

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 1022 (Skinner)  
Version: April 1, 2024  
Hearing Date: April 9, 2024  
Fiscal: Yes  
Urgency: No  
AWM

**SUBJECT**

Enforcement of civil rights

**DIGEST**

This bill provides that the director of the Civil Rights Department (CRD) may file a group or class complaint alleging a violation of the California Fair Employment and Housing Act (FEHA) within a period of 10 years or fewer before the date of the alleged violation, or longer if the court determines the longer window is reasonable, and adds periods during which the CRD's time frame to issue a right-to-sue notice and an individual's time frame to sue following the receipt of a right-to-sue notice are tolled.

**EXECUTIVE SUMMARY**

California's FEHA establishes the mechanism by which Californians can seek relief from invidious discrimination in employment and housing. The FEHA requires all potential FEHA plaintiffs to file an administrative complaint with the CRD before proceeding to a civil action. The CRD is tasked with conducting an investigation and may opt to proceed with a suit in the name of the plaintiff; if the CRD elects not to sue in the plaintiff's name, the plaintiff may file a lawsuit against the employer or housing provider. If the CRD determines that an administrative complaint relates to a class or group of similarly situated individuals, the CRD may also elect to proceed with a class or group claim.

This bill makes a number of changes to the provisions governing the FEHA's administrative timelines. The most significant of these changes permits the CRD to file a group or class civil action alleging violations that date back 10 years from the date the initial administrative complaint was filed, or for longer than 10 years if a court determines the longer look-back is reasonable. The bill also establishes tolling periods during the period in which the CRD must conduct its investigation and issue a right-to-sue notice, and during which a plaintiff has to file suit after receiving a right-to-sue notice, to include tolling during the pendency of an agreement between the CRD and

the defendant, during the time when a plaintiff is appealing the CRD's denial to pursue a claim, and during the pendency of a class action brought by the CRD that relates to the individual claim. These tolling periods are intended to bring greater efficiency to the claims process and avoid the filing of duplicative lawsuits. The bill also makes other changes to clarify the scope of class actions and provisions of the housing portions of FEHA. The author has agreed to amendments reducing the CRD's class action statute of limitations to seven years and eliminating the possibility of a court extending the statute of limitations further.

This bill is sponsored by Equal Rights Advocates, Equality California, and Legal Aid at Work, and is supported by 15 organizations, including legal aid, immigrant rights, and LGBTQA+ rights organizations. This bill is opposed by 20 organizations, including the California Chamber of Commerce, trade organizations, and business organizations.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes the California Fair Employment and Housing Act (FEHA). (Gov. Code, tit. 2, div. 3, pt. 2.8, §§ 12900 et seq.)
- 2) Declares that:
  - a) It is the public policy of this State that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account 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, reproductive health decisionmaking, or military and veteran status.
  - b) It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment for these reasons foments domestic strife and unrest, deprives the state of the fullest utilization of its capacities for development and advancement, and substantially and adversely affects the interests of employees, employers, and the public in general.
  - c) The practice of discrimination because 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 in housing accommodations is declared to be against public policy.
  - d) It is the purpose of FEHA to provide remedies that will eliminate these discriminatory practices, and FEHA shall be deemed an exercise of the police power of the state for the protection of the welfare, health, and peace of the people of this State. (Gov. Code, § 12920.)

