

ASSEMBLY BILL

No. 2706

**Introduced by Assembly Member Bonnie Lowenthal
(Coauthor: Assembly Member Hall)**

February 19, 2010

An act to amend Section 51.7 of the Civil Code, and to amend Sections 12930, 12948, 12960, 12965, and 12970 of the Government Code, relating to civil rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 2706, as introduced, Bonnie Lowenthal. Civil rights: homeless persons.

Existing law sets forth various personal rights and provides that all persons within California have the right to be free from violence, or intimidation by the threat of violence, because of, among other characteristics, their race, color, religion, ancestry, national origin, political affiliation, or sex. Existing law further permits an individual whose exercise or enjoyment of specified personal rights have been interfered with to bring a civil action for damages, including actual damages, exemplary damages, attorney's fees, injunctive relief, and other appropriate relief.

This bill would specify that homeless persons, as defined, are entitled to the rights set forth under existing law, and would provide that a homeless person has the right to be free from violence or intimidation by threat of violence directed against that person on the basis of that person's status as a homeless person.

This bill would provide that the Department of Fair Employment and Housing does not have jurisdiction or enforcement powers over the protections specified in this bill.

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

3 51.7. (a) All persons within the jurisdiction of this state have
4 the right to be free from any violence, or intimidation by threat of
5 violence, committed against their persons or property because of
6 political affiliation, or on account of any characteristic listed or
7 defined in subdivision (b) or (e) of Section 51, or position in a
8 labor dispute, or because another person perceives them to have
9 one or more of those characteristics. The identification in this
10 subdivision of particular bases of discrimination is illustrative
11 rather than restrictive.

12 (b) *This section includes any violence, or intimidation by threat*
13 *of violence, committed against a person or property because the*
14 *person is, or is perceived to be, homeless. For purposes of this*
15 *section, “homeless person” means:*

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

18 (2) *A person that has a nighttime residence that constitutes any*
19 *of the following:*

20 (A) *A supervised, publicly or privately operated shelter*
21 *designated to provide temporary living accommodations, including,*
22 *but not limited to, welfare hotels, congregate shelters, and*
23 *transitional housing.*

24 (B) *An institution that provides a temporary residence for*
25 *individuals intended to be institutionalized.*

26 (C) *A public or private building or designated area that is not*
27 *ordinarily designed for, or ordinarily used for, sleeping*
28 *accommodations for persons.*

29 ~~(b)~~

30 (c) *This section does not apply to statements concerning*
31 *positions in a labor dispute which are made during otherwise lawful*
32 *labor picketing.*

33 SEC. 2. Section 12930 of the Government Code is amended
34 to read:

1 12930. The department shall have the following functions,
2 powers, and duties:

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

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

7 (c) To appoint attorneys, investigators, conciliators, and other
8 employees as it may deem necessary, fix their compensation within
9 the limitations provided by law, and prescribe their duties.

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

13 (e) To adopt, promulgate, amend, and rescind suitable rules and
14 regulations to carry out the functions and duties of the department
15 pursuant to this part.

16 (f) (1) To receive, investigate, and conciliate complaints
17 alleging practices made unlawful pursuant to Chapter 6
18 (commencing with Section 12940).

19 (2) To receive, investigate, and conciliate complaints alleging
20 a violation of *subdivision (a) of Section 51.7 or Section 51 , 51.5,*
21 *51.7, 54, 54.1, or 54.2* of the Civil Code. The remedies and
22 procedures of this part shall be independent of any other remedy
23 or procedure that might apply.

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

27 (1) To issue subpoenas to require the attendance and testimony
28 of witnesses and the production of books, records, documents, and
29 physical materials.

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

32 (3) To issue written interrogatories.

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

35 (5) To petition the superior courts to compel the appearance
36 and testimony of witnesses, the production of books, records,
37 documents, and physical materials, and the answering of
38 interrogatories.

39 (h) To issue accusations pursuant to Section 12965 or 12981
40 and to prosecute those accusations before the commission.

1 (i) To issue those publications and those results of investigations
2 and research as in its judgment will tend to promote good will and
3 minimize or eliminate discrimination in employment on the bases
4 enumerated in this part and discrimination in housing because of
5 race, religious creed, color, sex, marital status, national origin,
6 ancestry, familial status, disability, or sexual orientation.

