

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

SB 807 (Wieckowski)  
Version: March 10, 2021  
Hearing Date: April 6, 2021  
Fiscal: Yes  
Urgency: No  
TSG

**SUBJECT**

Enforcement of civil rights: Department of Fair Employment and Housing

**DIGEST**

This bill makes procedural modifications to how the Department of Fair Employment and Housing (DFEH) enforces California's civil rights laws. The bill also extends how long employers must retain specified employment records to match a recent increase in the length of time that workers have to file claims alleging employment discrimination.

**EXECUTIVE SUMMARY**

DFEH is the state agency charged with the enforcement of many of California's civil rights laws, including the Unruh Civil Rights Act, the Disabled Persons Act, the Ralph Civil Rights Act, and the Fair Employment and Housing Act (FEHA), among others. In carrying out its duties, DFEH is subject to certain procedural requirements. This bill makes a series of modifications to those requirements including, most notably: (1) authorizing DFEH to appeal court decisions regarding the scope of the agency's power to compel cooperation with its investigations, rather than having to proceed by writ; (2) tolling otherwise applicable statutes of limitation while DFEH is conducting investigations or attempting mediation; (3) bringing the methods through which DFEH may serve process of a verified civil rights complaint into harmony with the methods authorized in other civil legal disputes; and (4) expanding where DFEH can file civil rights actions. Additionally, FEHA currently contains a two-year record retention requirement for employers. Since the Legislature recently extended the amount of time that workers have to file claims of unlawful employment discrimination, this bill would lengthen the record retention requirement to match with the new maximum time period for which those documents could be relevant to a legal claim: six years.

The bill is author-sponsored. There is no known support or opposition.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes DFEH and tasks it with receiving, investigating, conciliating, mediating, and prosecuting allegations of violations of specified civil rights laws involving, among other things, employment discrimination, housing discrimination, discrimination against consumers, discrimination between businesses, hate crimes, and sexual harassment in business, service, or professional relationships. (Gov. Code § 12930(a)-(f).)
- 2) Sets forth the procedural rules and timelines to which DFEH must adhere when receiving, investigating, conciliating, mediating, and prosecuting allegations of violations of the civil rights laws under its jurisdiction. (Gov. Code § 12930 *et seq.*)
- 3) Authorizes DFEH or a complainant to file a complaint on behalf of a group or class if an unlawful practice alleged in a verified complaint adversely affects, in a similar manner, a group or class of persons of which the aggrieved person filing the complaint is a member, or if the unlawful practice raises questions of law or fact which are common to such a group or class. (Gov. Code § 12961.)
- 4) Requires DFEH, or if there is an attorney representing the complainant, then the attorney, to serve a copy of the verified complaint on the person or entity alleged to have committed the violation by delivering it personally or sending it by certified U.S. mail with return receipt requested. (Gov. Code § 12962.)
- 5) Provides that, after exhaustion of administrative efforts to resolve an employment or housing complaint, including through mandatory or voluntary mediation efforts, DFEH may bring a civil action on behalf of the complainant in the court of any county where:
  - a) the unlawful practices are alleged to have been committed;
  - b) records relevant to the alleged unlawful practices are maintained and administered;
  - c) the complainant would have worked or would have had access to public accommodation, but for the alleged unlawful practices; or
  - d) the defendant's residence or principal office is located, if the defendant is not found in any of preceding counties. (Gov. Code § 12965.)
- 6) Empowers DFEH, in connection with any matter under investigation or in question pursuant to an employment or housing discrimination complaint, to do any of the following:
  - a) issue subpoenas to require the attendance and testimony of witnesses and the production of books, records, documents, and physical materials;

- b) administer oaths, examine witnesses under oath and take evidence, and take depositions and affidavits;
  - c) issue written interrogatories;
  - d) request the production for inspection and copying of books, records, documents, and physical materials;
  - e) petition the superior courts to compel the appearance and testimony of witnesses, the production of books, records, documents, and physical materials, and the answering of interrogatories. (Gov. Code § 12930(g).)
- 7) Vests jurisdiction over a petition to enforce DFEH's investigatory powers pursuant to (4), above, in the superior court of any county in which DFEH's investigation or inquiry takes place, but if the respondent is not found within any such county, then in the county of the respondent's residence or principal office. Requires the superior court to issue rulings on the petition on an expedited timeline, as specified. (Gov. Code § 12963.5(a)-(c).)
- 8) Declares a superior court ruling pursuant to (5), above, final, and limits the procedure for challenging such an order to a petition for writ of mandamus from the appropriate appellate court. (Gov. Code § 12963.5(d).)
- 9) Provides that complainants may not commence a civil action with respect to an alleged discriminatory housing practice that forms the basis of a civil action brought by DFEH. (Gov. Code § 12981.)
- 10) Requires specified employers, labor organizations, and employment agencies to:
- a) maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received;
  - b) retain personnel files of applicants or terminated employees for a minimum period of two years after the date of the employment action taken. (Gov. Code § 12946.)
- 11) Exempts the State Personnel Board from the record retention requirement in (10), above. (Gov. Code § 12946.)

This bill:

- 1) Authorizes DFEH and a party under DFEH investigation to appeal adverse superior court decisions regarding the scope of DFEH's power to compel cooperation in the investigation. Directs courts to prioritize such appeals over all other civil matters and to set an expedited briefing schedule, as specified, to the extent feasible. Authorizes courts to award attorney's fees and costs to the prevailing party in the action, except for a prevailing defendant, unless the court

determines that DFEH's petition was frivolous when filed or that DFEH continued to litigate the matter after it clearly became frivolous.