- 3) Establishes the Civil Rights Department (CRD) and the Civil Rights Council (Council) within the CRD to effectuate and enforce FEHA, as specified. (Gov. Code, §§ 12901-12907.)
- 4) Makes it an unlawful employment practice in California, unless based upon a bona fide occupational qualification or, except where based on applicable security regulations established by the United States or this State, for employers and labor organizations to engage in discrimination and other negative employment actions on the basis of the characteristics listed in 2)(a), subject to certain exemptions. (Gov. Code, § 12940.)
- 5) Sets forth procedures for the prevention and elimination of practices made unlawful under 4), including:
  - a) Any person claiming to be aggrieved by an alleged unlawful practice may file a complaint with the CRD, as specified. (Gov. Code, § 12960.)
  - b) Upon receipt of a complaint alleging facts sufficient to constitute a violation of 4), the CRD must make a prompt investigation of the allegations. (Gov. Code, § 12963.)
  - c) The CRD may bring an action in the name of the CRD and on behalf of the person claiming to be aggrieved, if it determines the circumstances warrant and the parties did not resolve the dispute in the CRD's internal dispute resolution division. The CRD may file the suit in any county in which the CRD has an office, 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. (Gov. Code, § 12965(a).)
  - d) If the CRD does not file a civil action within 150 days after the filing of a complaint, or the CRD determines earlier that it will not bring a civil action, the CRD shall promptly notify the person claiming to be aggrieved that the CRD shall issue, on request, a right to sue notice. (Gov. Code, § 12965(c).)
  - e) If the person who filed the complaint does not request a notice, the CRD shall issue the notice upon completion of its investigation, which must be no later than one year after the complaint was filed (or two years, for complaints treated as group or class complaints). These time periods are tolled during a mandatory or voluntary dispute resolution proceeding. (Gov. Code, § 12965(c).)
  - f) Upon receipt of a right to sue notice, an aggrieved person may file a civil action in a superior court in any county in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to the practice are maintained or administered, 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, or in the county where the defendant has their residence or personal office, as specified. (Gov. Code, § 12965(c).)
- g) The aggrieved person may, if the unlawful practice adversely affects a group or class of persons, or raises questions of law similar to a group or class, file the complaint on behalf of and as representative of a group or class. (Gov. Code, § 12961.)
  - h) A court may, at its discretion, award a prevailing plaintiff, including the CRD, reasonable attorney fees and costs; notwithstanding Code of Civil Procedure section 998, a court shall not award a prevailing defendant 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. (Gov. Code, § 12965(c)(6).)
- 6) Provides statutes of limitations for actions brought pursuant to 5), and for those time frames to be extended or tolled for certain periods, including:
- a) The statute of limitations for an individual to file a complaint with the CRD is one year for a violation of the Unruh Civil Rights Act, two years for specified wage violations, three years for specified sexual harassment and FEHA violations, and up to ten years for a victim of human trafficking. (Gov. Code, § 12960(e).)
  - b) The limitations window for filing a complaint with CRD is extended for specified reasons, including for 90 days if the person allegedly aggrieved first obtained knowledge of the facts during that 90-day period; for up to one year if the person needs to make a substitute identification of an actual employer; and for up to one year after the aggrieved person attains the age of minority. (Gov. Code, § 12960(e)(6).)
  - c) The one-year window in which a person may bring a civil action following the CRD's issuance of a right to sue notice is tolled when the aggrieved person has also filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) and it conducts its own investigation, as specified. (Gov. Code, § 12965(f).)
  - d) For suits filed by the CRD, the filing deadlines are tolled during a mandatory or voluntary dispute resolution conducted by the CRD's dispute resolution division. (Gov. Code, § 12965(a).)
- 7) Authorizes, where an unlawful practice alleged in a verified complaint under 5) that adversely affects a group or class of persons in a similar manner or raises questions of law common to a group or class, the aggrieved individual or the CRD to file the complaint on behalf of and as representative of such group or class. (Gov. Code, § 12961(a).)
- a) The CRD may investigate a complaint as a group or class complaint. (Gov. Code, § 12961(b).)

- b) The director of the CRD shall communicate in writing its determination to treat a complaint as a group or class within one year of the filing of the complaint to each person or entity alleged in the complaint to have committed the unlawful practice. (Gov. Code, § 12961(c).)
  - c) The CRD may bring a group or class action in any county in the state. (Gov. Code, § 12965(a)(4).)
- 8) Establishes procedures for the prevention and elimination of discrimination in housing under FEHA which are generally similar to those for unlawful employment practices, including permitting the Attorney General or the director of the CRD to make, sign, and file complaints citing practices that appear to relate to housing discrimination, as specified. (Gov. Code, § 12980.)
- 9) States that no complaint for housing discrimination under FEHA may be filed after the expiration of one year from the date upon which the alleged violation occurred or terminated. (Gov. Code, § 12980(b).)
- 10) Provides that, when CRD brings a housing complaint in the public interest, the civil action shall be filed in any county in the state where the unlawful practice is alleged to have been committed, in the county in which the records relevant to that practice are maintained or administered, or the county in which the aggrieved person would have resided in the housing accommodation. (Gov. Code, § 12981.)