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

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

12 SEC. 3. Section 12948 of the Government Code is amended
13 to read:

14 12948. It is an unlawful practice under this part for a person
15 to deny or to aid, incite, or conspire in the denial of the rights
16 created by *subdivision (a) of Section 51.7 or Section 51, 51.5, 51.7,*
17 *54, 54.1, or 54.2 of the Civil Code.*

18 SEC. 4. Section 12960 of the Government Code is amended
19 to read:

20 12960. (a) The provisions of this article govern the procedure
21 for the prevention and elimination of practices made unlawful
22 pursuant to Article 1 (commencing with Section 12940) of Chapter
23 6.

24 (b) Any person claiming to be aggrieved by an alleged unlawful
25 practice may file with the department a verified complaint, in
26 writing, that shall state the name and address of the person,
27 employer, labor organization, or employment agency alleged to
28 have committed the unlawful practice complained of, and that shall
29 set forth the particulars thereof and contain other information as
30 may be required by the department. The director or his or her
31 authorized representative may in like manner, on his or her own
32 motion, make, sign, and file a complaint.

33 (c) Any employer whose employees, or some of them, refuse
34 or threaten to refuse to cooperate with the provisions of this part
35 may file with the department a verified complaint asking for
36 assistance by conciliation or other remedial action.

37 (d) No complaint may be filed after the expiration of one year
38 from the date upon which the alleged unlawful practice or refusal
39 to cooperate occurred, except that this period may be extended as
40 follows:

1 (1) For a period of time not to exceed 90 days following the
2 expiration of that year, if a person allegedly aggrieved by an
3 unlawful practice first obtained knowledge of the facts of the
4 alleged unlawful practice after the expiration of one year from the
5 date of their occurrence.

6 (2) For a period of time not to exceed one year following a
7 rebutted presumption of the identity of the person's employer under
8 Section 12928, in order to allow a person allegedly aggrieved by
9 an unlawful practice to make a substitute identification of the actual
10 employer.

11 (3) For a period of time, not to exceed one year from the date
12 the person aggrieved by an alleged violation of *subdivision (a) of*
13 Section 51.7 of the Civil Code becomes aware of the identity of a
14 person liable for the alleged violation, but in no case exceeding
15 three years from the date of the alleged violation if during that
16 period the aggrieved person is unaware of the identity of any person
17 liable for the alleged violation.

18 (4) For a period of time not to exceed one year from the date
19 that a person allegedly aggrieved by an unlawful practice attains
20 the age of majority.

21 SEC. 5. Section 12965 of the Government Code is amended
22 to read:

23 12965. (a) In the case of failure to eliminate an unlawful
24 practice under this part through conference, conciliation, or
25 persuasion, or in advance thereof if circumstances warrant, the
26 director in his or her discretion may cause to be issued in the name
27 of the department a written accusation. The accusation shall contain
28 the name of the person, employer, labor organization, or
29 employment agency accused, which shall be known as the
30 respondent, shall set forth the nature of the charges, shall be served
31 upon the respondent together with a copy of the verified complaint,
32 as amended, and shall require the respondent to answer the charges
33 at a hearing.

34 For any complaint treated by the director as a group or class
35 complaint for purposes of investigation, conciliation, and
36 accusation pursuant to Section 12961, an accusation shall be issued,
37 if at all, within two years after the filing of the complaint. For any
38 complaint alleging a violation of *subdivision (a) of* Section 51.7
39 of the Civil Code, an accusation shall be issued, if at all, within
40 two years after the filing of the complaint. For all other complaints,

1 an accusation shall be issued, if at all, within one year after the
2 filing of a complaint. If the director determines, pursuant to Section
3 12961, that a complaint investigated as a group or class complaint
4 under Section 12961 is to be treated as a group or class complaint
5 for purposes of conciliation and accusation as well, that
6 determination shall be made and shall be communicated in writing
7 within one year after the filing of the complaint to each person,
8 employer, labor organization, employment agency, or public entity
9 alleged in the complaint to have committed an unlawful practice.

