may award the petitioner or plaintiff reasonable attorney's
6 fees.

7 (i) A violation of an order described in subdivision (d) may be
8 punished either by prosecution under Section 422.77 of the Penal
9 Code, or by a proceeding for contempt brought pursuant to Title
10 5 (commencing with Section 1209) of Part 3 of the Code of Civil
11 Procedure. However, in any proceeding pursuant to the Code of
12 Civil Procedure, if it is determined that the person proceeded
13 against is guilty of the contempt charged, in addition to any other
14 relief, a fine may be imposed not exceeding one thousand dollars
15 (\$1,000), or the person may be ordered imprisoned in a county jail
16 not exceeding six months, or the court may order both the
17 imprisonment and fine.

18 (j) Speech alone is not sufficient to support an action brought
19 pursuant to subdivision (a) or (b), except upon a showing that the
20 speech itself threatens violence against a specific person or group
21 of persons; and the person or group of persons against whom the
22 threat is directed reasonably fears that, because of the speech,
23 violence will be committed against them or their property and that
24 the person threatening violence had the apparent ability to carry
25 out the threat.

26 (k) No order issued in any proceeding brought pursuant to
27 subdivision (a) or (b) shall restrict the content of any person's
28 speech. An order restricting the time, place, or manner of any
29 person's speech shall do so only to the extent reasonably necessary
30 to protect the peaceable exercise or enjoyment of constitutional or
31 statutory rights, consistent with the constitutional rights of the
32 person sought to be enjoined.

33 (l) The rights, penalties, remedies, forums, and procedures of
34 this section shall not be waived by contract except as provided in
35 Section 51.7.