

AMENDED IN SENATE AUGUST 19, 2010

AMENDED IN SENATE AUGUST 2, 2010

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 Saldaña
(Coauthors: Assembly Members Ammiano, Blumenfield, Brownley,
Jones, Lieu, Nava, John A. Pérez, 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, Saldaña. Civil rights: waiver of rights.

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 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 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 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 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. The bill's provisions would apply to contracts entered into, removed, altered, modified, or extended on and after January 1, 2011. This bill would provide that its provisions shall not be construed to negate other specified provisions.

This bill would include legislative findings and declarations with respect to the public policy underlying its provisions.

This bill would incorporate additional changes to Section 51.7 of the Civil Code as proposed by AB 2706, to be operative only if AB 2706 and this bill are both enacted and become effective on or before January 1, 2011, both bills amend those sections, and this bill is enacted after AB 2706 is enacted.

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

1 under the Ralph Civil Rights Act or the Bane Civil Rights Act, is
2 a matter of voluntary consent, not coercion.

3 SEC. 2. Section 51.7 of the Civil Code is amended to read:

4 51.7. (a) All persons within the jurisdiction of this state have
5 the right to be free from any violence, or intimidation by threat of
6 violence, committed against their persons or property because of
7 political affiliation, or on account of any characteristic listed or
8 defined in subdivision (b) or (e) of Section 51, or position in a
9 labor dispute, or because another person perceives them to have
10 one or more of those characteristics. The identification in this
11 subdivision of particular bases of discrimination is illustrative
12 rather than restrictive.

13 (b) (1) No person shall require another person to waive any
14 legal right, penalty, remedy, forum, or procedure for a violation
15 of this section, as a condition of entering into a contract for goods
16 or services, including the right to file and pursue a civil action or
17 complaint with, or otherwise notify, the Attorney General or any
18 other public prosecutor, or law enforcement agency, the
19 Department of Fair Employment and Housing, or any court or
20 other governmental entity.

21 (2) No person shall refuse to enter into a contract with, or refuse
22 to provide goods or services to, another person on the basis that
23 the other person refuses to waive any legal right, penalty, remedy,
24 forum, or procedure for a violation of this section, including the
25 right to file and pursue a civil action or complaint with, or
26 otherwise notify, the Attorney General or any other public
27 prosecutor, or law enforcement agency, the Department of Fair
28 Employment and Housing, or any other governmental entity.

29 (3) Any waiver of any legal right, penalty, remedy, forum, or
30 procedure for a violation of this section, including the right to file
31 and pursue a civil action or complaint with, or otherwise notify,
32 the Attorney General or any other public prosecutor, or law
33 enforcement agency, the Department of Fair Employment and
34 Housing, or any other governmental entity shall be knowing and
35 voluntary, and in writing, and expressly not made as a condition
36 of entering into a contract for goods or services or as a condition
37 of providing or receiving goods and services.

38 (4) Any waiver of any legal right, penalty, remedy, forum, or
39 procedure for a violation of this section that is required as a
40 condition of entering into a contract for goods or services shall be

1 deemed involuntary, unconscionable, against public policy, and
2 unenforceable. Nothing in this subdivision shall affect the
3 enforceability or validity of any other provision of the contract.

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

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

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

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

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

24 (d) Nothing in this section shall be construed to negate or
25 otherwise abrogate the provisions of Sections 1668 and 3513.

26 *SEC. 2.5. Section 51.7 of the Civil Code is amended to read:*

27 51.7. (a) All persons within the jurisdiction of this state have
28 the right to be free from any violence, or intimidation by threat of
29 violence, committed against their persons or property because of
30 political affiliation, or on account of any characteristic listed or
31 defined in subdivision (b) or (e) of Section 51, or position in a
32 labor dispute, or because another person perceives them to have
33 one or more of those characteristics. The identification in this
34 subdivision of particular bases of discrimination is illustrative
35 rather than restrictive.

36 (b) (1) *This section includes any violence, or intimidation by*
37 *threat of violence, committed against the person or property of a*
38 *homeless person because the person is, or is perceived to be, a*
39 *homeless person.*

40 (2) *For purposes of this section, "homeless person" means:*

1 (A) A person who does not have a fixed, regular, and adequate
2 nighttime residence.

3 (B) A person that has a nighttime residence that constitutes any
4 of the following:

5 (i) A supervised, publicly or privately operated shelter
6 designated to provide temporary living accommodations, including,
7 but not limited to, welfare hotels, congregate shelters, and
8 transitional housing.

9 (ii) An institution that provides a temporary residence for
10 individuals intended to be institutionalized.