This bill:

- 1) Defines, within FEHA, “group or class complaint” as including any complaint alleging a pattern or practice; and states that this definition is declarative of, and clarifies, existing law.
- 2) Provides that a complaint filed by the director of CRD, or the director’s authorized representative, or an unlawful employment practices complaint treated by the director or the director’s representative, as a group or class complaint may allege any violation of FEHA that occurred within a period of 10 years or fewer before the date the complaint was filed, or more than 10 years before the complaint was filed if a court determines that the longer period is reasonable.
- 3) Modifies the time during which an individual’s time frame to bring a FEHA action following the filing of a complaint is tolled, to run until either (1) when CRD files a civil action for the alleged violation, or (2) one year after CRD issues either the written notice that the CRD is not electing to file a lawsuit on behalf of the complainant or, if the complainant timely appeals the CRD’s closure of their complaint, written notice that the complaint remains closed following the appeal. Under the existing language of the statute, the new tolling – during the complainant’s appeal of the CRD’s closure of the case – would apply retroactively.

- 4) Modifies the time during which the director of CRD's time frame to bring a FEHA civil action following the filing of a complaint is tolled, to include:
  - a) The amount of time specified in any written agreement between CRD and the respondent executed before the expiration of the applicable timeline.
  - b) The length of time for which the CRD's investigation is extended due to the pendency of a petition to compel, as specified.
  - c) During a timely appeal with the CRD of the CRD's closure of the complaint.
- 5) Requires the CRD, if it determines, in its discretion, that an individually filed unlawful employment practice complaint relates in whole or in part to a complaint filed in the name of the director or as a group or class complaint for the purposes of investigation, conciliation, mediation, or civil action, to issue a right-to-sue notice either in response to a request from the complainant or after the director's or group or class complaint has been fully and finally disposed of and all civil actions, appeals, or related proceedings have terminated.
- 6) Modifies the time during which the CRD's time frame to issue a right-to-sue notice to an individual complainant is tolled, to include:
  - a) The amount of time specified in any written agreement between CRD and the respondent executed before the expiration of the applicable timeline.
  - b) The length of time for which the CRD's investigation is extended due to the pendency of a petition to compel, as specified.
  - c) During a timely appeal with the CRD of the CRD's closure of the complaint.
- 7) Clarifies that no complaint in a housing discrimination action may be filed after the expiration of one year from the date upon which the alleged violation occurred or terminated, and removes this term from the subdivision relating to housing discrimination actions filed by the Attorney General or the director of the CRD.
- 8) Eliminates the requirement that the CRD bring a civil action for housing discrimination in a county in the state in which the unlawful practice is alleged to have been committed, a county in which the relevant records are maintained and administered, a county in which the aggrieved person would have resided in the housing, or a county in which the defendant resides or maintains its principal office.

### COMMENTS

#### 1. Author's comment

According to the author:

The California Civil Rights Department ("CRD") is the institutional centerpiece of California's defense against discrimination, harassment, and other civil rights violations. Each year, CRD serves the public interest by investigating thousands

of complaints of civil rights violations, mediating and settling many of those complaints, and prosecuting high-impact civil actions for the purposes of protecting the rights of a large number of Californians. SB 1022 would clarify the law that allows the CRD to effectively investigate and prosecute violations of Californians' civil rights by ensuring that courts can address systemic abuses in the workplace that stretch back for years and give appropriate relief to victims. SB 1022 empowers CRD to effectively address systemic discriminatory practices impacting racialized, gender, LGBTQ+, and other forms of workplace, housing and other discrimination.

