

AMENDED IN SENATE MARCH 28, 2016

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 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 bill would require the Department of Housing and Community Development to compile the information regarding community actions to reduce criminalization of homelessness found in those applications and provide a report to the Assembly Housing and Community Development Committee and the Senate Transportation and Housing Committee*

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,

1 a severe shortage of safe and affordable housing, a failed veteran
2 and civilian mental health system, and a diminished social safety
3 net.

4 (b) According to the United States Department of Education,
5 284,086 schoolchildren were known to have experienced
6 homelessness in the 2013–14 school year.

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

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

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

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

35 (g) That is why, on September 18, 2015, the United States
36 Department of Housing and Urban Development included in the
37 annual Notice of Funding Availability for the 2015 Continuum of
38 Care Program ~~funding competition~~, *Competition* provisions that
39 would award additional points to any application that could include

1 steps the community is taking to reduce criminalization of
2 homelessness.

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

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

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

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

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

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

32 (n) Homelessness and the increasing criminalization of
33 homelessness and discrimination against those experiencing
34 homelessness are widespread throughout California and are matters
35 of statewide concern.

36 (o) Section 1 of Article I of the California Constitution provides
37 that “[a]ll people are by nature free and independent and have
38 inalienable rights. Among these are enjoying and defending life
39 and liberty, acquiring, possessing, and protecting property, and
40 pursuing and obtaining safety, happiness, and privacy,” without

1 qualification as to whether or not a person is, or appears to be,
2 homeless.

3 (p) Subdivision (a) of Section 7 of Article I of the California
4 Constitution provides that “[a] person may not be deprived of life,
5 liberty, or property without due process of law or denied equal
6 protection of the laws”

7 (q) Concordant with this fundamental belief, a person should
8 not be subject to discrimination based on his or her income, housing
9 status, or ability or desire to appear housed. Therefore, it is the
10 intent of the Legislature in enacting this legislation to protect the
11 rights of all Californians, regardless of their housing status, and
12 ameliorate the adverse effects caused by the criminalization of
13 homelessness on our communities and our citizens.

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

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

19

20 PART 2.2. HOMELESS PERSONS

21

22 53.8. For purposes of this part, the following definitions shall
23 apply:

24 (a) “Homeless persons,” “homeless people,” or “persons
25 experiencing homelessness” means those individuals or members
26 of families who lack a fixed, regular, and adequate nighttime
27 residence, including people defined as homeless using the criteria
28 established in the Homeless Emergency Assistance and Rapid
29 Transition to Housing (HEARTH) Act of 2009.

30 (b) “Public space” means any property that is owned by a
31 government entity or ~~any property~~ upon which there is an easement
32 for public use and that is held open to the public, including, but
33 not limited to, plazas, courtyards, parking lots, sidewalks, public
34 transportation facilities and services, public buildings, shopping
35 centers, and parks. *The ability to rest shall not apply to a public
36 space during a time it is closed to all persons or when a fee is
37 required for entry or use.*

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

1 53.81. (a) It is the intent of the Legislature that this section be
2 interpreted broadly so as to prohibit policies or practices that are
3 discriminatory in either their purpose or effect.

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

- 10 (1) Free movement without restraint.
11 (2) Sleeping or resting, and protecting oneself from the elements
12 while sleeping or resting in a nonobstructive manner.
13 (3) Eating, sharing, accepting, or giving food in a space in which
14 having food is not otherwise generally prohibited.
15 (4) Praying, meditating, worshiping, or practicing religion.

16 (c) Nothing in this section shall prevent law enforcement from
17 enforcing laws to protect the right of people to use the sidewalk
18 pursuant to the federal Americans with Disabilities Act of 1990
19 (42 U.S.C. Sec. 12101 et seq.).

20 (d) Nothing in this section shall prevent law enforcement from
21 enforcing the Penal Code, except subdivision (e) of Section 647
22 of the Penal Code, so far as it prohibits ~~rest~~ *rest in public spaces*
23 *as defined in subdivision (b) of Section 53.8.*

24 53.82. (a) Any person whose rights have been violated pursuant
25 to this part may enforce those rights in a civil action.

26 (b) The court may award appropriate injunctive and declaratory
27 relief, restitution for loss of property or personal effects and
28 belongings, actual damages, compensatory damages, exemplary
29 damages, statutory damages of one thousand dollars (\$1,000) per
30 violation, and reasonable attorney's fees and costs to a prevailing
31 plaintiff.

32 SEC. 3. Section 11139.2 is added to the Government Code, to
33 read:

34 11139.2. To improve monitoring of discrimination based upon
35 housing status and violations of Part 2.2 (commencing with Section
36 53.8) of Division 1 of the Civil Code, and to ensure that people
37 who are experiencing homelessness are not unlawfully denied full
38 and equal access to the benefits of state-funded programs or
39 assistance, or unlawfully subjected to discrimination, all applicants
40 for the United States Department of Housing and Urban

1 Development's Continuum of Care Homeless Assistance Program
2 shall annually provide to the Department of Housing and
3 Community Development's Division of Housing Policy
4 Development a copy of its application for funding from the United
5 States Department of Housing and Urban Development that
6 includes the organization's response to the application question
7 regarding steps that its community is taking to reduce
8 criminalization of homelessness. *Notwithstanding Section 10231.5,*
9 *the Department of Housing and Community Development shall*
10 *compile the information regarding community actions to reduce*
11 *criminalization of homelessness found in those applications and*
12 *provide an annual report to the Assembly Housing and Community*
13 *Development Committee and the Senate Transportation and*
14 *Housing Committee.*

15 SEC. 4. If the Commission on State Mandates determines that
16 this act contains costs mandated by the state, reimbursement to
17 local agencies and school districts for those costs shall be made
18 pursuant to Part 7 (commencing with Section 17500) of Division
19 4 of Title 2 of the Government Code.