- 2) Extends the employer record retention requirement from two to six years and eliminates the State Personnel Board's exemption from that requirement.
- 3) Sets forth the deadlines by which complaints for violations of various civil rights laws must be filed with DFEH.
- 4) Tolls the statute of limitations, including retroactively, for filing a civil action based on specified civil rights complaints under investigation by DFEH until:
  - a) DFEH files a civil action for the alleged violation under this part; or
  - b) one year after the department issues written notice to a complainant that it has closed its investigation without electing to file a civil action for the alleged violation.
- 5) Authorizes DFEH or counsel for a complainant to serve a verified complaint on the entity alleged to have committed the civil rights violation by any manner specified in the Code of Civil Procedure.
- 6) Enables DFEH to bring an action to compel cooperation with its discovery demands in any county in which the department's investigation or inquiry takes place, or in the county of the respondent's residence or principal office.
- 7) Authorizes DFEH to bring a civil action to enforce the civil rights laws under its mandate in any county where:
  - a) DFEH has an office or staff;
  - b) the unlawful practices are alleged to have been committed;
  - c) records relevant to the alleged unlawful practices are maintained and administered;
  - d) the complainant would have worked or had access to public accommodation but for the alleged unlawful practice; or
  - e) the defendant's residence or principal office is located.
- 8) Authorizes DFEH to bring a civil action in any county to enforce the civil rights laws under its mandate if the civil action includes class or group allegations on behalf of DFEH.
- 9) Tolls the statute of limitations for DFEH to file civil actions based on the civil rights laws under its mandate for the duration of any voluntary or mandatory referral to DFEH's mediation program.

- 10) Clarifies that, for any employment discrimination complaint treated by DFEH as a class or group complaint, DFEH must issue a right-to-sue notice upon completion of its investigation, and not later than two years after the filing of the complaint.
- 11) Removes a provision prohibiting a complainant from commencing a civil action with respect to an alleged discriminatory housing practice that forms the basis of a civil action brought by the department.
- 12) Reorganizes existing provisions and makes other technical, non-substantive changes.

### COMMENTS

#### 1. Background on DFEH

The Department of Fair Employment and Housing is the state agency tasked with oversight, monitoring, and enforcement of many of California's civil rights laws. As its name suggests, one of DFEH's primary roles is to receive, investigate, and sometimes prosecute allegations of unlawful discrimination, harassment, and related retaliation in the context of housing and employment. However, DFEH is also charged with responding to allegations of civil rights violations in several other contexts as well. Among other things, DFEH is responsible for administrative enforcement of the prohibition on discrimination against consumers (the Unruh Civil Rights Act; Civ. Code § 51), prohibitions on discrimination between businesses (Civ. Code § 51.5), prohibitions on hate crimes (the Ralph Civil Rights Act; Civ. Code § 51.7), and prohibitions on sexual harassment in business, service, or professional relationships (Civ. Code § 51.9). (Gov. Code § 12930.)

In the context of DFEH's mandate to investigate housing and employment discrimination complaints, DFEH is empowered to compel cooperation in its investigation from the party alleged to have committed the violation. This authority is similar in many respects to discovery in typical civil cases. For example, DFEH can issue subpoenas to witnesses, issue written interrogatories, and request the production of books, records, documents, and physical materials. (Gov. Code § 12965.)

#### 2. Procedural modifications proposed by this bill

This bill makes numerous amendments to the statutes governing DFEH's procedures. The majority of these amendments are worthwhile but purely technical in nature: things like updating the language to be more gender inclusive and breaking down lengthy code sections into shorter, clearer components. A few of the amendments are more substantive and would alter legal requirements for employers and change aspects of DFEH's process for investigating and prosecuting civil rights violations. In general, these proposed changes can be characterized as uncontroversial reforms designed to

enable DFEH to operate more efficiently. In a few cases, these reforms also place some additional demands on employers or the courts.

What follows is a brief summary and analysis of each of the more substantive proposals relating to DFEH procedures.

a. *Switching from writs to appeals for review of the scope of DFEH's investigatory powers*

So that DFEH may carry out its duty to investigate claims of unlawful harassment, discrimination, and related retaliation, California law empowers the agency to interview witnesses, inspect records, request evidence, and issue interrogatories, among other things. (Gov. Code § 12965.) Sometimes the entity subject to the complaint resists DFEH's efforts to investigate and refuses to comply with DFEH's requests voluntarily. In such instances, DFEH must seek court orders to back up their investigatory authority. Sometimes the subjects of the investigations challenge DFEH's assertion of investigatory authority and sometimes they prevail in the district court. Under existing law, DFEH's only recourse in such a scenario is to seek review of that decision through a petition for a writ of mandate. (Gov. Code § 12963.5(d).) According to DFEH, this process can drag out for months. Even when the agency successfully obtains a writ, the court rulings are often limited in nature and do not delve much into the legal basis for the court's conclusion. As a result, little to no jurisprudence has built up in this area. Without caselaw to rely upon, DFEH winds up re-litigating the same issues again and again. This is inefficient for DFEH, parties who are under investigation, and the courts.

To help address this problem, this bill would make three modifications to the way these disputes over DFEH's investigatory authority take place. First, the bill would authorize DFEH to appeal adverse decisions regarding the scope of its investigatory powers, instead of having to challenge such rulings by writ. Since appellate court rulings are more often accompanied by the sort of written decisions that establish jurisprudential precedents, the switch should result in the development of a body of case law that would reduce the number of disputes that must be litigated in the future.

Second, the bill would require the courts to treat such appeals on an expedited timeline, with priority over "all other civil actions." While this would have the commendable effect of allowing the parties to move on quickly with the investigation, the Judicial Council and this Committee have historically hesitated to approve provisions of this nature. In general, the idea is that courts are best positioned to determine how to prioritize and proceed with their dockets. Moreover, as much as swift DFEH investigations are desirable, elevating that goal over "all other civil actions," can be questioned, when those other civil actions could well involve matters like domestic violence, child custody, and evictions, where lives, families, and shelter may be at stake. In response to these concerns, the author proposes to offer an amendment in Committee to eliminate from the bill the provision forcing courts to make these appeals a priority over all other civil actions.