## 2. The FEHA complaint and investigation process

California's FEHA governs claims involving workplace harassment, discrimination, and civil rights-related retaliation.<sup>1</sup> Under the FEHA, such claims cannot be filed directly in court. Instead, workers alleging that they have been harassed, discriminated against, or retaliated against in the workplace must first exhaust their administrative remedies by filing a claim with CRD.<sup>2</sup> Aggrieved persons have from one year to ten years after the alleged violation to file a claim, depending on the nature of the claim.<sup>3</sup> FEHA violations and certain sexual harassment violations have a three-year statute of limitations;<sup>4</sup> the three-year window was put in place in 2021, when it was extended from one year.<sup>5</sup> The statute of limitations may be tolled under specified conditions, such as where the victim was a minor or the identity of the employer was rebutted.<sup>6</sup> Claims for housing discrimination must be brought within one year of the alleged violation.<sup>7</sup>

After the claim is filed with CRD, CRD investigates the claim; it must finish the investigation within one year, or two years for a group or class complaint.<sup>8</sup> If CRD determines that a FEHA violation took place, then the department has discretion to file a civil action in court on behalf of the worker, either individually or as a class complaint.<sup>9</sup> Alternatively, if CRD is unable to determine that a violation took place, or if the worker requests it at any time, then the department will provide the worker with a right-to-sue letter.<sup>10</sup> Only upon receipt of the right-to-sue letter may the worker proceed

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<sup>1</sup> Gov. Code, § 12940.

<sup>2</sup> *Id.*, §§ 12965, 12980

<sup>3</sup> *Id.*, § 12960(e).

<sup>4</sup> *Id.*, § 12960.

<sup>5</sup> SB 807 (Wieckowski, Ch. 278, Stats. 2021).

<sup>6</sup> Gov. Code, § 12960.

<sup>7</sup> *Id.*, § 12980.

<sup>8</sup> *Id.*, § 12965.

<sup>9</sup> *Id.*, §§ 12960, 12961.

<sup>10</sup> *Id.*, § 12965(c).

to file a civil action in court.<sup>11</sup> The worker has one year from the date of the right-to-sue letter to do so.<sup>12</sup>

3. The dispute over CRD's statute of limitation for FEHA "pattern and practice" class actions

In 2021, after a two-year investigation, the CRD filed a class action against Activision Blizzard for alleged unlawful employment practices on the basis of sex under FEHA and the California Equal Pay Act.<sup>13</sup> CRD alleged that "women across the company are assigned to lower paid and lower opportunity levels... receive lower starting pay and also earn less than male employees for substantially similar work," and were promoted more slowly and terminated more quickly than their male counterparts.<sup>14</sup> CRD also alleged that Activision Blizzard "fostered a pervasive 'frat boy' workplace culture," in which "[m]ale employees proudly come into work hungover, play video games for long periods of time during work while delegating their responsibilities to female employees, engage in banter about their sexual encounters, and talk openly about rape."<sup>15</sup> Female employees had to "continually fend off unwanted sexual comments and advances by their male co-workers and supervisors and being groped" at various company events.<sup>16</sup>

In 2022, after approximately three years of investigation, CRD filed a class action complaint against Tesla for alleged unlawful employment practices on the basis of race under FEHA. The complaint alleged that Black and/or African American workers were underrepresented in Tesla's leadership ranks and racist harassment was rampant.<sup>17</sup> According to the complaint:

As early as 2012, Black and/or African American Tesla workers have complained that Tesla production leads, supervisors, and managers constantly use the n-word and other racial slurs to refer to Black workers. They have complained that swastikas, "KKK," the n-word, and other racist writings are etched onto walls of restrooms, restroom stalls, lunch tables, and even factory machinery. They have complained that Black and/or African American workers are assigned to more physically

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<sup>11</sup> *Id.*, § 12960(f).

<sup>12</sup> *Ibid.*

<sup>13</sup> See *Department of Fair Employment and Housing v. Activision Blizzard, Inc.*, First Amended Complaint (Aug. 23, 2021), Case No. 21STCV26571. The Department of Fair Employment and Housing changed its name to CRD in 2022. (See SB 189 (Budget Committee, Ch. 48, Stats. 2022).)

