

# State Homeless 'Bill of Rights' Put on Hold Until Next Year

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A “homeless bill of rights” in California must wait until next year for a vote in the full Assembly after clearing its first hurdle.

Advocates say the legislation would protect homeless people from local enforcement of so-called “quality of life” laws, and specify homeless people as deserving of protection in the state’s antidiscrimination statutes.

Earlier this month, the Assembly’s Judiciary Committee approved the legislation, AB 5. But last Friday, the Appropriations Committee put the bill on hold until January 2014.

Assemblyman Tom Ammiano, D-San Francisco, said in a statement that his bill was suspended largely because of the costs of setting up new infrastructure and enforcing the new rules. But he vowed to negotiate with advocates and opponents through the rest of this year to protect the legal rights of homeless people.

The Appropriations Committee said the bill would cost around \$300 million, mostly for state public health officials to build and operate hygiene centers with showers and bathrooms.

The bill would bar discriminating against homeless people while they seek or maintain tax-funded benefits. It would also assert a right to be in public places, safeguard personal property, guarantee use of public facilities, protect confidentiality of medical records and provide legal representation in low-level criminal proceedings, not just those that rise to the level of misdemeanors.

The bill’s main purpose is to challenge local ordinances that deem sitting on sidewalks or loitering to be infractions, which homeless advocates say are disproportionately enforced on low-income people.

Since Ammiano introduced it last December, the bill has been amended to delay enforcement of local laws unless yearlong welfare benefits are provided, and benchmarks for unemployment rates and waitlists for public housing are met.

Savings provided by supportive services, including housing and medical care, would offset the enforcement costs, Ammiano said. According to estimates from the law school

at University of California, Berkeley, the state spends between \$310 million and \$1.7 billion on issuing citations, trying and incarcerating homeless people who are unable to pay tickets.

A pilot study in Los Angeles also found California spends \$605 per person monthly in supportive housing, while it spends \$2,897 on services to those who remain without housing.

But these economic arguments are not swaying opponents of the measure. Assemblyman Donald Wagner, R-Irvine, said that if the bill were enacted, cities would shoulder the costs without reimbursement from the counties. He also said he fears municipalities would be vulnerable to legal challenges from those receiving citations.

“Plaintiffs’ class action lawyers will have marvelous new opportunities to sue public agencies and pocket millions of taxpayer dollars for themselves,” Wagner said. “Not a dollar necessarily will go to providing new homes for the homeless.”

San Francisco Supervisor Scott Wiener said the bill would enable homeless people to disrupt public areas with their presence.

“Our local laws against forming encampments, passing out and blocking sidewalks, and otherwise monopolizing public spaces would be wiped off the books,” he said. “Think we have a street behavior problem now? Just wait until this passes.”

Business alliances have also come out against the bill. Opponents include the San Francisco Travel Association, the Golden Gate Restaurant Association and the state and city Chamber of Commerce groups. In addition, 60 cities, including San Jose, have declared their opposition.

California would be the third state to have a homeless bill of rights if it passes, after Rhode Island and Illinois.

The final deadline for passage in the Legislature is in September 2014.

Advocates for the homeless said they would lobby to pass the legislation. “By January, we will be strong enough to not have to ask for their support — we can demand it,” said Paul Boden, executive director of the San Francisco-based Western Regional Advocacy Project.

- See more at: <http://sfpublicpress.org/news/2013-05/state-homeless-bill-of-rights-put-on-hold-until-next-year#sthash.crrfnHpi.dpuf>



*California*  
LEGISLATIVE INFORMATION

**AB-5 Homelessness.** (2013-2014)

**SECTION 1.** *This act shall be known and may be cited as the Homeless Person's Bill of Rights and Fairness Act.*

**SEC. 2.** *The Legislature finds and declares all of the following:*

*(a) In the State of California, there has been a long history of discriminatory laws and ordinances that have disproportionately affected people with low incomes and who are without homes, including, but not limited to, all of the following:*

*(1) Jim Crow laws: After the Civil War, many states, especially in the south, passed laws denying African Americans basic human rights. In California, these laws also targeted Chinese immigrants. In San Francisco, Chinese residents were forced to live in one area of the city. The same segregation laws also prohibited interracial marriage between Chinese and non-Chinese persons.*

*(2) Ugly laws: In 1867, San Francisco was the first city in the country to pass a law making it illegal for people with "unsightly or disgusting" disabilities to appear in public. In many cities, these laws persisted until the 1970s.*

*(3) Anti-Okie laws: In 1937, California passed an Anti-Okie law that criminalized "bringing or assisting in bringing" extremely poor people into the state. The United States Supreme Court struck down the law in 1941, when it declared that these laws are in violation of the commerce clause, and therefore unconstitutional.*

*(4) Sundown town ordinances: Town policies and real estate covenants were aimed at preventing minorities, homeless persons, and other persons considered to be socially undesirable from remaining within city limits after sunset. Thousands of these towns existed prior to the federal Civil Rights Act of 1968, which made these ordinances and covenants illegal.*

*(5) Vagrancy laws: Vagrancy laws have been held to be discriminatory on their face because they criminalize a person's status rather than a behavior. Nevertheless, these laws existed in California until the Legislature revised them in 1961.*