Finally, the bill would provide for a one-way attorney fee shift in favor of DFEH in these cases. Ordinarily, in U.S. courts, each party to a legal dispute has to pay its own attorney's fees, regardless of who wins or loses the case. In some instances, however, this rule can be overcome, either by a contractual agreement between the parties to the litigation or by statute. Provisions that modify the usual American rule that all parties must bear their own attorney's fees are known as fee-shifting provisions. One-way fee shifting provisions of the type proposed in this bill are ordinarily used when there is a strong public interest in the type of claim in question. They serve the public interest by enabling people whose rights have been violated to take on these cases even if they cannot afford legal counsel directly.<sup>1</sup> For this reason, one-way fee shifting provisions are common in the civil rights enforcement context. The one proposed here aligns with the one-way fee-shifting provision that applies to FEHA cases once they have been filed in court: a prevailing plaintiff may obtain an attorney's fee award, but defendants generally cannot, unless the court finds that the plaintiff acted frivolously. (Gov. Code § 12965(b).)

*b. Tolling the statute of limitations for filing claims in civil court while the matter is under investigation by DFEH*

Under existing law, from the moment that their civil rights are violated, people have a limited amount of time in which to file a complaint with DFEH. Exactly how long depends upon the particular civil rights violation in question. Once DFEH receives the complaint, it has a certain amount of time to investigate the matter and make a decision about whether DFEH believes a violation occurred. Exactly how long DFEH has to investigate depends, again, on the type of complaint involved.

While this administrative complaint and investigatory process takes place, the clock is also running on the complainant's statute of limitations to file the claim in civil court. This is not a problem in the case of housing and employment discrimination claims, because existing law operates to toll the relevant statutes of limitation while the DFEH investigation is pending. (Gov. Code §§ 12965 and 12989.1) For other civil rights statutes that DFEH enforces, however, no such tolling exists. As a result, in some instances, the impending expiration of the statute of limitations leads complainants to file a claim in court even though DFEH is still in the midst of its investigation.

---

<sup>1</sup> One-way fee-shifting provisions do not promote frivolous litigation, as is sometimes claimed. Assuming that attorneys are rational economic actors, they will not agree to represent clients in one-way fee shifting scenarios unless they believe they have a good chance of winning. Filing a frivolous case would only give a lawyer a lot of work to do with little hope of getting paid for it in the end. Nonetheless, as an extra precaution, this bill, like many one-way fee-shifting provisions, contains a clause allowing the defendant to obtain attorney's fees from the plaintiff if the court determines that the case was frivolous from the outset, or that the plaintiff continued to litigate the case even after it had become obvious that the case was frivolous.

To address the problem, this bill proposes a blanket tolling on the statute of limitations applicable to any law under DFEH's jurisdiction. The tolling effect would begin when the complaint is filed with DFEH and end when either DFEH decides to file an action in court on behalf of the complainant, or one year from when DFEH declines to bring such an action. There is no danger that this tolling period will drag the case out, because DFEH is required to complete its investigation and decide whether or not to file within specific deadlines. Again, those deadlines vary depending on the type of claim involved, but are generally one or two years. The proposed tolling effect should result in more complainants waiting for DFEH to complete its investigation of their complaint before jumping over to the civil courts.

The tolling effect proposed in this bill is retroactive, meaning that people who have already filed their complaints would not have to worry about the applicable statute of limitations expiring while they await the completion of a pending DFEH investigation. Under standard interpretation of laws extending statutes of limitation, the bill should not have the effect of resuscitating claims for which the applicable statute of limitations has already passed. (*Quarry v. Doe I* (2012) 53 Cal.4th 945, 955-957.) Just to make that expressly clear, the author proposes to offer an amendment in Committee that expresses states that the bill should not be construed to revive lapsed claims.

- c. Tolling DFEH's deadline to file a civil action for the duration of the time that a complaint has been referred to DFEH's voluntary or mandatory mediation process*

As discussed earlier, existing law sets deadlines within which DFEH must complete its investigation and decide whether or not to file a civil action in court on behalf of the complainant. At the same time, attempting to reach a mediated resolution to civil rights disputes under DFEH's jurisdiction is sometimes mandatory, and almost always worth trying, at least if the parties are interested. DFEH has an entire program devoted to mediation for this reason. To facilitate mediated settlements, this bill would toll DFEH's deadline for completing its investigation for the duration of any attempts at mediation.

- d. Expanding the methods through which DFEH may accomplish service of process*

The phrase "service of process" refers to the formal means by which one party to a legal dispute must notify any other parties to the dispute about their actions. Service of process is most critical at the very first stage in any litigation, when all parties need to be informed that the matter has been presented formally to a court or administrative body for adjudication so that they can participate and assert their rights.

Existing law prescribes certain methods by which DFEH must serve process on the person, employer, labor organization, or employment agency alleged to have committed the unlawful practice in question. Specifically, the current law requires DFEH either to personally serve the verified complaint or mail it to the person or entity



accused of the violation by U.S. mail with return receipt requested. (Gov. Code. § 12962.)

In most other legal contexts, other ways of serving process are acceptable. Moreover, other trustworthy methods of communication have developed, most notably electronic correspondence. Accordingly, the laws governing service of process in many other areas of the law have evolved to allow parties to serve process using methods like email. (*See, e.g.,* Code Civ. Proc. 1010.6.) Meanwhile, as the author puts it, DFEH remains tied to having to serve “thousands of administrative complaints per year personally or by certified mail even though more modern, less expensive, and equally or more effective forms of service are authorized by the Code of Civil Procedure.”

This bill would expand the methods by which DFEH could serve process on other parties to match the methods now available in most other legal contexts.

