



## **Analysis of Amended Bill**

Author: Jones-Sawyer	Sponsor:	Bill Number: AB 1007
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Attorney: Shane Hofeling	Related Bills: See Legislative History	

**Subject:** State Employment/Adverse Actions Against Employees

### **Summary**

This bill would, under the Government Code, modify the statute of limitations for serving adverse actions against state employees.

**Recommendation – No position.**

### **Summary of Amendments**

The March 25, 2019, amendments removed provisions of the bill related to the Labor Code and replaced them with the provisions discussed in this analysis.

The May 16, 2019, amendments added a cause of action that would remain subject to the current three year statute of limitations.

This is the department's first analysis of the bill.

### **Reason for the Bill**

The reason for this bill is to protect workers and reduce departmental backlog by expediting the disciplinary process for state employees by requiring that a notice of adverse action be served within one year of the alleged employee violation.

### **Effective/Operative Date**

This bill would be effective and operative January 1, 2020, and would apply to causes for discipline discovered on or after that date.

### **State Law**

The California Civil Service Act (Act) within the Government Code establishes procedures for taking disciplinary actions, called adverse actions, by the State Personnel Board. The Act provides a statute of limitations of three years to serve an

adverse action on state employees. If the action is not served within three years after the cause for discipline, the action is deemed invalid. In a case where the adverse action is due to fraud, embezzlement, or falsification of records, the notice of adverse action must be served within three years after the discovery of the misconduct. Adverse actions served within the statute of limitations can result in dismissal, demotion, or reassignment.

Existing state law prohibits the disclosure of any taxpayer information, except as specifically authorized by statute. Any Franchise Tax Board (FTB) employee or member responsible for the unauthorized disclosure of state or federal tax information is subject to criminal prosecution. Improper disclosure of state tax information is a misdemeanor and improper disclosure of federal tax information is a felony. If the unauthorized disclosure involves the use of a state computer, it may be prosecuted as a felony. Additionally, the FTB may take disciplinary action against an employee who makes an unauthorized disclosure.

### **This Bill**

This bill would, under the Government Code, reduce the statute of limitations for service of a valid adverse action against a state employee related to a cause for discipline discovered on or after January 1, 2020, to one year after the cause for discipline, upon which the notice is based, first arose, with the following exceptions:

- Adverse actions based on fraud, embezzlement, or falsification of records would remain subject to a three-year statute of limitations for service after the discovery of the cause for discipline.
- Adverse actions based on harassment, as specified,<sup>1</sup> sexual assault, or a cause for discipline that is the subject of a criminal investigation or criminal prosecution for a felony would remain subject to a three-year statute of limitations for service after the cause for discipline first arose.

### **Implementation Considerations**

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

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<sup>1</sup> Harassment on the basis of race, color, religion, sex, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information.

The statute of limitations applicable to service of an action for any criminal investigation would expire three years after the cause for discipline first arose. If the three year statute of limitations is intended to apply to investigations of felony criminal activity, this bill should be amended.

A one-year statute of limitations to serve an adverse action would weaken the department's ability to use disciplinary action as a deterrent for violating the department's unauthorized access policies. Although the majority of the department's investigations currently meet the timeframes provided for in this bill, there are times when the department must work with external agencies such as the Treasury Inspector General for Tax Administration, the California Highway Patrol, the Employment Development Department, and the District Attorney's Office to complete the investigation. These investigations often involve serious types of misconduct, system misuse, and in some cases criminal activity that often extends the investigative time beyond one year. Allowing an employee to escape discipline due to a shortened statute of limitations would also weaken privacy protection for taxpayers' confidential information.

In addition, a one year statute of limitations can negatively impact the department's efforts in progressive discipline.

### **Legislative History**

SB 646 (Galgiani, 2017/2018), would have modified the statute of limitations on adverse actions served against state employees. SB 646 failed to pass out of the Assembly Public Employees and Retirement Committee.

AB 769 (Jones-Sawyer, 2015/2016), would have prohibited adverse actions against state employees unless notice of the adverse action is served and the investigation is completed within one year of the date the cause for discipline arose. Adverse actions based on fraud, embezzlement, the falsification of records, or the unauthorized accessing or disclosure of confidential tax information would be valid if notice of the adverse action is served within three years after the discovery of the fraud, embezzlement, falsification, or unauthorized accessing or disclosure. AB 769 was vetoed by Governor Brown on September 30, 2016.

The Governor's veto message stated in part: I am unwilling to reduce longstanding civil service adverse action timeframes because it may take state agencies longer than a year to investigate and serve adverse actions in complex cases involving employee misconduct or unsatisfactory work performance. Further, this bill hinders the progressive discipline process which is intended to give employees a reasonable amount of time to correct problems at an early stage.

### **Other States' Information**

Since this bill pertains to administrative procedures that are specific to California, a comparison to other states would not be relevant.

### **Fiscal Impact**

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

### **Economic Impact**

Revenue Estimate

This bill would not impact the state's income or franchise tax revenue.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

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