

Assembly Bill No. 2706

Passed the Assembly August 24, 2010

Chief Clerk of the Assembly

Passed the Senate August 23, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 51.7 of the Civil Code, relating to civil rights.

LEGISLATIVE COUNSEL’S DIGEST

AB 2706, Bonnie Lowenthal. Civil rights: homeless persons.

Existing law sets forth various personal rights and provides that all persons within California have the right to be free from violence, or intimidation by the threat of violence, because of, among other characteristics, their race, color, religion, ancestry, national origin, political affiliation, or sex. Existing law further permits an individual whose exercise or enjoyment of specified personal rights has been interfered with to bring a civil action for damages, including actual damages, exemplary damages, attorney’s fees, injunctive relief, and other appropriate relief. Existing law requires the Department of Fair Employment and Housing to receive, investigate, and conciliate complaints that an individual’s personal rights have been violated.

This bill would specify that homeless persons, as defined, are entitled to the rights set forth under existing law, and would provide that a homeless person has the right to be free from violence or intimidation by threat of violence directed against that person on the basis of that person’s status as a homeless person. The bill would also provide that these provisions shall not be construed to enlarge or diminish an existing duty, if any, by an owner of residential rental or commercial property to protect a homeless person who is present on the property from violence or intimidation by threats of violence.

This bill would incorporate additional changes to Section 51.7 of the Civil Code, proposed by AB 1680, contingent upon the prior enactment of that bill.

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

SECTION 1. Section 51.7 of the Civil Code is amended to read:

51.7. (a) All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of political affiliation, or on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51, or position in a labor dispute, or because another person perceives them to have one or more of those characteristics. The identification in this subdivision of particular bases of discrimination is illustrative rather than restrictive.

(b) (1) This section includes any violence, or intimidation by threat of violence, committed against the person or property of a homeless person because the person is, or is perceived to be, a homeless person.

(2) For purposes of this section, “homeless person” means:

(A) A person who does not have a fixed, regular, and adequate nighttime residence.

(B) A person that has a nighttime residence that constitutes any of the following:

(i) A supervised, publicly or privately operated shelter designated to provide temporary living accommodations, including, but not limited to, welfare hotels, congregate shelters, and transitional housing.

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized.

(iii) A public or private building or designated area that is not ordinarily designed for, or ordinarily used for, sleeping accommodations for persons.

(3) This subdivision shall not be construed to enlarge or diminish an existing legal duty, if any, by an owner of residential rental or commercial property to protect a homeless person from violence, or intimidation by threats of violence, because the homeless person is physically present on the owner’s property or other property controlled by the owner incidental to ownership of the rental property.

(c) This section does not apply to statements concerning positions in a labor dispute which are made during otherwise lawful labor picketing.

SEC. 1.5. Section 51.7 of the Civil Code is amended to read:

51.7. (a) All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of

violence, committed against their persons or property because of political affiliation, or on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51, or position in a labor dispute, or because another person perceives them to have one or more of those characteristics. The identification in this subdivision of particular bases of discrimination is illustrative rather than restrictive.

(b) (1) This section includes any violence, or intimidation by threat of violence, committed against the person or property of a homeless person because the person is, or is perceived to be, a homeless person.

(2) For purposes of this section, “homeless person” means:

(A) A person who does not have a fixed, regular, and adequate nighttime residence.

(B) A person that has a nighttime residence that constitutes any of the following:

(i) A supervised, publicly or privately operated shelter designated to provide temporary living accommodations, including, but not limited to, welfare hotels, congregate shelters, and transitional housing.

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized.

(iii) A public or private building or designated area that is not ordinarily designed for, or ordinarily used for, sleeping accommodations for persons.

(3) This subdivision shall not be construed to enlarge or diminish an existing legal duty, if any, by an owner of residential rental or commercial property to protect a homeless person from violence, or intimidation by threats of violence, because the homeless person is physically present on the owner’s property or other property controlled by the owner incidental to ownership of the rental property.

(c) (1) No person shall require another person to waive any legal right, penalty, remedy, forum, or procedure for a violation of this section, as a condition of entering into a contract for goods or services, including the right to file and pursue a civil action or complaint with, or otherwise notify, the Attorney General or any other public prosecutor, or law enforcement agency, the Department of Fair Employment and Housing, or any court or other governmental entity.

(2) No person shall refuse to enter into a contract with, or refuse to provide goods or services to, another person on the basis that the other person refuses to waive any legal right, penalty, remedy, forum, or procedure for a violation of this section, including the right to file and pursue a civil action or complaint with, or otherwise notify, the Attorney General or any other public prosecutor, or law enforcement agency, the Department of Fair Employment and Housing, or any other governmental entity.

(3) Any waiver of any legal right, penalty, remedy, forum, or procedure for a violation of this section, including the right to file and pursue a civil action or complaint with, or otherwise notify, the Attorney General or any other public prosecutor, or law enforcement agency, the Department of Fair Employment and Housing, or any other governmental entity shall be knowing and voluntary, and in writing, and expressly not made as a condition of entering into a contract for goods or services or as a condition of providing or receiving goods and services.

(4) Any waiver of any legal right, penalty, remedy, forum, or procedure for a violation of this section that is required as a condition of entering into a contract for goods or services shall be deemed involuntary, unconscionable, against public policy, and unenforceable. Nothing in this subdivision shall affect the enforceability or validity of any other provision of the contract.

(5) Any person who seeks to enforce a waiver of any legal right, penalty, remedy, forum, or procedure for a violation of this section shall have the burden of proving that the waiver was knowing and voluntary and not made as a condition of the contract or of providing or receiving the goods or services.

(6) The exercise of a person's right to refuse to waive any legal right, penalty, remedy, forum, or procedure for a violation of this section, including a rejection of a contract requiring a waiver, shall not affect any otherwise legal terms of a contract or an agreement.

(7) This subdivision shall not apply to any agreement to waive any legal rights, penalties, remedies, forums, or procedures for a violation of this section after a legal claim has arisen.

(8) This subdivision shall apply to any agreement to waive any legal right, penalty, remedy, forum, or procedure for a violation of this section, including an agreement to accept private arbitration, entered into, altered, modified, renewed, or extended on or after January 1, 2011.

(d) This section does not apply to statements concerning positions in a labor dispute which are made during otherwise lawful labor picketing.

(e) Nothing in this section shall be construed to negate or otherwise abrogate the provisions of Sections 1668 and 3513.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 51.7 of the Civil Code proposed by both this bill and Assembly Bill 1680. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2011, (2) each bill amends Section 51.7 of the Civil Code, and (3) this bill is enacted after Assembly Bill 1680, in which case Section 1 of this bill shall not become operative.

Approved _____, 2010

Governor