

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

SB 647 (Laird)  
Version: March 9, 2021  
Hearing Date: April 6, 2021  
Fiscal: Yes  
Urgency: No  
TSG

**SUBJECT**

Unruh Civil Rights Act: violations: service of process: Department of Fair  
Employment and Housing

**DIGEST**

This bill would require anyone filing documents in court to send a copy of those documents to the Director of the California Department of Fair Employment and Housing if the matter at issue involves the violation, application, or construction of specified civil rights laws.

**EXECUTIVE SUMMARY**

The Department of Fair Employment and Housing (DFEH) plays a significant role in the enforcement of many of California's civil rights laws, including prohibitions on discrimination against consumers (the Unruh Civil Rights Act), prohibitions on discrimination between businesses (Civ. Code § 51.5), prohibitions on hate crimes (the Ralph Civil Rights Act), and prohibitions on sexual harassment in business, service, or professional relationships (Civ. Code § 51.9). Yet, when litigants file legal documents that involve these civil rights laws in California courts, only the Attorney General's office must receive a copy. As a result, DFEH may go unaware of pending litigation that could impact civil rights in California and that DFEH might otherwise weigh in on. This bill would address the problem by requiring anyone filing legal documents to send a copy to the Director of DFEH if the matter at issue involves the violation, application, or construction of specified civil rights laws that fall within DFEH's jurisdiction.

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

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Prohibits, pursuant to the Unruh Civil Rights Act, California business establishments of any kind whatsoever from discriminating against customers based on sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, immigration status, or any other arbitrary factor, in the provision of accommodations, advantages, facilities, privileges, or services. (Civ. Code § 51.)
- 2) Prohibits a business establishment of any kind whatsoever from discriminating against, boycotting or blacklisting, or refusing to buy from, contract with, sell to, or trade with any other person or entity based on sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status. (Civ. Code Sec. 51.5.)
- 3) Prohibits, pursuant to the Ralph Civil Rights Act, any violence, or intimidation by threat of violence, committed against people or property because of political affiliation, sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, immigration status, any other arbitrary factor, position in a labor dispute, or because another person perceives them to have one or more of those characteristics. (Civ. Code § 51.7.)
- 4) Prohibits sexual harassment, as defined, in business, service, and professional relationships. (Civ. Code § 51.9.)
- 5) Tasks the Department of Fair Employment and Housing with investigating, conciliating, mediating, and prosecuting complaints alleging violations of (1) through (4), above. (Gov. Code § 12930(f)(2).)
- 6) Requires that if a violation of (1) through (4), above, is alleged or the application or construction of (1) through (4), above, is at issue in any proceeding in the California courts, each party shall serve a copy of the party's brief or petition and brief on the State Solicitor General at the Office of the Attorney General. (Civ. Code § 51.1.)
- 7) Prohibits a court from accepting a brief for filing unless the proof of service shows compliance with (6), above, but requires courts to give any party failing to comply with this requirement a reasonable opportunity to cure the failure before imposing sanctions. Directs courts to give the Attorney General additional time to file a brief

in the case if the litigants failed to serve a timely copy of their brief on the Solicitor General. (Civ. Code § 51.1.)

This bill:

- 1) Specifies that if a violation, application, or construction of specified civil rights laws is at issue in any proceeding in the California courts, each party shall also serve a copy of the party's brief or petition and brief on the DFEH Director. Prohibits a court from accepting a brief for filing unless the proof of service shows compliance with this requirement, but requires courts to give any party failing to comply with this requirement a reasonable opportunity to cure the failure before imposing sanctions. Directs courts to give DFEH additional time to file a brief in the case if the litigants failed to serve a timely copy of their brief on DFEH.

### COMMENTS

#### 1. About DFEH

Alongside the Office of the Attorney General, DFEH is the lead civil rights enforcement agency in the state. Though, as its name suggests, one of DFEH's primary tasks is to investigate and prosecute allegations of unlawful discrimination, harassment, and related retaliation in the context of housing and employment, DFEH is also charged with responding to allegations of civil rights violations in several other contexts as well. Of particular relevance to this bill, DFEH is responsible for investigating, conciliating, mediating, and prosecuting complaints alleging violations 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(f)(2).)

#### 2. Civil rights litigants must notify the California Solicitor General about court filings

The California Attorney General's office is tasked with upholding the rights of all Californians under the law. Where litigation between two private parties may have an impact on the rights of Californians more broadly, the Attorney General's office may, from time to time, intervene in such cases. Civil rights matters represent a quintessential example of this type of litigation. In recognition of that fact, California law currently requires private civil rights litigants to send a copy to the Solicitor General in the California Attorney General's Office whenever they file legal documents where a violation, application, or construction of specified civil rights laws is at issue. (Gov. Code § 51.1.)

In this way, the Solicitor General can keep tabs on civil rights litigation that is pending before the California courts and, when the Solicitor General deems it appropriate, intervene on behalf of the State.

Although DFEH also plays a key role in enforcing most of these same civil rights laws, no similar mechanism currently exists for DFEH to stay abreast of relevant pending litigation. As a result, DFEH may not be aware of pending legal decisions that could impact how civil rights laws are applied in California. For that same reason, DFEH may miss out on opportunities to weigh in on these cases.

### 3. Arguments in support of the bill

According to the author:

When a civil rights violation is filed with the courts, the Attorney General must be notified. SB 647 ensures the Director of the Department of Fair Employment and Housing, one of the state's top and most qualified entities whose purpose is to protect civil rights, must also be notified when a violation is filed. Throughout my career in public service, I have worked to protect and expand civil rights for all.

#### SUPPORT

None known

#### OPPOSITION

None known

#### RELATED LEGISLATION

##### Pending Legislation:

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.

SB 807 (Wieckowski, 2021) proposes a series of modifications to the procedures by which DFEH conducts its investigation and prosecution of alleged civil rights violations. SB 807 is currently pending consideration before the Senate Judiciary Committee.

Prior Legislation: AB 2524 (Goldberg, Ch. 244, Stats. 2002) required participants in

litigation involving specified state civil rights laws to send a copy of their legal filings to the Solicitor General in the Attorney General's office.

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