10 (b) If an accusation is not issued within 150 days after the filing
11 of a complaint, or if the department earlier determines that no
12 accusation will issue, the department shall promptly notify, in
13 writing, the person claiming to be aggrieved that the department
14 shall issue, on his or her request, the right-to-sue notice. This notice
15 shall indicate that the person claiming to be aggrieved may bring
16 a civil action under this part against the person, employer, labor
17 organization, or employment agency named in the verified
18 complaint within one year from the date of that notice. If the person
19 claiming to be aggrieved does not request a right-to-sue notice,
20 the department shall issue the notice upon completion of its
21 investigation, and not later than one year after the filing of the
22 complaint. A city, county, or district attorney in a location having
23 an enforcement unit established on or before March 1, 1991,
24 pursuant to a local ordinance enacted for the purpose of prosecuting
25 HIV/AIDS discrimination claims, acting on behalf of any person
26 claiming to be aggrieved due to HIV/AIDS discrimination, may
27 also bring a civil action under this part against the person,
28 employer, labor organization, or employment agency named in
29 the notice. The superior courts of the State of California shall have
30 jurisdiction of those actions, and the aggrieved person may file in
31 these courts. An action may be brought in any county in the state
32 in which the unlawful practice is alleged to have been committed,
33 in the county in which the records relevant to the practice are
34 maintained and administered, or in the county in which the
35 aggrieved person would have worked or would have had access
36 to the public accommodation but for the alleged unlawful practice,
37 but if the defendant is not found within any of these counties, an
38 action may be brought within the county of the defendant's
39 residence or principal office. A copy of any complaint filed
40 pursuant to this part shall be served on the principal offices of the

1 department and of the commission. The remedy for failure to send
2 a copy of a complaint is an order to do so. Those actions may not
3 be filed as class actions or may not be maintained as class actions
4 by the person or persons claiming to be aggrieved where those
5 persons have filed a civil class action in the federal courts alleging
6 a comparable claim of employment discrimination against the
7 same defendant or defendants. In actions brought under this section,
8 the court, in its discretion, may award to the prevailing party
9 reasonable attorney's fees and costs, including expert witness fees,
10 except where the action is filed by a public agency or a public
11 official, acting in an official capacity.

12 (c) (1) If an accusation includes a prayer either for damages
13 for emotional injuries as a component of actual damages, or for
14 administrative fines, or for both, or if an accusation is amended
15 for the purpose of adding a prayer either for damages for emotional
16 injuries as a component of actual damages, or for administrative
17 fines, or both, the respondent may within 30 days after service of
18 the accusation or amended accusation, elect to transfer the
19 proceedings to a court in lieu of a hearing pursuant to subdivision
20 (a) by serving a written notice to that effect on the department, the
21 commission, and the person claiming to be aggrieved. The
22 commission shall prescribe the form and manner of giving written
23 notice.

24 (2) No later than 30 days after the completion of service of the
25 notice of election pursuant to paragraph (1), the department shall
26 dismiss the accusation and shall, either itself or, at its election,
27 through the Attorney General, file in the appropriate court an action
28 in its own name on behalf of the person claiming to be aggrieved
29 as the real party in interest. In this action, the person claiming to
30 be aggrieved shall be the real party in interest and shall have the
31 right to participate as a party and be represented by his or her own
32 counsel. Complaints filed pursuant to this section shall be filed in
33 the superior court in any county in which unlawful practices are
34 alleged to have been committed, in the county in which records
35 relevant to the alleged unlawful practices are maintained and
36 administered, or in the county in which the person claiming to be
37 aggrieved would have worked or would have had access to public
38 accommodation, but for the alleged unlawful practices. If the
39 defendant is not found in any of these counties, the action may be
40 brought within the county of the defendant's residence or principal

1 office. Those actions shall be assigned to the court's delay
2 reduction program, or otherwise given priority for disposition by
3 the court in which the action is filed.

4 (3) A court may grant as relief in any action filed pursuant to
5 this subdivision any relief a court is empowered to grant in a civil
6 action brought pursuant to subdivision (b), in addition to any other
7 relief that, in the judgment of the court, will effectuate the purpose
8 of this part. This relief may include a requirement that the employer
9 conduct training for all employees, supervisors, and management
10 on the requirements of this part, the rights and remedies of those
11 who allege a violation of this part, and the employer's internal
12 grievance procedures.

