

Introduced by Senator LiuJanuary 14, 2016

An act to add Part 2.2 (commencing with Section 53.8) to Division 1 of the Civil Code, and to amend Section 11135 of, and to add Section 11139.2 to, the Government Code, relating to homelessness.

LEGISLATIVE COUNSEL'S DIGEST

SB 876, as introduced, 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 expand those provisions to also include exclusion or discrimination based upon homeless status. The bill would prohibit cities, counties, cities and counties, and municipal agencies that receive state funds from enacting or enforcing a law that bans resting in a public space, as defined. The 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. Because the bill would require local agencies to perform additional duties, it would impose a state-mandated local program.

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 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.

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.

13 (c) Homelessness is an independent risk factor for a number of
14 illnesses, making people more susceptible to increased health
15 problems due to high stress, sleep deprivation, unsanitary

1 surroundings, lack of access to hygiene facilities, and a myriad of
2 other situational stressors experienced by people without stable
3 housing. Subsequently, people who are chronically homeless are
4 more medically frail and three to four times more likely to die
5 prematurely than their housed counterparts.

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

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

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

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

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

38 (i) While these ordinances apply to all residents, they
39 disproportionately impact people without homes, who have no
40 private place to rest or seek nourishment, and are often selectively

1 applied by law enforcement to people based upon their appearance
2 or an assumption of homelessness.

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

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

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

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

21 (n) Homelessness and the increasing criminalization of
22 homelessness and discrimination against those experiencing
23 homelessness are widespread throughout California and are matters
24 of statewide concern.

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

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

36 (q) Concordant with this fundamental belief, a person should
37 not be subject to discrimination based on his or her income, housing
38 status, or ability or desire to appear housed. Therefore, it is the
39 intent of the Legislature in enacting this legislation to protect the
40 rights of all Californians, regardless of their housing status, and

1 ameliorate the adverse effects caused by the criminalization of
2 homelessness on our communities and our citizens.

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

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

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PART 2.2. HOMELESS PERSONS

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11 53.8. For purposes of this part, the following definitions shall
12 apply:

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

19 (b) “Motor vehicle” means a motor vehicle as defined in Section
20 415 of the Vehicle Code.

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

27 (d) “Recreational vehicle” means a recreational vehicle as
28 defined in Section 18010 of the Health and Safety Code.

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

32 53.81. (a) Persons experiencing homelessness shall be
33 permitted to use public space in the ways described in this section
34 at any time that the public space is open to the public without
35 discrimination based upon their housing status, and without being
36 subject to criminal, civil, or administrative penalties. Permitted
37 use of the public space include, but are not limited to, all of the
38 following:

39 (1) Free movement without restraint.

1 (2) Sleeping or resting, and protecting oneself from the elements
2 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 (b) 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 Americans with Disabilities Act of 1990 (42 U.S.C.
9 Sec. 12101 et seq.).

10 (c) 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.

21 SEC. 3. Section 11135 of the Government Code is amended
22 to read:

23 11135. (a) No person in the State of California shall, on the
24 basis of race, national origin, ethnic group identification, religion,
25 age, sex, sexual orientation, color, genetic information,~~or~~
26 disability, *or homeless status*, be unlawfully denied full and equal
27 access to the benefits of, or be unlawfully subjected to
28 discrimination under, any program or activity that is conducted,
29 operated, or administered by the state or by any state agency, is
30 funded directly by the state, or receives any financial assistance
31 from the state. Notwithstanding Section 11000, this section applies
32 to the California State University.

33 (b) With respect to discrimination on the basis of disability,
34 programs and activities subject to subdivision (a) shall meet the
35 protections and prohibitions contained in Section 202 of the federal
36 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132),
37 and the federal rules and regulations adopted in implementation
38 thereof, except that if the laws of this state prescribe stronger
39 protections and prohibitions, the programs and activities subject

1 to subdivision (a) shall be subject to the stronger protections and
2 prohibitions.

3 (c) (1) As used in this section, “disability” means any mental
4 or physical disability, as defined in Section 12926.

