
THIRD READING

Bill No: SB 16
Author: Smallwood-Cuevas (D)
Amended: 3/30/23
Vote: 21

SENATE JUDICIARY COMMITTEE: 9-1, 3/28/23
AYES: Umberg, Wilk, Allen, Ashby, Caballero, Durazo, Laird, Min, Wiener
NOES: Niello
NO VOTE RECORDED: Stern

SUBJECT: Civil rights: discrimination: enforcement

SOURCE: Author

DIGEST: This bill authorizes local governments to enforce the housing and employment components of California's state civil rights laws.

ANALYSIS:

Existing federal law:

- 1) Makes it unlawful, pursuant to Title VII of the Civil Rights Act of 1964, for employers with 15 or more employees to discriminate on the basis of race, color, sex, pregnancy status, religion, or national origin in all aspects of an employment relationship, including hiring, discharge, compensation, assignments, and other terms, conditions and privileges of employment. (42 U.S.C. 2000e *et seq.*)
- 2) Establishes an administrative agency, the Equal Employment Opportunity Commission (EEOC), charged with receiving, investigating, and adjudicating allegations of workplace discrimination. (42 U.S.C. § 2000e-4.)
- 3) Requires an aggrieved worker to exhaust the EEOC's administrative remedies before filing an action for discrimination in court. (42 USCS § 2000e-5(f)(1).)

- 4) Permits state or local agencies to accept and investigate allegations that federal workplace antidiscrimination laws have been violated, provided that the state or local agency has entered into a worksharing agreement with the EEOC that requires specified case-handling procedures and coordination with the EEOC such that filing with the state or local agency also constitutes filing with the EEOC (so-called “dual filing”). (42 U.S.C. § 2000e-5(c).)
- 5) Makes it unlawful, pursuant to the Fair Housing Act, for a provider of housing accommodations to discriminate in the sale or rental of housing, including against individuals seeking a mortgage or housing assistance, or in other housing-related activities on the basis of race, color, national origin, religion, sex (including gender identity and sexual orientation), familial status, and disability. (42 U.S.C. § 3604.)
- 6) Provides that a federal administrative agency, the Department of Housing and Urban Development (HUD), shall receive and investigate complaints of housing discrimination. (42 U.S.C. § 3610(a).)
- 7) Establishes procedures by which HUD may certify state and local public agencies to accept referrals of housing discrimination complaints for investigation and enforcement. (42 U.S.C. § 3610(f).)
- 8) Does not require an aggrieved person to file an administrative complaint with HUD prior to filing a lawsuit for discrimination in court. (42 U.S.C. § 3613(a)(2).)

Existing state law:

- 1) Prohibits workplace discrimination, as specified, on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status through the Fair Employment and Housing Act (FEHA). (Gov. Code § 12940.)
- 2) Prohibits housing providers from discriminating on the basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information through the FEHA. (Gov. Code § 12955.)

- 3) Establishes an administrative agency, the Civil Rights Department (CRD), responsible for receiving, investigating, and adjudicating allegations of housing and workplace discrimination under the FEHA. (Gov. Code § 12930.)
- 4) Requires an aggrieved worker to exhaust CRD's administrative remedies prior to filing a lawsuit in court for workplace discrimination. (Gov. Code §§ 12960 and 12965.)
- 5) Permits aggrieved parties to petition the court of jurisdiction for review of administrative determinations. (Code Civ. Proc. § 1094.5.)
- 6) Expresses the intent of the Legislature to occupy the field of enforcing the FEHA's prohibition on workplace discrimination to the exclusion of any city, city and county, county, or other political subdivision of the state. (Gov. Code § 12993(c)).

This bill:

- 1) Directs the CRD, by a date to be specified, to promulgate regulations governing local enforcement of FEHA that, at a minimum, do all of the following:
 - a) Ensure consistent application of employment and housing discrimination laws across the state;
 - b) Protect complainants against inadvertent loss of federal or state legal claims; and
 - c) Void duplication of investigatory work.
- 2) Authorizes efforts by any city, city and county, county, or other political subdivision of the state to enforce state law prohibiting housing or employment discrimination against any of the enumerated classes of persons covered by the FEHA, provided that such enforcement complies with the regulations issued pursuant to (1), above.

Comments

The issue this bill is intended to address

California's FEHA is one of the strongest anti-discrimination laws in the nation. Its purpose is to prohibit and punish unequal treatment of any Californian on the basis of race, religion, color, national origin, disability, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation, among other grounds, in the areas of housing and employment. (Gov. Code § 12920.)

California’s enforcement of the FEHA has sometimes been criticized, however. Existing law restricts the power to enforce the FEHA to the Civil Rights Department (formerly known as the Department of Fair Employment and Housing or DFEH).¹ Local governments are preempted from attempting such enforcement themselves.²

Responding to all of the civil rights concerns across one of the nation’s largest and most populous states presents an enormous challenge. According to a 2013 report by the California Senate Office of Oversight and Outcomes: “years of tight budgets have whittled away the state’s ability to protect workers and enforce the law.”³ The report concluded that “[o]ver the long run, DFEH and state leaders must come to grips with the chasm between the broad legal mandate to provide effective remedies – including full investigations into all proper claims alleging discrimination – and the relatively miniscule allotment of resources appropriated for that purpose in the state budget.”⁴ CRD has received some additional resources since that time, but its workload remains large and challenging.