13 (4) The department may amend an accusation to pray for either
14 damages for emotional injury or for administrative fines, or both,
15 provided that the amendment is made within 30 days of the
16 issuance of the original accusation.

17 (d) (1) Notwithstanding subdivision (b), the one-year statute
18 of limitations, commencing from the date of the right-to-sue notice
19 by the Department of Fair Employment and Housing, to the person
20 claiming to be aggrieved, shall be tolled when all of the following
21 requirements have been met:

22 (A) A charge of discrimination or harassment is timely filed
23 concurrently with the Equal Employment Opportunity Commission
24 and the Department of Fair Employment and Housing.

25 (B) The investigation of the charge is deferred by the
26 Department of Fair Employment and Housing to the Equal
27 Employment Opportunity Commission.

28 (C) A right-to-sue notice is issued to the person claiming to be
29 aggrieved upon deferral of the charge by the Department of Fair
30 Employment and Housing to the Equal Employment Opportunity
31 Commission.

32 (2) The time for commencing an action for which the statute of
33 limitations is tolled under paragraph (1) expires when the federal
34 right-to-sue period to commence a civil action expires, or one year
35 from the date of the right-to-sue notice by the Department of Fair
36 Employment and Housing, whichever is later.

37 (3) This subdivision is intended to codify the holding in *Downs*
38 *v. Department of Water and Power of City of Los Angeles* (1997)
39 58 Cal.App.4th 1093.

1 (e) (1) Notwithstanding subdivision (b), the one-year statute
2 of limitations, commencing from the date of the right-to-sue notice
3 by the Department of Fair Employment and Housing, to the person
4 claiming to be aggrieved, shall be tolled when all of the following
5 requirements have been met:

6 (A) A charge of discrimination or harassment is timely filed
7 concurrently with the Equal Employment Opportunity Commission
8 and the Department of Fair Employment and Housing.

9 (B) The investigation of the charge is deferred by the Equal
10 Employment Opportunity Commission to the Department of Fair
11 Employment and Housing.

12 (C) After investigation and determination by the Department
13 of Fair Employment and Housing, the Equal Employment
14 Opportunity Commission agrees to perform a substantial weight
15 review of the determination of the department or conducts its own
16 investigation of the claim filed by the aggrieved person.

17 (2) The time for commencing an action for which the statute of
18 limitations is tolled under paragraph (1) shall expire when the
19 federal right-to-sue period to commence a civil action expires, or
20 one year from the date of the right-to-sue notice by the Department
21 of Fair Employment and Housing, whichever is later.

22 SEC. 6. Section 12970 of the Government Code is amended
23 to read:

24 12970. (a) If the commission finds that a respondent has
25 engaged in any unlawful practice under this part, it shall state its
26 findings of fact and determination and shall issue and cause to be
27 served on the parties an order requiring the respondent to cease
28 and desist from the unlawful practice and to take action, including,
29 but not limited to, any of the following:

30 (1) The hiring, reinstatement, or upgrading of employees, with
31 or without backpay.

32 (2) The admission or restoration to membership in any
33 respondent labor organization.

34 (3) The payment of actual damages as may be available in civil
35 actions under this part, except as otherwise provided in this section.
36 Actual damages include, but are not limited to, damages for
37 emotional injuries if the accusation or amended accusation prays
38 for those damages. Actual damages awarded under this section for
39 emotional pain, suffering, inconvenience, mental anguish, loss of
40 enjoyment of life, and other nonpecuniary losses shall not exceed,

1 in combination with the amounts of any administrative fines
2 imposed pursuant to subdivision (c), one hundred fifty thousand
3 dollars (\$150,000) per aggrieved person per respondent.

4 (4) Notwithstanding paragraph (3), the payment of actual
5 damages up to one hundred fifty thousand dollars (\$150,000)
6 assessed against a respondent for a violation of *subdivision (a) of*
7 *Section 51.7 of the Civil Code*, as an unlawful practice under this
8 part.

9 (5) Affirmative or prospective relief to prevent the recurrence
10 of the unlawful practice.

11 (6) A report to the commission as to the manner of compliance
12 with the commission’s order.

