

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

AB 672 (Jackson)
Version: May 23, 2024
Hearing Date: June 25, 2024
Fiscal: Yes
Urgency: No
ID

SUBJECT

Civil Rights Department: community assistance

DIGEST

This bill provides that the Civil Rights Department may offer its community conflict conciliation services in cases of disputes, disagreements, or difficulties relating to discriminatory practices that impair the rights of persons in those communities.

EXECUTIVE SUMMARY

The Civil Rights Department (CRD) investigates, prosecutes, and resolves violations of California's anti-discrimination laws. It also is empowered to provide community conflict resolution services to assist communities and persons to resolve disputes, disagreements, or difficulties relating to discriminatory practices based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, veteran or military status, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, familial status, age, reproductive health decision-making, or sexual orientation, when the discriminatory practices impair the rights of persons in the community. The CRD's services may be made available in cases of such disputes only when peaceful relations among the members of the community involved are threatened, and when requested by an appropriate state or local body or any person directly affected by the dispute. The CRD is also empowered to provide conciliation services to an employer who the CRD determines has employment practices that discriminate on the basis of disability, and the law specifies that CRD must conduct such conciliation in confidence. A CRD employee that acted on behalf of CRD may not engage in the performance of investigative or prosecuting functions for any department in any litigation arising out of the dispute. This bill provides that CRD may affirmatively offer its conciliation services, in addition to providing them upon the request of a particular party. This bill applies the confidentiality and conflict provisions for conciliation services to employers to any conciliation efforts by CRD. AB 672 is author-sponsored, and the Committee has received no timely support or opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Civil Rights Department (CRD) to receive, investigate, conciliate, mediate, and prosecute complaints alleging violations of the state's anti-discrimination laws. (Gov. Code § 12930 et seq.)
- 1) Makes it an unlawful employment practice, unless based upon a bona fide occupational qualification or security regulations, for an employer to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment, of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decision-making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of the individual. (Gov. Code § 12940(a).)
- 2) Makes it unlawful for a provider of any housing accommodation, and other persons providing services related to housing accommodation, to discriminate against or harass any person because of the 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 of that person. (Gov. Code § 12955 et seq.)
- 3) Provides that CRD may provide assistance to communities and persons in the community in resolving disputes, disagreements, or difficulties relating to discriminatory practices that impair the rights of persons in that community under the Constitution or laws of the United States or California. Specifies that these services may be made available only when, in CRD's judgement, peaceful relations among the persons involved are threatened by the dispute. Specifies that CRD's services under this provision are to be made available only upon request of an appropriate state or local public body, or any person directly affected by the dispute. (Gov. Code § 12931.)
- 4) Specifies that CRD's services pursuant to (3), above, shall be limited to endeavors at investigation, conference, conciliation, and persuasion. (*Id.*)
- 5) Specifies that the Legislature recognizes that the avoidance of discriminatory practices in the employment of disabled persons is most effectively achieved through ongoing efforts in vocational rehabilitation and job placement. Specifies that CRD may utilize the efforts and experience of the Department of Rehabilitation, and

may conciliate on employment policies with employers who, in CRD's judgement, have employment practices and policies that discriminate against disabled persons.

- a) Specifies that the activities of CRD in providing conciliation assistance must be conducted in confidence and without publicity, and that CRD must hold confidential any information acquired upon the understanding that it would be held in confidence.
- b) Specifies that no employee of CRD may perform investigative or prosecutorial functions of any department or agency in any litigation arising out of a dispute when the employee acted on behalf of CRD. Specifies that any employee who makes public information in violation of these provisions is guilty of a misdemeanor and shall be subject to discipline, as specified, if they are a member of the state civil service. (Gov. Code § 12932.)

This bill:

1. Specifies that CRD may offer its community dispute resolution services in cases of disputes, disagreements, or difficulties, or upon the request of an appropriate state or local body, or any person directly affected by the dispute, disagreement, or difficulty.
2. Specifies that the confidentiality and conflict provisions described in 5), above, apply to CRD's provision of community dispute resolution services.

COMMENTS

1. Author's statement

According to the author:

Currently, the Community Conflict Resolution Unit is only able to offer its services by request only and not by its own motion, which results in missed opportunities to prevent and address conflicts in a timely manner. AB 672 would allow the unit to offer conflict resolution services of its own accord, which would prevent conflicts from escalating and help build more harmonious relationships within communities. Given current political and cultural divisiveness, it's more important now than ever to create a more inclusive environment where conflicts are addressed constructively and collaboratively.

