

Assembly Bill No. 3080

Passed the Assembly May 30, 2018

Chief Clerk of the Assembly

Passed the Senate August 22, 2018

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2018, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 12953 to the Government Code, and to add Sections 432.4 and 432.6 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 3080, Gonzalez Fletcher. Employment discrimination: enforcement.

Existing law imposes various restrictions on employers with respect to contracts and applications for employment. A violation of those restrictions is a misdemeanor.

Existing law creates the Division of Labor Standards Enforcement, which is under the direction of the Labor Commissioner, and generally commits to the commissioner the authority and responsibility for the enforcement of employment laws.

This bill would prohibit a person from, as a condition of employment, continued employment, the receipt of any employment-related benefit, or as a condition of entering into a contractual agreement, prohibiting an applicant for employment, employee, or independent contractor from disclosing to any person an instance of sexual harassment that the employee or independent contractor suffers, witnesses, or discovers in the workplace or in the performance of the contract, or otherwise opposing any lawful practice, or from exercising any right or obligation or participating in any investigation or proceeding with respect to unlawful harassment or discrimination. The bill would also prohibit an employer from requiring any applicant for employment or any employee to waive any right, forum, or procedure for a violation of any provision of the California Fair Employment and Housing Act (FEHA) or other specific statutes governing employment, as a condition of employment, continued employment, the receipt of any employment-related benefit, or as a condition of entering into a contractual agreement. The bill would also prohibit an employer from threatening, retaliating or discriminating against, or terminating any applicant for employment or any employee because of the refusal to consent to the waiver of any right, forum, or

procedure for a violation of specific statutes governing employment. The bill would establish a specific exemption from those prohibitions. Because a violation of these prohibitions would be a crime, the bill would impose a state-mandated local program.

FEHA makes specified employment and housing practices unlawful and provides procedures for enforcement by the Department of Fair Employment and Housing. FEHA authorizes a person alleging a violation of specified provisions of the act relating to employment discrimination to submit a verified complaint to the Department of Fair Employment and Housing, and requires the department to take actions to investigate and conciliate that complaint. FEHA authorizes the department to bring a civil action on behalf of the person who submitted the complaint upon the failure to eliminate an unlawful practice under these provisions. FEHA requires the department to issue a right-to-sue notice to a person who submitted the complaint if certain conditions occur, and FEHA requires a person who has been issued a right-to-sue notice to bring an action within one year from when the department issued that notice.

This bill would additionally make violations of the prohibitions described above, relating to sexual harassment and waivers, unlawful employment practices under FEHA.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares that it is the policy of this state to ensure that all persons have the full benefit of the rights, forums, and procedures established in the California Fair Employment and Housing Act Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code and the Labor Code.

(b) It is the purpose of this act to ensure that individuals are not retaliated against for refusing to consent to the waiver of those rights and procedures and to ensure that any contract relating to

those rights and procedures be entered into as a matter of voluntary consent, not coercion.

SEC. 2. Section 12953 is added to the Government Code, to read:

12953. It is an unlawful employment practice for an employer to violate Section 432.4 or 432.6 of the Labor Code.

SEC. 3. Section 432.4 is added to the Labor Code, to read:

432.4. (a) A person shall not, as a condition of employment, continued employment, the receipt of any employment-related benefit, or as a condition of entering into a contractual agreement, prohibit any applicant for employment, employee, or independent contractor from disclosing to any person an instance of sexual harassment that the employee or independent contractor suffers, witnesses, or discovers in the workplace or in the performance of the contract, or otherwise opposing any unlawful practice, or from exercising any right or obligation or participating in any investigation or proceeding with respect to unlawful harassment or discrimination.

(b) This section applies to contracts for employment entered into, modified, or extended on or after January 1, 2019.

SEC. 4. Section 432.6 is added to the Labor Code, to read:

432.6. (a) A person shall not, as a condition of employment, continued employment, the receipt of any employment-related benefit, or as a condition of entering into a contractual agreement, require any applicant for employment or any employee to waive any right, forum, or procedure for a violation of any provision of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code) or this code, including the right to file and pursue a civil action or a complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged violation.

(b) An employer shall not threaten, retaliate or discriminate against, or terminate any applicant for employment or any employee because of the refusal to consent to the waiver of any right, forum, or procedure for a violation of the California Fair Employment and Housing Act or this code, including the right to file and pursue a civil action or a complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement

agency, or any court or other governmental entity of any alleged violation.

(c) For purposes of this section, an agreement that requires an employee to opt out of a waiver or take any affirmative action in order to preserve their rights is deemed a condition of employment.

(d) In addition to injunctive relief and any other remedies available, a court may award a prevailing plaintiff enforcing his or her rights under this section reasonable attorney's fees.

(e) This section does not apply to a person registered with a self-regulatory organization as defined by the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78c) or regulations adopted under that act pertaining to any requirement of a self-regulatory organization that a person arbitrate disputes that arise between the person and his or her employer or any other person as specified by the rules of the self-regulatory organization.

(f) This section applies to contracts for employment entered into, modified, or extended on or after January 1, 2019.

(g) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2018

Governor