13 (b) An unlawful practice under this part alone is not sufficient
14 to sustain an award of actual damages pursuant to this section. The
15 department is required to prove, by a preponderance of the
16 evidence, that an aggrieved person has sustained actual injury. In
17 determining whether to award damages for emotional injuries, and
18 the amount of any award for these damages, the commission shall
19 consider relevant evidence of the effects of discrimination on the
20 aggrieved person with respect to any or all of the following:

- 21 (1) Physical and mental well-being.
- 22 (2) Personal integrity, dignity, and privacy.
- 23 (3) Ability to work, earn a living, and advance in his or her
24 career.
- 25 (4) Personal and professional reputation.
- 26 (5) Family relationships.
- 27 (6) Access to the job and ability to associate with peers and
28 coworkers.

29 The commission shall also consider the duration of the emotional
30 injury, and whether that injury was caused or exacerbated by an
31 aggrieved person’s knowledge of a respondent’s failure to respond
32 adequately to, or to correct, the discriminatory practice or by the
33 egregiousness of the discriminatory practice.

34 (c) In addition to the foregoing, in order to vindicate the
35 purposes and policies of this part, the commission may assess
36 against the respondent, if the accusation or amended accusation
37 so prays, an administrative fine per aggrieved person per
38 respondent, the amount of which shall be determined in accordance
39 with the combined amount limitation of paragraph (3) of
40 subdivision (a).

1 (d) In determining whether to assess an administrative fine
2 pursuant to this section, the commission shall find that the
3 respondent has been guilty of oppression, fraud, or malice,
4 expressed or implied, as required by Section 3294 of the Civil
5 Code. In determining the amount of fines, the commission shall
6 consider relevant evidence of, including, but not limited to, the
7 following:

- 8 (1) Willful, intentional, or purposeful conduct.
- 9 (2) Refusal to prevent or eliminate discrimination.
- 10 (3) Conscious disregard for the rights of employees.
- 11 (4) Commission of unlawful conduct.
- 12 (5) Intimidation or harassment.
- 13 (6) Conduct without just cause or excuse.
- 14 (7) Multiple violations of the Fair Employment and Housing
15 Act.

16 The moneys derived from an administrative fine assessed
17 pursuant to this subdivision shall be deposited in the General Fund.
18 No administrative fine shall be assessed against a public entity.
19 The commission shall have no authority to award punitive damages
20 as a remedy for a finding of employment discrimination.

21 (e) In addition to the foregoing, in order to vindicate the
22 purposes and policies of this part, the commission may assess
23 against the respondent if the accusation or amended accusation so
24 prays, a civil penalty of up to twenty-five thousand dollars
25 (\$25,000) to be awarded to a person denied any right provided for
26 by *subdivision (a)* of Section 51.7 of the Civil Code, as an unlawful
27 practice prohibited under this part.

28 (f) If the commission finds the respondent has engaged in an
29 unlawful practice under this part, and the respondent is licensed
30 or granted a privilege by an agency of the state to do business,
31 provide a service, or conduct activities, and the unlawful practice
32 is determined to have occurred in connection with the exercise of
33 that license or privilege, the commission shall provide the licensing
34 or privilege granting agency with a copy of its decision or order.

35 (g) If the commission finds that a respondent has not engaged
36 in an unlawful practice under this part, the commission shall state
37 its findings of fact and determination and issue and cause to be
38 served on the parties an order dismissing the accusation as to that
39 respondent.

- 1 (h) Any findings and determination made or any order issued
2 pursuant to this section shall be written and shall indicate the
3 identity of the members of the commission who participated
4 therein.
- 5 (i) Any order issued by the commission shall have printed on
6 its face references to the rights of appeal of any party to the
7 proceeding to whose position the order is adverse.
- 8 (j) If the commission finds that a respondent has engaged in an
9 unlawful practice under this part, and it appears that this practice
10 consisted of acts described in Section 243.4, 261, 262, 286, 288,
11 288a, or 289 of the Penal Code, the commission, with the consent
12 of the complainant, shall provide the local district attorney's office
13 with a copy of its decision and order.
- 14 (k) Notwithstanding Section 12960, if the commission finds
15 that a respondent has engaged in unlawful discrimination in
16 housing under Section 12948, the remedies afforded in Section
17 12987 or any other provision in this part pertaining to housing
18 discrimination, shall apply.