

AMENDED IN SENATE JUNE 12, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2646

Introduced by Assembly Member Ting

February 21, 2014

An act to ~~amend Section 231.5 of the Code of Civil Procedure, relating to jurors~~; *add Section 53.7 to the Civil Code, relating to civil rights.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2646, as amended, Ting. ~~Jurors: peremptory challenge. Civil rights: structural equal protection.~~

The California Constitution prohibits a person from being deprived of life, liberty, or property without due process of law, or from being denied equal protection of the laws. The United States Constitution prohibits a state from denying to any person within its jurisdiction the equal protection of the laws. Existing case law interprets that provision as guaranteeing racial minorities the right to full participation in the political life of the community, and prohibiting racial or ethnic groups from being denied, or precluded from entering into the political process in a reliable and meaningful manner.

Existing law permits individuals whose personal rights have been violated, in certain circumstances, to bring a civil action for damages or other appropriate relief.

This bill would prohibit a statute, ordinance, or other specified enactment from denying a minority group, as defined, structural equal protection of the law by altering, restructuring, or reordering the policy

decisionmaking process in a manner that burdens the ability of members of the minority group to effect the enactment of future legislation, solely with respect to a matter that inures primarily to the benefit of, or is primarily of interest to, one or more minority groups. The bill would authorize a member of a minority group, as defined, to bring a civil action challenging the validity of a statute or ordinance, or other enactment on that basis. The provision in question would be determined valid only upon a showing by the government that burden it imposes is necessary to serve a compelling public interest, and is no greater than necessary to serve that interest. The bill would include supporting legislative findings and declarations.

~~Existing law prohibits a party from using a peremptory challenge to remove a prospective juror on the basis of an assumption that the prospective juror is biased merely because of his or her race, color, religion, sex, national origin, sexual orientation, or similar grounds.~~

~~This bill would also prohibit a party from using a peremptory challenge to remove a prospective juror on the basis of ethnic group identification, age, genetic information, or disability.~~

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

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) *The United States Supreme Court has interpreted the Equal*
4 *Protection Clause of the Fourteenth Amendment of the United*
5 *States Constitution as disfavoring and subjecting to “strict*
6 *scrutiny” state and local laws that (1) target a suspect*
7 *classification of persons, (2) restrict a fundamental right, or (3)*
8 *alter the political policymaking process with respect to an issue*
9 *of primary concern to a minority group or groups. This last*
10 *doctrine is commonly referred to as “structural equal protection.”*
11 (b) *The doctrine of structural equal protection was established*
12 *primarily through two United States Supreme Court decisions,*
13 *Hunter v. Erickson (1969) 393 U.S. 385, and Washington v. Seattle*
14 *School District No. 1 (1982) 458 U.S. 457. As a result, this doctrine*
15 *has also been referred to as the “Hunter/Seattle” doctrine. In the*
16 *recent case of Schuette v. BAMN, et. al. (2014) 134 S. Ct. 1623,*
17 *the United States Supreme Court has further interpreted the*

1 *structural equal protection doctrine, although the implications of*
2 *this new interpretation are not yet clear.*

3 *(c) Because the Hunter/Seattle doctrine was established as a*
4 *part of the Equal Protection Clause of the Fourteenth Amendment*
5 *of the United States Constitution, there has not been the need or*
6 *occasion for the California Supreme Court to determine whether*
7 *the California Constitution, through its own guarantee of equal*
8 *protection of the laws under Section 7 of Article I, also includes*
9 *structural equal protection.*

10 *(d) Because the California Constitution goes at least as far as*
11 *the United States Constitution in protecting rights and liberties,*
12 *and in some cases has been interpreted to go beyond the United*
13 *States Constitution in providing such protections, the guarantee*
14 *of structural equal protection that has been part of the United*
15 *States Constitution for nearly 50 years should appropriately be*
16 *recognized in the California Constitution. Specifically, the*
17 *Legislature believes that Section 7 of Article I of the California*
18 *Constitution provides broader protection of individual liberties*
19 *and rights than the Equal Protection Clause of the Fourteenth*
20 *Amendment of the United States Constitution, and these broader*
21 *protections include the structural equal protection doctrine, as*
22 *interpreted prior to Schuette v. BAMN.*

23 *(e) Independent of the guarantees afforded by the California*
24 *Constitution, the Legislature believes that the Hunter/Seattle*
25 *doctrine provides a prudent and salutary rule for statutory*
26 *protection against discriminatory statutes, ordinances, or other*
27 *state or local rules, regulations, or enactments.*

28 *SEC. 2. Section 53.7 is added to the Civil Code, to read:*

29 *53.7. (a) A statute, ordinance, or other state or local rule,*
30 *regulation, or enactment shall not deny a minority group structural*
31 *equal protection of the law by altering, restructuring, or reordering*
32 *the policy decisionmaking process in a manner that burdens the*
33 *ability of members of the minority group to effect the enactment*
34 *of future legislation, solely with respect to a matter that inures*
35 *primarily to the benefit of, or is primarily of interest to, one or*
36 *more minority groups.*

37 *(b) (1) A member of a minority group, as defined in paragraph*
38 *(2), may bring a civil action challenging the validity of a statute,*
39 *ordinance, or other state or local rule, regulation, or enactment,*
40 *pursuant to subdivision (a).*

1 (2) For purposes of this section, “minority group” means a
2 group of persons who share in common any race, ethnicity,
3 nationality, or sexual orientation.

4 (c) A statute, ordinance, or other state or local rule, regulation,
5 or enactment shall be determined valid in an action brought
6 pursuant to this section, only upon a showing by the government
7 that the burden imposed by the statute, ordinance, or other state
8 or local rule, regulation or enactment satisfies both of the following
9 criteria:

10 (1) The burden is necessary to serve a compelling government
11 interest.

12 (2) The burden is no greater than necessary to serve the
13 compelling government interest.

14 SECTION 1. ~~Section 231.5 of the Code of Civil Procedure is~~
15 ~~amended to read:~~

16 ~~231.5. A party may not use a peremptory challenge to remove~~
17 ~~a prospective juror on the basis of an assumption that the~~
18 ~~prospective juror is biased merely because of a characteristic listed~~
19 ~~or defined in subdivision (a) of Section 11135 of the Government~~
20 ~~Code, or similar grounds.~~