5 (2) The Legislature finds and declares that the amendments
6 made to this act are declarative of existing law. The Legislature
7 further finds and declares that in enacting Senate Bill 105 of the
8 2001–02 Regular Session (Chapter 1102 of the Statutes of 2002),
9 it was the intention of the Legislature to apply subdivision (d) to
10 the California State University in the same manner that
11 subdivisions (a), (b), and (c) already applied to the California State
12 University, notwithstanding Section 11000. In clarifying that the
13 California State University is subject to paragraph (2) of
14 subdivision (d), it is not the intention of the Legislature to increase
15 the cost of developing or procuring electronic and information
16 technology. The California State University shall, however, in
17 determining the cost of developing or procuring electronic or
18 information technology, consider whether technology that meets
19 the standards applicable pursuant to paragraph (2) of subdivision
20 (d) will reduce the long-term cost incurred by the California State
21 University in providing access or accommodations to future users
22 of this technology who are persons with disabilities, as required
23 by existing law, including this section, Title II of the federal
24 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101
25 and following), and Section 504 of the Rehabilitation Act of 1973
26 (29 U.S.C. Sec. 794).

27 (d) (1) The Legislature finds and declares that the ability to
28 utilize electronic or information technology is often an essential
29 function for successful employment in the current work world.

30 (2) In order to improve accessibility of existing technology, and
31 therefore increase the successful employment of individuals with
32 disabilities, particularly blind and visually impaired and deaf and
33 hard-of-hearing persons, state governmental entities, in developing,
34 procuring, maintaining, or using electronic or information
35 technology, either indirectly or through the use of state funds by
36 other entities, shall comply with the accessibility requirements of
37 Section 508 of the federal Rehabilitation Act of 1973, as amended
38 (29 U.S.C. Sec. 794d), and regulations implementing that act as
39 set forth in Part 1194 of Title 36 of the Federal Code of
40 Regulations.

1 (3) Any entity that contracts with a state or local entity subject
2 to this section for the provision of electronic or information
3 technology or for the provision of related services shall agree to
4 respond to, and resolve any complaint regarding accessibility of
5 its products or services that is brought to the attention of the entity.

6 (e) As used in this section, “sex” and “sexual orientation” have
7 the same meanings as those terms are defined in subdivisions ~~(q)~~
8 ~~and~~ (r) and (s) of Section 12926.

9 (f) As used in this section, “race, national origin, ethnic group
10 identification, religion, age, sex, sexual orientation, color, or
11 disability” includes a perception that a person has any of those
12 characteristics or that the person is associated with a person who
13 has, or is perceived to have, any of those characteristics.

14 (g) As used in this section, “genetic information” has the same
15 definition as in paragraph (2) of subdivision (e) of Section 51 of
16 the Civil Code.

17 (h) *As used in this section, “homeless status,” or “people
18 experiencing homelessness” means those individuals or members
19 of families who lack a fixed, regular, and adequate nighttime
20 residence.*

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

27 (j) *As used in this section, “rest” means the state of not moving,
28 holding certain postures that include, but are not limited to, sitting,
29 standing, leaning, kneeling, squatting, sleeping, or lying. Rest also
30 includes the act of protecting oneself from the elements, in a
31 nonobstructive manner.*

32 (k) *The Legislature finds and declares that people with a
33 homeless status lack a private space to rest, and, therefore, they
34 must rest in a public space.*

35 (l) *It is the intent of the Legislature to protect the rights of all
36 people, including those experiencing homelessness, in order to
37 diminish the adverse effects of municipalities engaged in violating
38 the fundamental right to rest.*

39 (m) *In order to ensure full and equal access to the benefits and
40 protections afforded by this section against discrimination in the*

1 *administration of any program or activity conducted, operated,*
2 *or administered by the state or any state agency funded directly*
3 *by the state, or that receives any financial assistance from the*
4 *state, no city, county, city and county, or municipal agency that*
5 *receives state funds shall enact or enforce a law that bans resting*
6 *in a public space, as defined in Part 2.2 (commencing with Section*
7 *53.8) of Division 1 of the Civil Code.*

8 SEC. 4. Section 11139.2 is added to the Government Code, to
9 read:

10 11139.2. To improve monitoring of discrimination based upon
11 housing status and violations of Section 11135, and to ensure that
12 people who are experiencing homelessness are not unlawfully
13 denied full and equal access to the benefits of state-funded
14 programs or assistance, or unlawfully subjected to discrimination,
15 all applicants for the United States Department of Housing and
16 Urban Development’s Continuum of Care Homeless Assistance
17 Program shall annually provide to the Department of Housing and
18 Community Development’s Division of Housing Policy
19 Development a copy of its application for funding from the United
20 States Department of Housing and Urban Development that
21 includes the organization’s response to the application question
22 regarding steps that its community is taking to reduce
23 criminalization of homelessness.

24 SEC. 5. If the Commission on State Mandates determines that
25 this act contains costs mandated by the state, reimbursement to
26 local agencies and school districts for those costs shall be made
27 pursuant to Part 7 (commencing with Section 17500) of Division
28 4 of Title 2 of the Government Code.