

AMENDED IN SENATE MARCH 7, 2016

AMENDED IN SENATE FEBRUARY 22, 2016

SENATE BILL

No. 876

Introduced by Senator Liu

January 14, 2016

An act to add Part 2.2 (commencing with Section 53.8) to Division 1 of the Civil Code, and to add Section 11139.2 to, the Government Code, relating to homelessness.

LEGISLATIVE COUNSEL'S DIGEST

SB 876, as amended, Liu. Homelessness.

Existing law provides that no person shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

This bill would afford persons experiencing homelessness the right to use public spaces without discrimination based on their housing status and describe basic human and civil rights that may be exercised without being subject to criminal or civil sanctions, including the right to use and to move freely in public spaces, the right to rest in public spaces and to protect oneself from the elements, the right to eat in any public space in which having food is not prohibited, and the right to perform religious observances in public spaces, as specified. The bill would state the intent of the Legislature that these provisions be interpreted broadly so as to prohibit policies or practices that are discriminatory in either their purpose or effect.

The bill would authorize a person whose rights have been violated pursuant to these provisions to enforce those rights in a civil action in which the court may award the prevailing ~~party~~ *plaintiff* injunctive and declaratory relief, restitution, damages, statutory damages of \$1,000 per violation, and fees and costs.

The bill would also require all applicants for the United States Department of Housing and Urban Development's Continuum of Care Homeless Assistance Program to annually provide to the Department of Housing and Community Development's Division of Housing Policy Development a copy of its application for funding from the United States Department of Housing and Urban Development that includes the organization's response to the application question regarding steps that its community is taking to reduce criminalization of homelessness. Because the bill would require local agencies to perform additional duties, it would impose a state-mandated local program.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) According to the United States Department of Housing and
- 4 Urban Development's report to Congress, 115,738 people were
- 5 estimated to be homeless in California in 2014, a rate that is
- 6 unprecedented following a deep and prolonged economic recession,
- 7 a severe shortage of safe and affordable housing, a failed veteran
- 8 and civilian mental health system, and a diminished social safety
- 9 net.
- 10 (b) According to the United States Department of Education,
- 11 284,086 schoolchildren were known to have experienced
- 12 homelessness in the 2013–14 school year.

1 (c) Homelessness is an independent risk factor for a number of
2 illnesses, making people more susceptible to increased health
3 problems due to high stress, sleep deprivation, unsanitary
4 surroundings, lack of access to hygiene facilities, and a myriad of
5 other situational stressors experienced by people without stable
6 housing. Subsequently, people who are chronically homeless are
7 more medically frail and three to four times more likely to die
8 prematurely than their housed counterparts.

9 (d) Throughout California, local governments have enacted
10 ordinances that make it illegal to rest or receive nourishment in
11 public spaces.

12 (e) Ending homelessness in California will require significant
13 state and federal resources and there is ample evidence that policies
14 that invest in ending homelessness, rather than criminalizing and
15 marginalizing people who are experiencing homelessness,
16 adequately balance the needs of all parties: community residents,
17 government agencies, businesses, and men and women who are
18 experiencing homelessness.

19 (f) Passing this act will not reduce homelessness, but neither
20 will local ordinances that criminalize homelessness. Instead,
21 ordinances that criminalize homelessness result in increased
22 incarceration rates and financial indebtedness of people who simply
23 have no means of support and prolong homelessness by making
24 it more difficult for people to secure housing, employment, and
25 medical care. Criminalization policies further marginalize men
26 and women who are experiencing homelessness, fuel inflammatory
27 attitudes, and may even unduly restrict constitutionally protected
28 liberties.

29 (g) That is why, on September 18, 2015, the United States
30 Department of Housing and Urban Development included in the
31 annual Notice of Funding Availability for the 2015 Continuum of
32 Care *Program* funding competition, provisions that would award
33 additional points to any application that could include steps the
34 community is taking to reduce criminalization of homelessness.

35 (h) It is also why, on August 6, 2015, the United States
36 Department of Justice submitted a rare statement of interest in a
37 United States District Court in opposition to the criminalization
38 of people who are homeless, calling it cruel and unusual
39 punishment to punish someone for a crime with the potential for
40 imprisonment and a violation of constitutional rights.

1 (i) While these ordinances apply to all residents, they
2 disproportionately impact people without homes, who have no
3 private place to rest or seek nourishment, and are often selectively
4 applied by law enforcement to people based upon their appearance
5 or an assumption of homelessness.

6 (j) In practice, these ordinances deprive persons experiencing
7 homelessness and those who may be perceived as homeless of a
8 safe and legal place to rest and seek nourishment, which adversely
9 impacts their health and well-being.

10 (k) Sleep deprivation impairs cognitive processes and puts one
11 at risk for obesity, heart disease, heart attack, heart failure, irregular
12 heartbeat, high blood pressure, stroke, diabetes, and depression.
13 People who are homeless suffer from sleep deprivation and, absent
14 a place to rest, they suffer it more frequently.

15 (l) Because current practices have denied the right to adequate
16 legal representation to people cited or arrested while resting or
17 sharing food, homeless persons are often denied relief or damages
18 through the courts.