2. The Civil Rights Department and its conflict resolution services

The CRD was formed, originally as the Department of Fair Employment and Housing, in 1980 through the Fair Employment and Housing Act (FEHA) to investigate, prosecute, and resolve violations of California's anti-discrimination laws. (Ch. 992,

Stats. 1980.) The statutes regulating its operation and defining the prohibited discrimination in employment or housing accommodations is contained in 12900 through 12999 of the Government Code. (Gov. Code § 12900 et seq.) FEHA prohibits discrimination on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decision-making, medical condition, genetic information, marital status, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status, unless the discrimination is based upon a bona fide occupational qualification or security regulations of the state or federal government. (Gov. Code § 12940.) FEHA also prohibits discrimination on the aforementioned bases in the provision of housing accommodations. (Gov. Code § 12955 et seq.)

FEHA also provided CRD with the authority to conduct community conflict resolution services. This provision of FEHA provided that CRD may provide assistance to communities and persons in resolving disputes, disagreements, or difficulties relating to discriminatory practices that impair the rights of persons in the community. (Gov. Code § 12931.) Through these provisions, CRD may provide endeavors for investigation, conference, conciliation, and persuasion. (Gov. Code § 12931(c).) These services may only be made available when, in CRD's judgement, peaceful relations among persons in the community are threatened by the dispute. In addition, CRD cannot initiate these conciliation services independently; instead, they are to be made available only upon request by a state or local public body or by any person directly affected by the dispute.

Another provision of FEHA provides CRD with additional authority to assist disabled persons with finding job opportunities and to conciliate with employers with employment practices that discriminate against disabled persons. (Gov. Code § 12932.) For these services, the statute specifies that CRD must conduct conciliation assistance with employers in confidence and without publicity, and that CRD must hold confidential any information acquired. (Gov. Code § 12931(b).) CRD employees are also prohibited from engaging in investigative or prosecutorial functions for any department in any litigation arising out of a dispute in which the employee acted on behalf of the CRD. (Gov. Code § 12932(c).) An employee who makes any information public in violation of the confidentiality requirement for conciliation is guilty of a misdemeanor and subject to discipline if a civil servant. (*Id.*)

3. CRD's Community Conflict Resolution Unit

In 2022, the 2022 Budget Act provided the CRD with funds to establish a Community Conflict Resolution Unit (CCRU) within its Dispute Resolution Department. In CRD's funding request for 2022, CRD stated that funding for community conflict resolution and conciliation efforts would:

“allow [CRD] to fund 3 positions and operational funding to develop and run a community conciliation program, modeled in part on the U.S. Department of

Justice's Community Relations Service. These staffers would, among other responsibilities, identify opportunities for intervention and travel around the state to provide conciliation services to communities facing hate incidents or other conflicts over discriminatory practices. Specifically, [CRD would provide] facilitated dialogue, mediation, training, and consultation to assist these communities to come together, develop solutions to the conflict, and enhance their capacity to independently prevent and resolve future conflict."¹

As the statement above evidences, the CCRU is similar to and fashioned on a federal program: the Community Relations Service (CRS). The CRS was created as part of the Civil Rights Act of 1964.² The CRS is empowered to provide assistance to communities and persons in resolving disputes relating to discriminatory practices based on race, color, or national origin which impair the rights of persons in the community. (42 U.S.C. § 2000g-1.) Like the CCRU, the CRS is meant to facilitate dialogue, mediation, training, and consultation to assist communities in resolving conflicts. The CRS also may only provide services when peaceful relations among members of the impacted community are threatened by the dispute. (*Id.*) However, unlike the CCRU, the CRS may offer its services affirmatively, upon its own motion.

In 2024, the CRD reported that the CCRU had exceeded its initial goals. It reported that it has explored 23 community conciliation opportunities, conducted eight community conciliation sessions, provided 4 trainings for local leaders, facilitated 21 meetings, completed 10 technical consultations, and conducted 52 community engagement sessions.³ Examples of CCRU's work included: assisting to the design and facilitating of dialogue for community leaders of a city to improve community relations, particularly among Latinx and African American residents; consulting with the head of a university related to responding to campus tensions related to the war in Gaza; working with rural communities to address concerns related to disability access; and assisting the Commission on the State of Hate with community forums and listening sessions.