<sup>14</sup> *Id.* at pp. 3-4.

<sup>15</sup> *Id.* at p. 4.

<sup>16</sup> *Id.* at pp. 4-5.

<sup>17</sup> See *Department of Fair Housing and Employment v. Tesla, Inc.*, Complaint (Feb. 9, 2022), Cse No. 22CV006830, p. 4.



demanding posts and the lowest-level contract roles, paid less, and more often terminated from employment than other workers.<sup>18</sup>

The complaint further stated that Tesla “turned, and continued to turn, a blind eye to years of complaints from Black workers who protest the commonplace use of racial slurs on the assembly line,” and that Tesla’s workplace investigations did not comply with legal requirements.<sup>19</sup>

In both suits, CRD sought to hold the companies liable for the violations that occurred during the companies’ entire “pattern or practice” of wrongdoing and argued that CRD is not bound by FEHA’s “administrative statute of limitations,” which requires an administrative complaint to be filed with the CRD within a certain time of the violation.<sup>20</sup> (The administrative statute of limitations was changed from one year to three years in 2021.)<sup>21</sup> Instead, CRD argued that the statute authorizing it to bring class or group claims permits it to bring such claims dating back as far as the pattern or practice of the violations could be proven. Activision and Tesla argued that CRD is, in fact, bound by the same administrative statute of limitations as an individual plaintiff. In both cases, the judges sided with the defendant and limited the scope of the CRD’s actions to one year prior to when CRD commenced its investigation.

Following those rulings, the CRD entered into a consent decree with Activision.<sup>22</sup> Activision agreed to pay up to \$45,750,000 to a covered class of female employees that ran from October 12, 2015, until December 31, 2020, and another \$9,125,000 in attorney fees and costs; and to injunctive relief requiring Activision to take certain steps to avoid violations going forward.<sup>23</sup>

The Tesla suit is ongoing, with CRD able to prosecute class claims dating back to June 19, 2018.<sup>24</sup>

#### 4. This bill adds an express administrative statute of limitations for CRD group or class action claims

To avoid further litigation or confusion over how far the CRD may look back in a group or class action claim, this bill adds an express administrative statute of limitations for those claims. Specifically, this bill gives CRD, for actions filed as group or class claims, a minimum of 10 years to look back from the date the administrative complaint was filed,

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<sup>18</sup> *Ibid.*

<sup>19</sup> *Id.* at p. 5.

<sup>20</sup> *See* Gov. Code, § 12960.

<sup>21</sup> SB 807 (Wieckowski, Ch. 278, Stats. 2021).

<sup>22</sup> *See California Civil Rights Department v. Activision Blizzard, Inc.*, Order on Consent Decree (Jan. 17, 2024), Case No. 21STCV26571, p. 3.

<sup>23</sup> *Id.* at pp. 9, 17-19.

<sup>24</sup> *See Department of Fair Housing and Employment v. Tesla, Inc.*, Order re: Ruling on Submitted Matter (Nov. 18, 2022), Case No. 22CV006830, p. 5.

or longer if the court determines that a longer window is reasonable. The language allowing a judge to determine a longer lookback window comes from one line of federal district court cases ruling that the EEOC does not have a statute of limitations for “pattern and practice” class actions filed under Title VII.<sup>25</sup>

Statutes of limitations have two related purposes: to “protect defendants from the stale claims of dilatory plaintiffs” and to “stimulate plaintiffs to assert fresh claims against defendants in a diligent fashion.”<sup>26</sup> Nevertheless, a statute of limitations generally creates a hard line, meaning that “a cause of action brought by a plaintiff outside such period is barred, even if the [plaintiff was] diligent.”<sup>27</sup> Statutes of limitations thus represent a tension in two “equally strong” policy interests: repose on the one hand, and allowing claims to be disposed of on the merits on the other.<sup>28</sup>

According to the author, a longer lookback is appropriate in the rare cases where CRD brings a class action on the basis of a longstanding practice of prohibited employment practices. Under this theory, it would be arbitrary to cut off recovery at three years from the date of the filing of the administrative complaint, and CRD should be able to vindicate the rights of a broader scope of similarly situated employees. The bill’s opponents argue that the 10-year statute of limitations, with the possibility of a further extension from the court, will disadvantage employers who have to defend against actions that took place years before.