19 (m) Both the federal government, through its Interagency
20 Council on Homelessness, and the United Nations have recognized
21 that discrimination and criminalization violate a homeless person's
22 human rights and have called upon state and local governments to
23 cease enactment and enforcement of those laws.

24 (n) Homelessness and the increasing criminalization of
25 homelessness and discrimination against those experiencing
26 homelessness are widespread throughout California and are matters
27 of statewide concern.

28 (o) Section 1 of Article I of the California Constitution provides
29 that "[a]ll people are by nature free and independent and have
30 inalienable rights. Among these are enjoying and defending life
31 and liberty, acquiring, possessing, and protecting property, and
32 pursuing and obtaining safety, happiness, and privacy," without
33 qualification as to whether or not a person is, or appears to be,
34 homeless.

35 (p) Subdivision (a) of Section 7 of Article I of the California
36 Constitution provides that "[a] person may not be deprived of life,
37 liberty, or property without due process of law or denied equal
38 protection of the laws"

39 (q) Concordant with this fundamental belief, a person should
40 not be subject to discrimination based on his or her income, housing

1 status, or ability or desire to appear housed. Therefore, it is the
2 intent of the Legislature in enacting this legislation to protect the
3 rights of all Californians, regardless of their housing status, and
4 ameliorate the adverse effects caused by the criminalization of
5 homelessness on our communities and our citizens.

6 (r) Decriminalization of rest allows municipal governments to
7 redirect resources from local enforcement activities to activities
8 that address the root causes of homelessness and poverty.

9 SEC. 2. Part 2.2 (commencing with Section 53.8) is added to
10 Division 1 of the Civil Code, to read:

11
12 PART 2.2. HOMELESS PERSONS
13

14 53.8. For purposes of this part, the following definitions shall
15 apply:

16 (a) “Homeless persons,” “homeless people,” or “persons
17 experiencing homelessness” means those individuals or members
18 of families who lack a fixed, regular, and adequate nighttime
19 residence, including people defined as homeless using the criteria
20 established in the Homeless Emergency Assistance and Rapid
21 Transition to Housing (HEARTH) Act of 2009.

22 (b) “Public space” means any property that is owned by a
23 government entity or any property upon which there is an easement
24 for public use and that is held open to the public, including, but
25 not limited to, plazas, courtyards, parking lots, sidewalks, public
26 transportation facilities and services, public buildings, shopping
27 centers, and parks.

28 (c) “Rest” means the state of not moving, holding certain
29 postures that include, but are not limited to, sitting, standing,
30 leaning, kneeling, squatting, sleeping, or lying.

31 53.81. (a) It is the intent of the Legislature that this section be
32 interpreted broadly so as to prohibit policies or practices that are
33 discriminatory in either their purpose or effect.

34 (b) Persons experiencing homelessness shall be permitted to
35 use public space in the ways described in this section at any time
36 that the public space is open to the public without discrimination
37 based upon their housing status, and without being subject to
38 criminal, civil, or administrative penalties. Permitted use of the
39 public space include, but are not limited to, all of the following:

40 (1) Free movement without restraint.

1 (2) Sleeping or resting, and protecting ~~onself~~ *oneself* from the
2 elements while sleeping or resting in a nonobstructive manner.

3 (3) Eating, sharing, accepting, or giving food in a space in which
4 having food is not otherwise generally prohibited.

5 (4) Praying, meditating, worshiping, or practicing religion.

6 (c) Nothing in this section shall prevent law enforcement from
7 enforcing laws to protect the right of people to use the sidewalk
8 pursuant to the *federal* Americans with Disabilities Act of 1990
9 (42 U.S.C. Sec. 12101 et seq.).

10 (d) Nothing in this section shall prevent law enforcement from
11 enforcing the Penal Code, except subdivision (e) of Section 647
12 of the Penal Code, so far as it prohibits rest.

13 53.82. (a) Any person whose rights have been violated pursuant
14 to this part may enforce those rights in a civil action.

15 (b) The court may award appropriate injunctive and declaratory
16 relief, restitution for loss of property or personal effects and
17 belongings, actual damages, compensatory damages, exemplary
18 damages, statutory damages of one thousand dollars (\$1,000) per
19 violation, and reasonable attorney's fees and costs to a prevailing
20 ~~party.~~ *plaintiff*.

21 SEC. 3. Section 11139.2 is added to the Government Code, to
22 read:

23 11139.2. To improve monitoring of discrimination based upon
24 housing status and violations of Part 2.2 (commencing with Section
25 53.8) of Division 1 of the Civil Code, and to ensure that people
26 who are experiencing homelessness are not unlawfully denied full
27 and equal access to the benefits of state-funded programs or
28 assistance, or unlawfully subjected to discrimination, all applicants
29 for the United States Department of Housing and Urban
30 Development's Continuum of Care Homeless Assistance Program
31 shall annually provide to the Department of Housing and
32 Community Development's Division of Housing Policy
33 Development a copy of its application for funding from the United
34 States Department of Housing and Urban Development that
35 includes the organization's response to the application question
36 regarding steps that its community is taking to reduce
37 criminalization of homelessness.

38 SEC. 4. If the Commission on State Mandates determines that
39 this act contains costs mandated by the state, reimbursement to
40 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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