

AMENDED IN ASSEMBLY AUGUST 20, 2002

AMENDED IN ASSEMBLY JUNE 18, 2002

AMENDED IN SENATE MAY 13, 2002

**SENATE BILL**

**No. 1538**

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**Introduced by Senator Burton**  
**(Principal coauthor: Senator Escutia)**  
(Coauthor: Assembly Member Wesson)

February 20, 2002

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An act to amend Section 1281 of the Code of Civil Procedure, and to add Section 12952 to the Government Code, relating to employment arbitration.

LEGISLATIVE COUNSEL'S DIGEST

SB 1538, as amended, Burton. Employment arbitration agreements.

Existing law generally provides that written agreements to submit controversies to arbitration are valid and enforceable.

This bill would amend existing law to invalidate predispute arbitration agreements between employers and employees as they relate to actions for employment pursuant to the Fair Housing and Employment Act (FEHA).

This bill would also establish that it is an unlawful employment practice, *on or after January 1, 2003*, to require an employee to waive rights and procedures established by FEHA, or to take any adverse employment action against any person in retaliation for refusing to waive rights and procedures established by FEHA. *This bill would also provide that a waiver of rights or procedures provided under FEHA must be knowing, voluntary, and not made a condition of employment*

*or continued employment, that a waiver of rights or procedures provided under FEHA required as a condition of employment or continued employment is invalid, and that a waiver of rights or procedures provided under FEHA required as a condition of employment or continued employment entered into prior to January 1, 2003, may be deemed involuntary as to any FEHA claim that arises on or after January 1, 2003. The bill would provide that the employer has the burden of proving that any waiver or arbitration agreement was knowing, voluntary, and was not a condition of employment or continued employment.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. The Legislature finds and declares that it is the  
2 public policy of the State of California to ensure that employees  
3 have the full benefit of the rights and protections contained in the  
4 Fair Employment and Housing Act and that employees not be  
5 deprived of those rights and protections by the use of coerced and  
6 involuntary waivers. It is the purpose of this act to ensure that any  
7 agreement between an employer and employee to arbitrate any  
8 claim arising under the FEHA is a matter of consent and not  
9 coercion.

10 The Legislature finds and declares that involuntary predispute  
11 arbitration provisions that limit an employee's access to the  
12 Department of Fair Employment and Housing *as a condition of*  
13 *employment* and limit the authority of the department to  
14 investigate and pursue meritorious claims of discrimination are  
15 against the public policy of this state.

16 SEC. 2. Section 1281 of the Code of Civil Procedure is  
17 amended to read:

18 1281. (a) Except as provided in subdivision (b), a written  
19 agreement to submit to arbitration an existing controversy or a  
20 controversy thereafter arising is valid, enforceable, and  
21 irrevocable, save upon grounds that exist for the revocation of any  
22 contract.

23 (b) Subdivision (a) does not apply to any predispute arbitration  
24 agreement between an employer and employee that violates  
25 Section 12952 of the Government Code.



1 SEC. 3. Section 12952 is added to the Government Code, to  
2 read:

3 12952. (a) It is an unlawful employment practice, *on or after*  
4 *January 1, 2003*, for an employer, as defined in subdivision (d) of  
5 Section 12926, to require an employee or potential employee to  
6 waive rights or procedures provided for in this chapter, including,  
7 but not limited to, the right to file a complaint with the department  
8 pursuant to Section 12960 or the right to file and pursue a civil  
9 action pursuant to Section 12965, as a condition of employment or  
10 continued employment.

11 (b) It is an unlawful employment practice, *on or after January*  
12 *1, 2003*, for an employer, as defined in subdivision (d) of Section  
13 12926, to refuse to hire, harass, discharge, expel, or otherwise  
14 discriminate against an employee or potential employee because  
15 he or she refuses to waive rights or procedures provided for in this  
16 chapter.

17 ~~(c) A waiver of rights or procedures provided for in this~~  
18 ~~chapter, in violation of subdivision (a), is void, and is deemed~~  
19 ~~involuntary, beyond the reasonable expectations of the parties,~~  
20 ~~unconscionable, and against public policy.~~

21 (c) *Any waiver of rights or procedures provided under the Fair*  
22 *Employment and Housing Act must be knowing, voluntary, and not*  
23 *made a condition of employment or continued employment.*

24 (1) *Any waiver of rights or procedures provided under the Fair*  
25 *Employment and Housing Act, including an agreement to*  
26 *arbitrate a FEHA claim, that is required as a condition of*  
27 *employment or continued employment in violation of subdivision*  
28 *(a), shall be deemed void, unconscionable, against public policy*  
29 *and unenforceable.*

30 (2) *Any waiver of rights or procedures provided under the Fair*  
31 *Employment and Housing Act, including an agreement to*  
32 *arbitrate a FEHA claim, required as a condition of employment or*  
33 *continued employment in any contract entered into prior to*  
34 *January 1, 2003, may be deemed involuntary as to any FEHA*  
35 *claim that arises on or after January 1, 2003, and if so found, is*  
36 *unconscionable, against public policy and unenforceable.*

37 (d) ~~The employer has the burden of proving that any waiver or~~  
38 ~~arbitration agreement was knowing, voluntary, and not a condition~~  
39 ~~of employment. *under subdivision (a), (b) or (c) was knowing,*~~  
40 ~~*voluntary, and not made a condition of employment or continued*~~



- 1 *employment, or that the arbitration agreement under subdivision*
- 2 *(a), (b) or (c) was knowing, voluntary, and not made a condition*
- 3 *of employment or continued employment.*

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