The author has agreed to amend the bill to reduce the CRD’s class action statute of limitations to seven years, and to eliminate the provision allowing a court to grant a longer lookback.

##### 5. This bill adds events that toll certain FEHA deadlines

FEHA has several time-sensitive requirements after an administrative complaint has been filed. There’s the one-year or two-year time window for CRD to investigate the claim; the 150-day window before CRD has to issue a right-to-sue notice to the claimant upon request; the mandate that CRD issue a right-to-sue notice to the claimant when its investigation is complete and CRD declines to bring a case on behalf of the claimant; and the one-year window for a claimant to bring a civil action following the issuance of

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<sup>25</sup> See, e.g., *E.E.O.C. v. Mitsubishi Motor Mfg. of America, Inc.* (C.D.Ill. 1998) 990 F.Supp. 1059, 1087-1088 (ruling that, in the absence of a statute of limitations for EEOC pattern and practice cases, “the solution to this problem is to let the evidence of a pattern determine the relevant ‘limits’ for the lawsuit.”). There is another line of federal district court cases ruling that the EEOC’s pattern and practice cases are subject to the same statute of limitations that applies to the EEOC’s cases brought on behalf of individuals: no more than 300 days from when the administrative complaint was filed. (See, e.g., *U.S. E.E.O.C. v. Global Horizons, Inc.* (D. Hawai’i, 2012) 904 F.Supp.2d 1074, 1092.) Surprisingly, no federal Court of Appeals has weighed in on this issue, so there is no binding precedent one way or the other.

<sup>26</sup> *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 395.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

a right-to-sue notice. Current law allows all of these time frames to be tolled during the pendency of certain events.

The bill adds new events that toll some of the administrative deadlines within the FEHA process, with the goal of streamlining the process and avoiding duplicative litigation.

First, the bill tolls the complainant's one-year window to file a civil action following the issuance of a right-to-sue notice for the duration of a claimant's timely appeal of the CRD's decision to close the case. Under the current set of guidelines, even if an appeal were successful, the CRD would not be able to proceed with a suit on behalf of the complainant – the combination of the investigation time limit and the filing time limit strip the CRD of the ability to do so. This change, along with the change below that tolls the CRD's investigation time window during the pendency of an appeal, are therefore intended to allow the CRD to file a civil action on behalf of a complainant if the appeal is successful.

Next, the bill adds events that toll the CRD's one- or two-year window to conduct an investigation following the filing of an administrative complaint. These events are:

- For the amount of time specified in any written agreement between the CRD and a respondent executed before the expiration of the applicable deadline.
- For the length of time for which the CRD's investigation is extended due to the pendency of a petition to compel the respondent to provide information.
- During a timely appeal within the CRD of the closure of the complaint.

Tolling the investigation window for a period stipulated to by the respondent, or during the pendency of a petition to compel information from an uncooperative respondent, is intended to give the CRD more space to complete an investigation without having to rush to file a civil action.

The bill also adds, to the list of events that toll the CRD's obligation to issue a right-to-sue notice at the end of an investigation, the same three events that toll the CRD's investigation window. Adding these same three events ensures that the CRD's obligations are in harmony with one another, e.g., by not requiring the CRD to issue a right-to-sue notice while its investigation is ongoing.

Finally, the bill permits the CRD to hold off on issuing a right-to-sue notice in a case where the CRD determines that a complaint is related to an ongoing complaint filed by the CRD as a group or class complaint for purposes of an investigation, conciliation, mediation, or civil action. Under this change, the CRD would still have to issue a right-to-sue notice after 150 days to a complainant who requests the notice, but CRD would not be required to issue the notice to a non-requesting complainant until the CRD's group or class complaint has been fully and finally disposed of. This provision is intended to avoid duplicative litigation while a class claim is pending: if the CRD is

required to issue right-to-sue notices to individual claimants who are also the members of a pending class action, the individuals would then have to file individual lawsuits within one year of receiving the notice or lose their claims. By allowing CRD to hold off on issuing the notices until the end of the class, or until the individual requests the notice, CRD will be able to limit the number of placeholder suits filed.