*e. Enabling jurisdiction in any court district where DFEH has an office*

Existing law states that, when prosecuting a case for discrimination in civil court, DFEH can bring the civil action: “in any county in which unlawful practices are alleged to have been committed, in the county in which records relevant to the alleged unlawful practices are maintained and administered, or in the county in which the person claiming to be aggrieved would have worked or would have had access to public accommodation, but for the alleged unlawful practices. If the defendant is not found in any of these counties, the action may be brought within the county of the defendant’s residence or principal office.” (Gov. Code § 12965(a).)

This bill would, in addition, allow DFEH to file the action in any county in which DFEH has an office or staff. The change would make it easier and more cost effective for DFEH to prosecute civil rights violations. By bringing suit in a county where DFEH has offices, the agency could avoid the travel, lodging, and related costs that are currently required when DFEH must send its counsel to appear in counties throughout the state.

It could be argued that the change would have an equal and opposite effect on some defendants, since they then might now have to travel to distant courts to defend the action. On the other hand, DFEH already has the authority to bring employment discrimination claims in federal court using federal law. (Gov. Code § 12930(h).) Since those federal laws enable DFEH to file in any federal district court in California, employers are already subject to the possibility that they will need to travel across the state to defend themselves. In that sense, this bill would bring parity to the choice of venues between state and federal civil rights laws, which should have the salutary effect of making it more likely that disputes over the proper interpretation of FEHA would be decided by California, rather than federal, courts. In addition, if DFEH brought an action in a county that was indeed problematic for the defendant, the defendant could move the court for a removal of the case to a more convenient venue on that basis.

### 3. Extension of employers' record retention requirement

The retention of employment-related records greatly facilitates DFEH's investigatory work. Having documentary evidence can help DFEH identify patterns of discrimination as well as ascertain whether alleged incidents of discrimination took place. Document retention also has benefits for employers. From the employers' point of view, maintaining good records can help dispel workplace discrimination claims by documenting standardized policies and memorializing the lawful grounds for employment decisions that might otherwise appear discriminatory. On the other hand, storing records over time can be burdensome and costly for employers, even when it is done electronically.

Current law requires that employers keep certain employment records around for at least two years. (Gov. Code § 12946.) This bill would extend that requirement out to six years. Though lengthy, the six-year figure is not arbitrary. In 2019, the Legislature extended the amount of time that a person has to file a claim with DFEH after enduring unlawful harassment or discrimination. (AB 9 (Reyes, Ch. 709, Stats. 2019.) The time limit is now three years from the time of the incident giving rise to the claim. The resulting DFEH investigation could potentially last up to two years. The complainant would have up to one year after the DFEH investigation closes to file a civil claim. In the lengthiest possible scenario, therefore, employment documents could be relevant evidence in an employment case six years after the incident they memorialize. Since existing law only requires employers to retain documents for two years, however, by the time it is needed to resolve the legal dispute, the employer may well have lawfully shredded the relevant evidence. By extending the amount of time that employers have to retain employment documents, this bill avoids that problem.

Six years is a long time to keep documents around, however, so a shorter requirement would be preferable if it can still achieve the goal of ensuring that relevant evidence gets preserved. With that goal in mind, the author proposes to offer an amendments in Committee that will shorten the general requirement for record retention to four years, with an exception for scenarios in which the employer has been notified that a complaint has been filed with DFEH. In those scenarios only, the employer would be required to retain all the relevant documents until the matter reaches its ultimate resolution, either because the entire administrative and court dispute process has come to an end, or because the worker's statute of limitations has expired.

One other noteworthy aspect of the bill's changes to document retention requirements is that it would also remove an existing exemption for the State Personnel Board (SPB), thus requiring the SPB to retain its records for the same amount of time as all other employers.

#### 4. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- confirm that the retroactive application of the bill's tolling provisions do not revive claims that have already lapsed;
- remove the provisions requiring courts to give appeals of decisions regarding the scope of DFEH's investigatory powers priority over "all other civil matters";
- shorten the record retention requirement to four years, except where a complaint has been filed with DFEH; and
- make other technical, non-substantive changes.

A mock-up of the amendments in context is attached to this analysis.

#### 5. Arguments in support of the bill

According to the author:

In the eight years that DFEH has been prosecuting civil rights actions, stakeholders have identified sections of the Fair Employment and Housing Act (FEHA) in need of modernization, harmonization, and clarification.

SB 807 address those issues, improves government efficiency, and provides the FEHA with greater clarity and organization - benefitting employers and employees, housing providers and tenants, and businesses and consumers.

#### SUPPORT

None known

#### OPPOSITION

None known

#### RELATED LEGISLATION

##### Pending legislation:

SB 674 (Laird, 2021) requires anyone filing documents in court to send a copy of those documents to the DFEH Director if the matter at issue involves the violation, application, or construction of specified civil rights laws. SB 674 is currently pending consideration before the Senate Judiciary Committee.

SB 774 (Hertzberg, 2021) specifies that the attorney-client privilege applies to confidential communications between a DFEH lawyer and a person who files a

complaint with the department. SB 774 is currently pending consideration before the Senate Judiciary Committee.

Prior legislation:

SB 873 (Jackson, 2020) would have given DFEH authority to receive, investigate, and prosecute complaints of gender discrimination in the pricing of goods and services. SB 873 died in the Senate Judiciary Committee.

SB 973 (Jackson, Ch. X, Stats. 2020) gave DFEH authority to receive and investigate complaints of the Equal Pay Act.

AB 9 (Reyes, Ch. 709, Stats. 2019) extended the deadline for filing an employment discrimination complaint with DFEH from one to three years.

AB 1820 (Com. on Jud., Ch. 834, Stats. 2019) authorized DFEH to file claims pursuant to specified federal civil rights statutes in state or federal court.

SB 224 (Jackson, Ch. 951, Stats. 2018) gave DFEH authority to receive and investigate complaints of sexual harassment in business, service, or professional relationships.