11 (iii) A public or private building or designated area that is not
12 ordinarily designed for, or ordinarily used for, sleeping
13 accommodations for persons.

14 (3) This subdivision shall not be construed to enlarge or
15 diminish an existing legal duty, if any, by an owner of residential
16 rental or commercial property to protect a homeless person from
17 violence, or intimidation by threats of violence, because the
18 homeless person is physically present on the owner's property or
19 other property controlled by the owner incidental to ownership of
20 the rental property.

21 (c) (1) No person shall require another person to waive any
22 legal right, penalty, remedy, forum, or procedure for a violation
23 of this section, as a condition of entering into a contract for goods
24 or services, including the right to file and pursue a civil action or
25 complaint with, or otherwise notify, the Attorney General or any
26 other public prosecutor, or law enforcement agency, the
27 Department of Fair Employment and Housing, or any court or
28 other governmental entity.

29 (2) No person shall refuse to enter into a contract with, or refuse
30 to provide goods or services to, another person on the basis that
31 the other person refuses to waive any legal right, penalty, remedy,
32 forum, or procedure for a violation of this section, including the
33 right to file and pursue a civil action or complaint with, or
34 otherwise notify, the Attorney General or any other public
35 prosecutor, or law enforcement agency, the Department of Fair
36 Employment and Housing, or any other governmental entity.

37 (3) Any waiver of any legal right, penalty, remedy, forum, or
38 procedure for a violation of this section, including the right to file
39 and pursue a civil action or complaint with, or otherwise notify,
40 the Attorney General or any other public prosecutor, or law

1 enforcement agency, the Department of Fair Employment and
2 Housing, or any other governmental entity shall be knowing and
3 voluntary, and in writing, and expressly not made as a condition
4 of entering into a contract for goods or services or as a condition
5 of providing or receiving goods and services.

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

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

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

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

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

30 (9) Nothing in this subdivision shall be construed to negate or
31 otherwise abrogate the provisions of Sections 1668 and 3513.

32 ~~(b)~~

33 (d) This section does not apply to statements concerning
34 positions in a labor dispute which are made during otherwise lawful
35 labor picketing.

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

37 52. (a) Whoever denies, aids or incites a denial, or makes any
38 discrimination or distinction contrary to Section 51, 51.5, or 51.6,
39 is liable for each and every offense for the actual damages, and
40 any amount that may be determined by a jury, or a court sitting

1 without a jury, up to a maximum of three times the amount of
2 actual damage but in no case less than four thousand dollars
3 (\$4,000), and any attorney's fees that may be determined by the
4 court in addition thereto, suffered by any person denied the rights
5 provided in Section 51, 51.5, or 51.6.

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

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

12 (2) A civil penalty of twenty-five thousand dollars (\$25,000)
13 to be awarded to the person denied the right provided by Section
14 51.7 in any action brought by the person denied the right, or by
15 the Attorney General, a district attorney, or a city attorney. An
16 action for that penalty brought pursuant to Section 51.7 shall be
17 commenced within three years of the alleged practice.

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

19 (c) Whenever there is reasonable cause to believe that any person
20 or group of persons is engaged in conduct of resistance to the full
21 enjoyment of any of the rights described in this section, and that
22 conduct is of that nature and is intended to deny the full exercise
23 of those rights, the Attorney General, any district attorney or city
24 attorney, or any person aggrieved by the conduct may bring a civil
25 action in the appropriate court by filing with it a complaint. The
26 complaint shall contain the following:

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

30 (2) The facts pertaining to the conduct.

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

36 (d) Whenever an action has been commenced in any court
37 seeking relief from the denial of equal protection of the laws under
38 the Fourteenth Amendment to the Constitution of the United States
39 on account of race, color, religion, sex, national origin, or disability,
40 the Attorney General or any district attorney or city attorney for

1 or in the name of the people of the State of California may
2 intervene in the action upon timely application if the Attorney
3 General or any district attorney or city attorney certifies that the
4 case is of general public importance. In that action, the people of
5 the State of California shall be entitled to the same relief as if it
6 had instituted the action.

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

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

14 (g) This section does not require any construction, alteration,
15 repair, structural or otherwise, or modification of any sort
16 whatsoever, beyond that construction, alteration, repair, or
17 modification that is otherwise required by other provisions of law,
18 to any new or existing establishment, facility, building,
19 improvement, or any other structure, nor does this section augment,
20 restrict, or alter in any way the authority of the State Architect to
21 require construction, alteration, repair, or modifications that the
22 State Architect otherwise possesses pursuant to other laws.