#### 6. This bill makes additional changes to the FEHA procedures

In addition to the changes above, the bill makes a number of smaller modifications to the FEHA procedural statutes. These include:

- Defining “group or class complaint” to include any complaint alleging a pattern or practice, and stating that this definition is declarative of, and clarifies, existing law. This appears uncontroversial.
- Moving a provision in the housing discrimination procedural statute that requires a complaint to be filed no more than one year from the expiration of the date of the alleged violation occurred into the subdivision for individual claims. According to stakeholders, this limitation has always been understood to apply to individual claims, even though it is housed in the subdivision addressing actions filed by the Attorney General or CRD. The intent is to keep the individual statute of limitations as-is.
- Removing the venue limitations for housing actions filed by the CRD. Similar changes were made to the venue provisions in the employment context in SB 807 (Wieckowski, Ch. 278, Stats. 2021).

#### 7. Amendments

As discussed in Part 4, the author has agreed to amendments to reduce the CRD’s statute of limitations for class or group actions. The amendments are as follows, subject to any nonsubstantive changes the Office of Legislative Counsel may make:

##### Amendment 1

At page 12, in line 20, replace “10” with “seven”.

##### Amendment 2

At page 12, in line 21, add “.” after “filed” and strike the remainder of lines 21-23.

#### 8. Arguments in support

According to the sponsors of the bill:

Based on our experiences working closely with clients and the CRD, we know firsthand how impactful the prosecutorial arm of the agency can be in achieving

meaningful results for claimants. The ability of the Department to address and correct discriminatory policy and practice at large employers, for example, as well as the ability to deliver relief to groups of harmed workers, without the formal constraints of civil class actions, are incredibly important tools. Just last year, CRD reached a \$54 million settlement for workers suffering gender discrimination and equal pay violations at a Santa Monica video game company, which will provide relief to women who were employees or contract workers in California between October 12, 2015 and December 31, 2020.

However, CRD remains limited in its capacity to thoroughly and effectively prosecute systemic discrimination complaints. Although many complaints initiated by CRD, as well as complaints affecting a class or group, involve discriminatory practices that go back years, the department must adhere to the same statute of limitations as an individual claimant—one year. Similarly, CRD must complete their investigations of these claims within one year, despite the reality that information gathering in these investigations, particularly for group/class complaints, takes considerable time. This one-year investigation deadline is inadequate for a thorough investigation of claims, and leads to administrative inefficiency within the department—when individuals file complaints that are already the subject of ongoing CRD group/class investigations, they cannot be easily aggregated into ongoing investigations but rather must complete on their own individual timelines.

SB 1022 would address these concerns by allowing CRD to more fully rectify long-running civil rights violations and provide redress to as many victims as possible by clarifying that certain deadlines applicable to individual complainants do not apply to CRD actions to remedy systemic discrimination. This change would align California law with federal interpretations of the timelines applicable to CRD's counterpart agency, the U.S. Equal Employment Opportunity Commission (EEOC)—that it is not subject to Title VII's deadlines for individual workers. Further, SB 1022 would allow CRD to pause investigations of administrative complaints that may be resolved by actions CRD is already pursuing, so that thorough investigations can occur to resolve the maximum number of claims pertaining to the same discriminatory practices.

In addition, SB 1022 would clarify that the deadlines for CRD to complete its investigation and file a civil action may be tolled by voluntary agreement, a well-recognized tool to facilitate settlement. Finally, it will remedy a conflict in FEHA created by a recent amendment to the statute regarding venue for CRD civil actions alleging housing discrimination.