In its 2020 Annual Report, CRD stated that it received just under 24,000 intake forms alleging discrimination throughout that year. In over half of these cases, the complainant elected to bypass CRD’s involvement and to proceed directly to court by requesting a right-to-sue letter. CRD went on to investigate the complaints in 5,784 cases.⁵ The remaining intake forms involved complaints that CRD determined were outside of its jurisdiction (things like unpaid wages or overtime violations, for example), so CRD conducted no further investigation.

The author wants to see more investigation and enforcement, citing the need for “strong and swift enforcement of anti-discrimination laws.” As evidence of this need, the author points a recent survey of nearly 2,000 of Black workers in Southern California in which a third of respondents reported experiencing discrimination at work during the pandemic, of whom just under half were laid off or terminated and 16 percent were furloughed.⁶ Of particular relevance to this bill,

¹ Gov. Code § 12993(c). Given the recent name change, the acronyms DFEH and CRD will be used interchangeably in this analysis based on the entity’s name at the time most relevant to the reference.

² *Ibid.*

³ Korby & Adkisson. *Department of Fair Employment and Housing: Underfunding and Misguided Policies Compromise Civil Rights Mission* (Dec. 18, 2013) California Senate Office of Oversight and Outcomes <https://sooo.senate.ca.gov/sites/sooo.senate.ca.gov/files/fair%20employment%20and%20housing%20final.pdf> at p. 1 (as of Mar. 10, 2023).

⁴ *Id.* at pp. 1-2.

⁵ *2020 Annual Report*. California Civil Rights Department <https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2022/01/2020-DFEH-Annual-Report.pdf> at p. 11 (as of Mar. 10, 2023).

⁶ Thomas et al. *Essential Stories: Black Worker COVID-19 Economic Health Impact Survey* (Feb. 2022) The UCLA Center for the Advancement of Racial Equity at Work <https://www.labor.ucla.edu/publication/essential-stories-black-worker-covid-19-economic-health-impact-survey/> at p. 6 (as of Mar. 10, 2023).

the majority of the surveyed workers indicated that they were not aware of what rights and recourses they have for addressing the employment discrimination they faced.⁷

From the perspective of the author and supporters of this bill, the State's reliance on CRD as the sole government agency enforcing FEHA raises other concerns as well. Even with offices in a few locations throughout the state, CRD can feel removed and impersonal to civil rights complainants.

Primary concerns associated with local enforcement of FEHA and the bill's proposed method for addressing them

Previous legislative attempts to open up civil rights enforcement to local jurisdictions have surfaced a number of issues that need to be addressed in order to avoid unintended negative consequences. The most significant of those issues are: (1) the danger that people submitting local complaints alleging civil rights violations might inadvertently lose their state and federal discrimination claims; (2) the risk of inconsistent civil rights enforcement across the state; (3) the potential for inefficient or even conflicting duplication of work; and (4) the possibility of partial loss of federal revenue for CRD. Each issue is described in greater detail in the Senate Judiciary Committee analysis of this bill.

This bill addresses at least the first three of these concerns in two steps. First, the bill directs CRD to promulgate regulations to govern any local enforcement of the FEHA and mandates that those regulations are to address the concerns mentioned. Second, this bill requires any local civil rights enforcement regime to adhere to these regulations.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 4/6/23)

California African American Chamber of Commerce
California Labor Federation
California State Association of Counties
Oakland Privacy
Service Employees International Union – California State Council
Southern California Black Worker Hub for Regional Organizing

⁷ *Ibid.*

OPPOSITION: (Verified 4/6/23)

Affordable Housing Management Association – Pacific Southwest
Apartment Association of Orange County
East Bay Rental Housing Association
Housing Contractors of California

ARGUMENTS IN SUPPORT: According to the author:

Any form of discrimination robs people of their human dignity and often also of their financial stability and their health. When discrimination is allowed to ensue unchecked it also robs our communities of valuable opportunities to be better and to be stronger. Lack of enforcement of anti-discrimination laws is a problem that is well documented and if ever there were a time to reverse that pattern, it is now. SB 16 would do this by specifying nothing in the FEHA restricts the ability of local agencies from enforcing the Act's provisions. This will expand the number of agencies actively addressing the problem of workplace and housing discrimination, and help ensure equity for all Californians.

In support, the California State Association of Counties writes:

[...] [T]he pervasiveness of discrimination throughout the state makes it difficult for a single state agency to bear the sole responsibility for enforcement. While municipalities and other local agencies could assist in the Act's enforcement, there is no clear direction on whether local agencies actually have the authority to do so. SB 16 would specify that nothing in the FEHA restricts the ability of local agencies from enforcing the Act's provisions. This will expand the number of agencies actively addressing the problem of workplace and housing discrimination and will help ensure equity for all.

ARGUMENTS IN OPPOSITION: In opposition to the bill, Housing Contractors of California writes:

[...] enforcement of complex laws requires significant training and experience by the enforcing agents. Having local jurisdictions join enforcement in discrimination claims will not promote enforcement, but cause more confusion. Laws should be enforced by those agencies who have committed the time and resources to train and vet their staff to effectively enforce the laws assigned to them. Agencies should stay in their lane of expertise.

Discrimination claims should only be enforced by the California Civil Rights Department.

Prepared by: Margie Estrada / JUD. / (916) 651-4113
4/6/23 10:59:31

**** **END** ****