The CRD initiated a rulemaking process for the CCRU in December 2023.⁴ These proposed regulations were aimed at implementing and interpreting the Government Code section 12931 through 12933 that provide the CRD with the authority to provide conflict resolution services for the purpose of providing "suitable procedural rules and regulations [for CRD to] carry out the Department's community conflict resolution

¹ See Subcommittee No. 4, Agenda, Senate Committee on Budget and Fiscal Review; Subcommittee No. 4 (Mar. 14, 2024), Item 1700 - Civil Rights Department, available at

<https://sbud.senate.ca.gov/hearingagendas/subcommittee-4-state-administration-and-general-government>.

² Community Relations Service, About CRS, U.S. Dept. of Justice (accessed Jun. 9, 2024), available at <https://www.justice.gov/crs/about>.

³ *Id.*

⁴ Civil Rights Department, "Notice of Proposed Rulemaking: Proposed Regulations Regarding Procedures of Community Conflict Resolution," (Dec. 1, 2023), available at <https://calcivilrights.ca.gov/procedural-rulemaking/>.

functions as well as other functions and duties of the Community Conflict Resolution Unit.”⁵ The regulations state that the community conflict conciliation assistance provided by CRD is intended to assist communities experiencing conflict to develop community-led solutions to the conflict and enhance communities’ capacity to independently prevent and resolve future conflict.⁶ The regulations specify that CRD’s community conflict resolution conciliation assistance is separate and distinct from its enforcement activities, and that staff who provide conflict resolution conciliation do not engage in any of CRD’s enforcement activities, including mediation under the CRD.

The regulations provide a variety of definitions for the program, that CRD must provide conflict resolution services in confidence, and how a request for conflict resolution services may be made to the CRD. They define “conciliation assistance” as activities undertaken by the community conflict resolution unit to assist communities or state or local bodies to resolve community conflict, including by facilitating dialogues, mediation, education and outreach, training, and designing effective opportunities for community input, technical assistance, and consultation. (2 Cal. Code of Regs. § 10301.) The regulations provide that a request can be made verbally or in writing, including by email or a request form on the CRD’s website. (2 Cal. Code of Regs. § 10303.) A request for conflict resolution services does not require the filing with CRD of a complaint alleging a violation of anti-discrimination laws, and a request can be made before, simultaneously with, or after the filing of a discrimination complaint. (2 Cal. Code of Regs. § 10303.)

4. AB 672 proposes to revise CRD’s community conflict resolution services to allow CRD to affirmatively offer its services

AB 672 proposes a minor change to CRD’s community conflict resolution services. It proposes to allow CRD to offer its services in cases of disputes, disagreements, or difficulties, rather than simply permitting it to provide services upon request. This would allow CRD to affirmatively offer its community conflict resolution services. In addition, AB 672 applies the requirements in Government Code Section 12932 to the CCRU’s services; namely, the requirement that CRD activities in providing conciliation assistance must be conducted in confidence and without publicity, and that no CRD employee who acted on behalf of CRD in a dispute may perform any investigative or prosecuting functions in any litigation arising from the dispute. These provisions are in line with the CRD’s newly-adopted regulations for the CCRU. This change also means that any CRD employee who makes public any information in violation of the confidentiality requirements for conflict resolution is guilty of a misdemeanor and potentially subject to disciplinary action.

⁵ *Id.*

⁶ 2 Cal. Code of Regs. § 10300.

SUPPORT

None received

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 523 (Leyva, Ch. 630, Stats. 2022) established the Contraceptive Equity Act of 2022 that, among other things, included as prohibited discriminatory acts those based on reproductive health decisionmaking, and included reproductive health decisionmaking as a discriminatory basis of a community dispute for which CRD may provide community resolution services.

SB 222 (Hill, Ch.601 , Stats. 2019) included as prohibited discrimination discriminatory acts based on veteran or military status, and included veteran or military status as a discriminatory basis of a community dispute for which CRD may provide community resolution services.

SB 559 (Padilla, Ch. 261, Stats. 2011) included genetic information as a discriminatory basis of a community dispute for which CRD may provide community resolution services, among other changes to various provisions of law.

AB 1001 (Villaraigosa, Ch. 592, Stats. 1999) included age and sexual orientation as a prohibited basis of discrimination, and included age or sexual orientation as a discriminatory basis of a community dispute for which CRD may provide community resolution services.

PRIOR VOTES:

This bill was amended on May 23, 2024 to completely change the bill's provisions, and therefore all prior votes are irrelevant.