9. Arguments in opposition

According to the coalition of organizations in opposition:

Not only do statutes of limitations ensure memories and evidence are fresh, but they also ensure illegal behavior is promptly reported and vanquished. This is why, for most civil claims, the statute of limitations will be between two and five years. For example, most personal injury lawsuits have a two-year statute of limitations. For contract cases, it varies from two-to-four years. For property damage, it is generally three years. For claims against a government entity, claims must be filed within in as little as six months. The default statute of limitations for laws without a specified statute of limitation is three years. See Code of Civil Procedure Sections 312, 338, 345. State entities filing claims are subject to these statutes of limitations as well. See, e.g., *People v. Overstock.com, Inc.* (2017) 12 Cal. App. 5th 1064, 1076-1078 (applying UCL four-year statute of limitations to case brought by the Attorney General); Code of Civil Procedure Section 345 (“The limitations prescribed in this chapter apply to actions brought in the name of the state or county or for the benefit of the state or county, in the same manner as to actions by private parties.”)

It is unclear why the CRD requires such a significant statute of limitations. For example, this proposed statute of limitations is *more than three times* the statute of limitations presently afforded to an individual employee or CRD to bring an action for an alleged unlawful employment practice.

A ten-year period undermines the very purpose of a statute of limitations. The evidence available to confirm or refute a claim will shrink. Memories will fade. Former employees will change jobs, retire, or, in some cases, pass on. The very methods by which we maintain data may become inaccessible or unavailable. As the available information about an event shrinks the claim becomes harder to defend. The defendant will be forced to assess what is the better option – pay the expensive attorney’s fees to litigate a claim where a plaintiff claims perfect memory and no other witnesses or evidence remains ... or just pay the plaintiff a settlement because defending the claim without evidence would be impossible.

It is also concerning that a court may extend that statute of limitations any time it decides that it is “reasonable” to do so. Existing doctrines used to look back further than an existing statute of limitations are limited and grounded in principles like situations where someone did not become aware of conduct until later. Under this language, there is no reason why the CRD shouldn’t ask for an extended liability period for every single case. There is nothing to lose by doing so. Every defendant will therefore also be required to spend time and money litigating this side issue.

**SUPPORT**

Equal Rights Advocates (co-sponsor)  
Equality California (co-sponsor)  
Legal Aid at Work (co-sponsor)  
APLA Health  
California Rural Legal Assistance Foundation  
California Work & Family Coalition  
Center for Immigrant Protection – the Asylum Project and Parivar Bay Area  
Central California LGBTQ+ Collaborative  
Courage California  
East Bay Sanctuary Covenant  
National Asian Pacific American Families Against Substance Abuse  
Public Counsel  
San Joaquin Pride Center  
Solano Pride Center  
The Transgender District, San Francisco  
Transgender Health & Wellness Center  
Transgender Resource, Advocacy and Network Service  
Youth Leadership Institute

**OPPOSITION**

Acclamation Insurance Management Services  
Allied Managed Care  
California Association of Joint Powers Authorities  
California Association of Sheet Metal and Air Conditioning Contractors National Association  
California Association of Winegrape Growers  
California Chamber of Commerce  
California Employment Law Council  
California Farm Bureau  
California Financial Services Association  
California league of Food Producers  
California Retailers Association  
California State Council for the Society of Human Resource Management  
Civil Justice Association of California  
Coalition of Small and Disabled Veteran Businesses  
Construction Employers' Association  
Family Business Association of California  
Flasher Barricade Association  
Housing Contractors of California  
Public Risk Innovation, Solution, and Management  
Western Electrical Contractors Association

**RELATED LEGISLATION**

Pending Legislation: SB 1137 (Smallwood-Cuevas, 2024) clarifies that FEHA and the Unruh Civil Rights Act prohibit discrimination on the basis of an intersection of characteristics covered by those acts, as well as on the basis of a single characteristic. SB 1137 is set to be heard in this Committee on the same day as SB 1022.

Prior Legislation:

SB 807 (Wieckowski, Ch. 278, Stats. 2021) among other things, modified the statutes of limitations for a person to file a claim with the CRD; authorized the CRD to bring actions in any county in which the CRD has an office or, for class or group claims, in any county in the state; and clarified certain tolling provisions.

AB 9 (Reyes, Ch. 709, Stats. 2019) extended the statute of limitations for filing a FEHA claim with the CRD from one year to three years.

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