SB 1038 (Com. on Bud. & Fisc. Rev., Ch. 46, Stats 2012) consolidated the Fair Employment and Housing Commission within DFEH and allowed courts to award reasonable attorney's fees and costs to DFEH.

\*\*\*\*\*

**Amended Mock-up for 2021-2022 SB-807 (Wieckowski (S))**

**Mock-up based on Version Number 98 - Amended Senate 3/10/21**

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 12930 of the Government Code is amended to read:

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

- (a) To establish and maintain a principal office and any other offices within the state as are necessary to carry out the purposes of this part.
- (b) To meet and function at any place within the state.
- (c) To appoint attorneys, investigators, conciliators, mediators, and other employees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.
- (d) To obtain upon request and utilize the services of all governmental departments and agencies and, in addition, with respect to housing discrimination, of conciliation councils.
- (e) To adopt, promulgate, amend, and rescind suitable procedural rules and regulations to carry out the investigation, prosecution, and dispute resolution functions and duties of the department pursuant to this part.
- (f) (1) To receive, investigate, conciliate, mediate, and prosecute complaints alleging practices made unlawful pursuant to Chapter 6 (commencing with Section 12940).
- (2) To receive, investigate, conciliate, mediate, and prosecute complaints alleging a violation of Section 51, 51.5, 51.7, 51.9, 54, 54.1, or 54.2 of the Civil Code. The remedies and procedures of this part shall be independent of any other remedy or procedure that might apply.
- (3) To receive, investigate, conciliate, mediate, and prosecute complaints alleging, and to bring civil actions pursuant to Section 52.5 of the Civil Code for, a violation of Section 236.1 of the Penal Code. Damages awarded in any action brought by the department pursuant to Section 52.5 of the Civil Code shall be awarded to the person harmed by the violation of Section 236.1 of the Penal Code. Costs and attorney's fees awarded in any action brought by the department pursuant to Section 52.5 of the Civil Code shall be awarded to the department. The remedies and procedures of this part shall be independent of any other remedy or procedure that might apply.

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

(5) To receive, investigate, conciliate, mediate, and prosecute complaints alleging practices made unlawful pursuant to Section 1197.5 of the Labor Code. The department shall, in coordination with the Division of Labor Standards Enforcement within the Department of Industrial Relations, adopt procedures to ensure that the departments coordinate activities to enforce Section 1197.5 of the Labor Code.

(A) Nothing in this part prevents the director or the director's authorized representative, in that person's discretion, from making, signing, and filing a complaint pursuant to Section 12960 or 12961 alleging practices made unlawful under Section 11135.

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

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

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

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

(3) To issue written interrogatories.

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

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

(6) To appeal, to the appropriate court of appeal, a superior court decision on a petition described in paragraph (5).

(h) To bring civil actions pursuant to Section 12965 or 12981 of this code, or Title VII of the Civil Rights Act of 1964 (Public Law 88-352; 42 U.S.C. Sec. 2000 et seq.), as amended, the federal Americans with Disabilities Act of 1990 (Public Law 101-336; 42

U.S.C. 12101, et seq.), as amended, or the federal Fair Housing Act (42 U.S.C. Sec. 3601 et seq.), and to prosecute those civil actions before state and federal trial courts.

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

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

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

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

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

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

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

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

(n) On a challenge, pursuant to Section 1094.5 of the Code of Civil Procedure, to a decision of the former Fair Employment and Housing Commission pending on or after January 1, 2013, the director or the director's designee shall consult with the Attorney General regarding the defense of that writ petition.

**SEC. 2.** Section 12946 of the Government Code is amended to read:

**12946. (a)** It shall be an unlawful practice for employers, labor organizations, and employment agencies subject to the provisions of this part to fail to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of ~~six~~four years after the records and files are initially created or received, or for employers to fail to retain personnel files of applicants or terminated employees for a minimum period of ~~six~~four years after the date of the employment action taken.

**(b)** Upon notice that a verified complaint against it has been filed under this part, any such employer, labor organization, or employment agency shall maintain and preserve any and all records and files until the later of the following:

(1) The first date after the period of time for filing a civil action has expired.

(2) The first date after the complaint ~~is~~has been fully and finally disposed of and all administrative proceedings, civil actions, appeals or related proceedings have terminated.

**(c)** The council shall adopt suitable rules, regulations, and standards to carry out the purposes of this section.

**(d)** Where necessary, the department, pursuant to its powers under Section 12974, may seek temporary or preliminary judicial relief to enforce this section.

**SEC. 3.** Section 12960 of the Government Code is amended to read:

**12960. (a)** This article governs the procedure for the prevention and elimination of practices made unlawful pursuant to Article 1 (commencing with Section 12940) of Chapter 6.

**(b)** For purposes of this section, filing a complaint means filing an intake form with the department and the operative date of the verified complaint relates back to the filing of the intake form.

**(c)** Any person claiming to be aggrieved by an alleged unlawful practice may file with the department a verified complaint, in writing, that shall state the name and address of the person, employer, labor organization, or employment agency alleged to have committed the unlawful practice complained of, and that shall set forth the particulars thereof and contain other information as may be required by the department. The director or the director's authorized representative may in like manner, on that person's own motion, make, sign, and file a complaint.

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



(e) (1) A complaint alleging a violation of Section 51, 51.5, 51.7, ~~51.9~~, 54, 54.1, or 54.2 of the Civil Code shall not be filed pursuant to this article after the expiration of one year from the date that the alleged unlawful practice or refusal to cooperate occurred.

(2) A complaint alleging a violation of Section 52.5 of the Civil Code shall not be filed pursuant to this article after the expiration of the applicable period of time for commencing a civil action pursuant to that section.

(3) A complaint alleging a violation of Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1 shall not be filed pursuant to this article after the expiration of three years from the date that the alleged unlawful practice occurred or refusal to cooperate occurred.