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

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

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

29 52.1. (a) If a person or persons, whether or not acting under
30 color of law, interferes by threat, intimidation, or coercion, or
31 attempts to interfere by threats, intimidation, or coercion, with the
32 exercise or enjoyment by any individual or individuals of rights
33 secured by the Constitution or laws of the United States, or of the
34 rights secured by the Constitution or laws of this state, the Attorney
35 General, or any district attorney or city attorney may bring a civil
36 action for injunctive and other appropriate equitable relief in the
37 name of the people of the State of California, in order to protect
38 the peaceable exercise or enjoyment of the right or rights secured.
39 An action brought by the Attorney General, any district attorney,
40 or any city attorney may also seek a civil penalty of twenty-five

1 thousand dollars (\$25,000). If this civil penalty is requested, it
2 shall be assessed individually against each person who is
3 determined to have violated this section and the penalty shall be
4 awarded to each individual whose rights under this section are
5 determined to have been violated.

6 (b) Any individual whose exercise or enjoyment of rights
7 secured by the Constitution or laws of the United States, or of
8 rights secured by the Constitution or laws of this state, has been
9 interfered with, or attempted to be interfered with, as described in
10 subdivision (a), may institute and prosecute in his or her own name
11 and on his or her own behalf a civil action for damages, including,
12 but not limited to, damages under Section 52, injunctive relief,
13 and other appropriate equitable relief to protect the peaceable
14 exercise or enjoyment of the right or rights secured.

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

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

31 (e) The court shall order the plaintiff or the attorney for the
32 plaintiff to deliver, or the clerk of the court to mail, two copies of
33 any order, extension, modification, or termination thereof granted
34 pursuant to this section, by the close of the business day on which
35 the order, extension, modification, or termination was granted, to
36 each local law enforcement agency having jurisdiction over the
37 residence of the plaintiff and any other locations where the court
38 determines that acts of violence against the plaintiff are likely to
39 occur. Those local law enforcement agencies shall be designated
40 by the plaintiff or the attorney for the plaintiff. Each appropriate

1 law enforcement agency receiving any order, extension, or
2 modification of any order issued pursuant to this section shall serve
3 forthwith one copy thereof upon the defendant. Each appropriate
4 law enforcement agency shall provide to any law enforcement
5 officer responding to the scene of reported violence, information
6 as to the existence of, terms, and current status of, any order issued
7 pursuant to this section.

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

11 (g) An action brought pursuant to this section is independent of
12 any other action, remedy, or procedure that may be available to
13 an aggrieved individual under any other provision of law,
14 including, but not limited to, an action, remedy, or procedure
15 brought pursuant to Section 51.7.

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

20 (i) A violation of an order described in subdivision (d) may be
21 punished either by prosecution under Section 422.77 of the Penal
22 Code, or by a proceeding for contempt brought pursuant to Title
23 5 (commencing with Section 1209) of Part 3 of the Code of Civil
24 Procedure. However, in any proceeding pursuant to the Code of
25 Civil Procedure, if it is determined that the person proceeded
26 against is guilty of the contempt charged, in addition to any other
27 relief, a fine may be imposed not exceeding one thousand dollars
28 (\$1,000), or the person may be ordered imprisoned in a county jail
29 not exceeding six months, or the court may order both the
30 imprisonment and fine.

31 (j) Speech alone is not sufficient to support an action brought
32 pursuant to subdivision (a) or (b), except upon a showing that the
33 speech itself threatens violence against a specific person or group
34 of persons; and the person or group of persons against whom the
35 threat is directed reasonably fears that, because of the speech,
36 violence will be committed against them or their property and that
37 the person threatening violence had the apparent ability to carry
38 out the threat.

39 (k) No order issued in any proceeding brought pursuant to
40 subdivision (a) or (b) shall restrict the content of any person's

1 speech. An order restricting the time, place, or manner of any
2 person's speech shall do so only to the extent reasonably necessary
3 to protect the peaceable exercise or enjoyment of constitutional or
4 statutory rights, consistent with the constitutional rights of the
5 person sought to be enjoined.

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

9 *SEC. 5. Section 2.5 of this bill incorporates amendments to*
10 *Section 51.7 of the Civil Code proposed by both this bill and AB*
11 *2706. It shall only become operative if (1) both bills are enacted*
12 *and become effective on or before January 1, 2011, (2) each bill*
13 *amends Section 51.7 of the Civil Code, and (3) this bill is enacted*
14 *after AB 2706, in which case Section 2 of this bill shall not become*
15 *operative.*