(4) A complaint alleging a violation of Section 1197.5 of the Labor Code shall not be filed pursuant to this article after the expiration of the applicable period of time for commencing a civil action pursuant to that section.

(5) A complaint alleging a violation of Section 51.9 of the Civil Code or any other violation of Article 1 (commencing with Section 12940) of Chapter 6 shall not be filed after the expiration of three years from the date upon which the unlawful practice or refusal to cooperate occurred.

(6) Notwithstanding paragraphs (1) through (5), inclusive, the filing periods set forth by this section may be extended as follows:

(A) For a period of time not to exceed 90 days following the expiration of the applicable filing deadline, if a person allegedly aggrieved by an unlawful practice first obtained knowledge of the facts of the alleged unlawful practice during the 90 days following the expiration of the applicable filing deadline.

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

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

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

(E) For the periods of time specified in Section 52.5 of the Civil Code for complaints alleging a violation of that section.

(f) (1) Notwithstanding any tolling or limitations period under any other law, the time for a complainant to file a civil action under a statute referenced in this section shall be tolled during the period commencing with the filing of a complaint with the department for an alleged violation of that statute until either of the following:

(A) The department files a civil action for the alleged violation under this part.

(B) One year after the department issues written notice to a complainant that it has closed its investigation without electing to file a civil action for the alleged violation.

(2) The tolling provided under this subdivision shall apply retroactively.

(3) This subdivision is not intended to revive claims that have already lapsed.-

**SEC. 4.** Section 12961 of the Government Code is amended to read:

**12961.** (a) If an unlawful practice alleged in a verified complaint adversely affects, in a similar manner, a group or class of persons of which the aggrieved person filing the complaint is a member, or if the unlawful practice raises questions of law or fact which are common to such a group or class, the aggrieved person or the director may file the complaint on behalf and as representative of such a group or class.

(b) (1) A complaint filed pursuant to subdivision (a) may be investigated as a group or class complaint.

(2) If in the judgment of the director circumstances warrant, a complaint investigated as a group or class complaint pursuant to paragraph (1) shall be treated as a group or class complaint for purposes of conciliation, dispute resolution, or civil action.

(3) The director shall communicate in writing their determination to treat a complaint as a group or class complaint pursuant to paragraph (2) within one year after the filing of the complaint to each person, employer, labor organization, employment agency, or public entity alleged in the complaint to have committed an unlawful practice.

**SEC. 5.** Section 12962 of the Government Code is amended to read:

**12962.** (a) The department shall cause any verified complaint filed for investigation under the provisions of this part to be served upon the person, employer, labor organization, or employment agency alleged to have committed the unlawful practice complained of in any of the following ways:

(1) In the manner specified in Section 415.20 of the Code of Civil Procedure.

(2) In the manner specified in Section 415.30 of the Code of Civil Procedure.

(3) In the manner specified in Section 1010.6 of the Code of Civil Procedure.

(4) In any other manner specified in the Code of Civil Procedure.

(5) Personally.

(6) By certified mail with return receipt requested.

(b) Notwithstanding subdivision (a), if a person claiming to be aggrieved by an alleged unlawful practice hires or retains private counsel for purposes of representation of the claim, the private counsel, and not the department, shall cause the verified complaint filed under the provisions of this part to be served upon the person, employer, labor organization, or employment agency alleged to have committed the unlawful practice in any of the following ways:

(1) In the manner specified in Section 415.20 of the Code of Civil Procedure.

(2) In the manner specified in Section 415.30 of the Code of Civil Procedure.

(3) In the manner specified in Section 1010.6 of the Code of Civil Procedure.

(4) In any other manner specified in the Code of Civil Procedure.

(5) Personally.

(6) By certified mail with return receipt requested.

(c) Service shall be made at the time of initial contact with the person, employer, labor organization, or employment agency or the agents thereof, or within 60 days, whichever first occurs. At the discretion of the director, the complaint may not contain the name of the complaining party unless the complaint is filed by the director or the director's authorized representative.

**SEC. 6.** Section 12963.5 of the Government Code is amended to read:

**12963.5.** (a) The superior courts shall have jurisdiction to compel the attendance and testimony of witnesses, the production of books, records, documents, and physical materials, and the answering of interrogatories. If an individual or organization fails to comply with a subpoena, interrogatory, request for production, or examination under oath by refusing to respond fully or objecting thereto, or by obstructing any proceeding before the department, the department may file with a superior court a petition for an order compelling compliance, naming as respondent the individual or organization that has failed to comply. Such an action may be brought in any county in which the department's investigation or inquiry takes place, or in the county of the respondent's residence or principal office.

(b) The petition shall describe the inquiry or investigation before the department, the basis for its jurisdiction therein, and state facts showing that the subpoena, interrogatory, request for production, or examination under oath was issued or carried

out in accordance with the requirements of this part, that the information sought was identified with sufficient particularity to permit response and is reasonably relevant to the inquiry or investigation before the department, and that the respondent has failed to comply. If the petition sets forth good cause for relief, the court shall issue an order to show cause to the respondent; otherwise the court shall enter an order denying the petition. The order to show cause shall be served, along with the department's petition, on the respondent in the same manner as summons must be served in civil actions, and the order shall be returnable not less than 10 days from its issuance nor later than 45 days after the filing of the petition. The respondent shall have the right to serve and file a written answer or other response to the petition and order to show cause.

(c) Unless otherwise stipulated by the parties, the court shall no later than 30 days after the filing of the petition file its order granting or denying the petition. However, the court may on its own motion for good cause extend such time an additional 30 days. If the order grants the petition in whole or part, the order shall set forth the manner in which the respondent shall comply and the period of time following the effective date of the order within which such compliance is required. A copy of the order shall be served by mail by the clerk upon the parties. If the order grants the petition in whole or in part, the order shall not become effective until 10 days after it is served. If the order denies the petition, it shall become effective on the date it is served.

(d) The order of the superior court shall be subject to review by appeal. A party aggrieved by such order, or any part thereof, may within 15 days after the service of the superior court's order, serve and file in the appropriate court of appeal a notice of appeal to set aside or otherwise modify the superior court's order. ~~In an appeal brought pursuant to this section, the court in which the appeal is pending shall give the appeal preference over all other civil actions, so that the appeal shall be quickly heard and determined.~~ The reviewing court shall regulate the briefing schedule so that, to the extent feasible, the court shall commence hearings on an appeal within 120 days of the date of the filing of the appeal. At the completion of the filing of briefs on appeal, the appellant shall notify the court of the completion of the filing of briefs, whereupon the clerk of the reviewing court shall set the appeal for hearing on the first available calendar date.

(e) (1) A court, in its discretion, may award to the prevailing party, including the department, reasonable attorney's fees and costs, including expert witness fees, in a petition, including appeals, brought pursuant to this section.

(2) Notwithstanding Section 998 of the Code of Civil Procedure, a prevailing defendant respondent shall not be awarded fees and costs pursuant to paragraph (1) unless the court finds the petition or appeal was frivolous, unreasonable, or without merit when brought, or the plaintiff-petitioner continued to litigate after it clearly became so.

(f) Within 15 days after the end of the compliance period specified in the order of the superior court, after the exhaustion of any challenges to the order in higher courts, the department shall in writing certify to the court either that the order has been complied with or that the respondent has failed to comply. A copy of the certified statement shall

be served on the respondent by personal delivery or certified mail. After receipt of a certified statement indicating the respondent's failure to comply with the order, the court may compel obedience to its order by contempt proceedings, and by making such additional orders as may be appropriate. Following such proceedings, the department shall, within 15 days after the respondent complies with the original order of the court, certify in writing to the court that such order has been complied with. A copy of the certified statement shall be served on the respondent by personal delivery or certified mail.

(g) The period of time within which the department is directed to initiate a civil action by Section 12965 shall be extended by the length of the period between the filing of a petition under this section and either (1) the final effective date, after the exhaustion of any challenges to the original order in higher courts, of an order of the superior court denying the petition, or (2) the filing by the department of a certified statement, pursuant to subdivision (e), indicating the respondent's compliance with the order of the superior court granting the petition in whole or in part, whichever occurs later.

**SEC. 7.** Section 12965 of the Government Code is amended to read:

**12965.** (a) (1) In the case of failure to eliminate an unlawful practice under this part through conference, conciliation, mediation, or persuasion, or in advance thereof if circumstances warrant, the director in the director's discretion may bring a civil action in the name of the department on behalf of the person claiming to be aggrieved.

(2) Prior to filing a civil action, the department shall require all parties to participate in mandatory dispute resolution in the department's internal dispute resolution division free of charge to the parties in an effort to resolve the dispute without litigation.

(3) In a civil action, the person claiming to be aggrieved shall be the real party in interest and shall have the right to participate as a party and be represented by that person's own counsel.

(4) A civil action under this subdivision shall be brought in a county in which the department has an office or staff, in a county in which unlawful practices are alleged to have been committed, in the county in which records relevant to the alleged unlawful practices are maintained and administered, in the county in which the person claiming to be aggrieved would have worked or would have had access to public accommodation, but for the alleged unlawful practices, in the county of the defendant's residence or principal office, or, if the civil action includes class or group allegations on behalf of the department, in any county in the state.

(5) (A) A complaint treated by the director as a group or class complaint for purposes of investigation, conciliation, mediation, or civil action pursuant to Section 12961, a civil action shall be brought, if at all, within two years after the filing of the complaint.

(B) For a complaint alleging a violation of Section 51.7 of the Civil Code, a civil action shall be brought, if at all, within two years after the filing of the complaint.

(C) For a complaint other than those specified in subparagraphs (A) and (B), a civil action shall be brought, if at all, within one year after the filing of a complaint.

(D) The deadlines specified in subparagraphs (A), (B), and (C), shall be tolled during a mandatory or voluntary dispute resolution proceeding commencing on the date the department refers the case to its dispute resolution division and ending on the date the department's dispute resolution division closes its mediation record and returns the case to the division that referred it.

(b) For purposes of this section, filing a complaint means filing a verified complaint.

(c) (1) (A) Except as specified in subparagraph (B), if a civil action is not brought by the department pursuant to subdivision (a) within 150 days after the filing of a complaint, or if the department earlier determines that no civil action will be brought pursuant to subdivision (a), the department shall promptly notify, in writing, the person claiming to be aggrieved that the department shall issue, on request, the right-to-sue notice. If the person claiming to be aggrieved does not request a right-to-sue notice, the department shall issue the notice upon completion of its investigation, and not later than one year after the filing of the complaint.

(B) For a complaint treated as a group or class complaint for purposes of investigation, conciliation, mediation, or civil action pursuant to subdivision (b) of Section 12961, the department shall issue a right-to-sue notice upon completion of its investigation, and not later than two years after the filing of the complaint.

(C) The notices specified in subparagraphs (A) and (B) shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person, employer, labor organization, or employment agency named in the verified complaint within one year from the date of that notice.

(D) This paragraph applies only to complaints alleging unlawful employment practices under Article 1 (commencing with Section 12940) of Chapter 6.

(2) A city, county, or district attorney in a location having an enforcement unit established on or before March 1, 1991, pursuant to a local ordinance enacted for the purpose of prosecuting HIV/AIDS discrimination claims, acting on behalf of any person claiming to be aggrieved due to HIV/AIDS discrimination, may also bring a civil action under this part against the person, employer, labor organization, or employment agency named in the notice.

(3) The superior courts of the State of California shall have jurisdiction of actions brought pursuant to this section, and the aggrieved person may file in these courts. An action may be brought in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to the practice are maintained and administered, or in the county in which the aggrieved person would have worked or would have had access to the public accommodation but

for the alleged unlawful practice, but if the defendant is not found within any of these counties, an action may be brought within the county of the defendant's residence or principal office.

(4) A copy of any complaint filed pursuant to this part shall be served on the principal offices of the department. The remedy for failure to send a copy of a complaint is an order to do so.

(5) A civil action brought pursuant to this section shall not be filed as class actions and shall not be maintained as class actions by the person or persons claiming to be aggrieved if those persons have filed a civil class action in the federal courts alleging a comparable claim of employment discrimination against the same defendant or defendants.

(6) In civil actions brought under this section, the court, in its discretion, may award to the prevailing party, including the department, reasonable attorney's fees and costs, including expert witness fees, except that, notwithstanding Section 998 of the Code of Civil Procedure, a prevailing defendant shall not be awarded fees and costs unless the court finds the action was frivolous, unreasonable, or groundless when brought, or the plaintiff continued to litigate after it clearly became so.

(d) A court may grant as relief in any action filed pursuant to subdivision (a) any relief a court is empowered to grant in a civil action brought pursuant to subdivision (c), in addition to any other relief that, in the judgment of the court, will effectuate the purpose of this part. This relief may include a requirement that the employer conduct training for all employees, supervisors, and management on the requirements of this part, the rights and remedies of those who allege a violation of this part, and the employer's internal grievance procedures. In addition, in order to vindicate the purposes and policies of this part, a court may assess against the defendant, if the civil complaint or amended civil complaint so prays, a civil penalty of up to twenty-five thousand dollars (\$25,000) to be awarded to a person denied any right provided for by Section 51.7 of the Civil Code, as an unlawful practice prohibited under this part.

(e) (1) Notwithstanding subdivision (c), the one-year statute of limitations, commencing from the date of the right-to-sue notice by the department to the person claiming to be aggrieved, shall be tolled when all of the following requirements have been met:

(A) A charge of discrimination or harassment is timely filed concurrently with the Equal Employment Opportunity Commission and the department.

(B) The investigation of the charge is deferred by the department to the Equal Employment Opportunity Commission.

(C) A right-to-sue notice is issued to the person claiming to be aggrieved upon deferral of the charge by the department to the Equal Employment Opportunity Commission.

(2) The time for commencing an action for which the statute of limitations is tolled under paragraph (1) expires when the federal right-to-sue period to commence a civil action expires, or one year from the date of the right-to-sue notice by the department, whichever is later.

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

(f) (1) Notwithstanding subdivision (c), the one-year statute of limitations, commencing from the date of the right-to-sue notice by the department, to the person claiming to be aggrieved, shall be tolled when all of the following requirements have been met:

(A) A charge of discrimination or harassment is timely filed concurrently with the Equal Employment Opportunity Commission and the department.

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

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

(2) The time for commencing an action for which the statute of limitations is tolled under paragraph (1) shall expire when the federal right-to-sue period to commence a civil action expires, or one year from the date of the right-to-sue notice by the department, whichever is later.

**SEC. 8.** Section 12981 of the Government Code is amended to read:

**12981.** (a) (1) In the case of failure to eliminate a violation of Section 12955, 12955.1, or 12955.7 that has occurred, or is about to occur, through conference, conciliation, mediation, or persuasion, or in advance thereof if circumstances warrant, the director shall bring a civil action in the name of the department on behalf of the aggrieved person as a real party in interest, notwithstanding Section 12971, in the same manner and with the same powers as provided in Section 12965, except that where the provisions of this article provide greater rights and remedies to an aggrieved person than Section 12965, the provisions of this article shall prevail.

(2) Prior to filing a civil action pursuant to paragraph (1), the department shall require all parties to participate in the department's mandatory dispute resolution division free of charge to the parties in an effort to resolve the dispute without litigation.

(3) A civil action brought pursuant to paragraph (1) shall be filed within 100 days after the filing of a complaint unless it is impracticable to do so. This deadline to file a civil action pursuant to paragraph (1) shall be tolled during a mandatory or voluntary dispute resolution proceeding commencing on the date the department refers the case to its



dispute resolution division and ending on the date the department's dispute resolution division closes its mediation record and returns the case to the division that referred it.

(4) The civil action shall be filed in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to that practice are maintained and administered, or in the county in which the aggrieved person would have resided in the housing accommodation. If the defendant is not found within that county, the action may be filed in the county of the defendant's residence or principal office. Any aggrieved person may intervene as a matter of right in the proceeding, and the appeal or other judicial review of that proceeding.

(b) If the department determines that an allegation concerns the legality of any zoning or other land use law or ordinance, the department or the Attorney General shall take appropriate action with respect to the complaint according to the procedures established in this part for other complaints of housing discrimination.

(c) Within one year of the effective date of every final order or decision issued pursuant to this part, the department shall conduct a compliance review to determine whether the order or decision has been fully obeyed and implemented.

(d) Whenever the department has reasonable cause to believe that a respondent has breached a conciliation agreement signed by the department, the department shall initiate a civil action to enforce the agreement.

**SEC. 9.** Section 12989.1 of the Government Code is amended to read:

**12989.1.** (a) An aggrieved person may commence a civil action in an appropriate court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or breach. The computation of the two-year period shall not include any time during which an administrative proceeding under this part was pending with respect to a complaint under this part based upon the discriminatory housing practice or breach.

(b) An aggrieved person may commence a civil action whether or not a complaint has been filed under this part and without regard to the status of any complaint. Any aggrieved person who is aggrieved with respect to the issues to be determined in a civil action filed under this part, may intervene in that civil action. However, if the department has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this part by the aggrieved person with respect to the alleged discriminatory housing practice that forms the basis for the complaint, except for the purpose of enforcing the terms of the agreement.