*(b) Act of living ordinances, often known as "quality of life ordinances" and other similar ordinances, are the modern reincarnations of laws of this kind. They are designed to force homeless people to flee local jurisdictions. These local ordinances result in de facto segregation as homeless people are forced out of specific jurisdictions or out of specific neighborhoods within jurisdictions. These practices tend to condemn large groups of inhabitants to dwell in segregated districts or under depressed living conditions that result in crowded, unsanitary, substandard, and unhealthful accommodations. Furthermore, these policies result in criminalization of homeless persons who do not choose, or are unable, to migrate.*

*(c) Today, in the state, many people are denied the following:*

*(1) Housing due to their status of being homeless, living in a shelter, a vehicle, the street, or the public domain.*

*(2) Employment due to their current status of being homeless or living in a shelter or a vehicle on the street.*

*(3) Housing and employment as a result of not having a fixed or residential mailing address or having a post office box as a mailing address.*

*(4) Equal protection of the laws and due process by law enforcement and prosecuting agencies.*

*(5) The ability to make certain purchases or enter certain contests as a result of not having a fixed or residential mailing address or having a post office box as a mailing address.*

*(6) Access to safe, clean restrooms, water, and hygienic supplies necessary to maintain health, safety, and dignity, especially with the proliferation of closures of public restrooms.*

*(d) Homeless persons are unfairly targeted by law enforcement, often resulting in the violation of homeless*

persons' constitutional rights. Lacking the resources necessary to obtain adequate legal representation, homeless persons are often denied relief or damages through the courts.

(e) Homeless persons rarely have access to shelters, and when shelter is available, its conditions can be so poor as to jeopardize their health and physical and mental safety.

(f) Homeless persons are often forced to separate from loved ones, give up their personal property, abandon pets, and make other inhumane choices in order to access even minimal shelter.

(g) Lesbian, gay, bisexual, transgender, gender nonconforming, and queer individuals often are forced to accept inappropriate or unsafe accommodations to access publicly funded emergency shelters.

(h) Children in homeless families are denied the ability to continue receiving education in their preferred school if their family's shelter lies outside the boundaries of their former district.

(i) At the present time, many persons have been rendered homeless as a result of a deep and prolonged economic recession, a severe shortage of safe and affordable housing, a failed mental health system, and a shrinking social safety net.

(j) Section 1 of Article I of the California Constitution provides that "[a]ll people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

(k) Subdivision (a) of Section 7 of Article I of the California Constitution provides, in part, that "[a] person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws... ."

(l) Concordant with this fundamental belief, a person should not be subject to discrimination based on his or her housing status, income level, mental or physical disability, sexual orientation, gender identity, citizenship, or immigration status. Therefore, it is the intent of the Legislature in enacting this act to protect the rights of all Californians, regardless of their housing status, and to ameliorate the adverse effects of homelessness on people who have no home and on our communities.

(m) It is the intent of the Legislature to enact legislation that would require all state agencies to use the same definition for "homeless persons or people" as follows:

(1) "Homeless" means those individuals or families who lack or are perceived to lack a fixed, regular, and adequate nighttime residence, or who have a primary nighttime residence in a shelter, on the street, in a vehicle, in an enclosure or structure that is not authorized or fit for human habitation.

(2) "Homeless" also means a person whose only residence is a residential hotel or who is residing anywhere without tenancy rights, and families with children staying in a residential hotel whether or not they have tenancy rights.

(n) It is the intent of the Legislature that publicly funded social and health care services be offered in a sufficient quantity to meet the population's needs, without barriers, including geographical barriers, such as making locations inconvenient or creating screen-out barriers, or prohibiting access due to a person's inability to provide identification or criminal justice history, or disability, in order that persons are reasonably able to reach and use that service.

**SEC. 3.** Part 2.2 (commencing with Section 53.1) is added to Division 1 of the Civil Code, to read:

**PART 2.2. Homeless Persons**

53.1. For purposes of this part, the following definitions shall apply:

(a) "BID" means a business improvement district, as established under Chapter 2 (commencing with Section 36520) of Part 6 of Division 18 of, or Chapter 2 (commencing with Section 36620) of Part 7 of Division 18 of, the Streets and Highways Code, or any public-private partnership established under any municipal or county law authorized under Chapter 1 (commencing with Section 36500) of Part 6 of Division 18 of, or Chapter 1 (commencing with Section 36600) of Part 7 of Division 18 of, the Streets and Highways Code, whether or not the phrase "business improvement district" is part of the public-private partnership's name.

(b) "BID agent" means any person hired by a BID.

(c) "Harassment" means a knowing and willful course of conduct by law enforcement, public or private security personnel, or a BID agent directed at a specific person that a reasonable person would consider as seriously

*alarming, seriously annoying, seriously tormenting, or seriously terrorizing a person.*

*(d) "Homeless persons" or "homeless people" means those individuals or families who lack or are perceived to lack a fixed, regular, and adequate nighttime residence, or who have a primary nighttime residence in a shelter, on the street, in a vehicle, in an enclosure or structure that is not authorized or fit for human habitation. "Homeless" also means a person whose only residence is a residential hotel or who is residing anywhere without tenancy rights, and families with children staying in a residential hotel whether or not they have tenancy rights.*

*(e) "Public space" means any property that is owned by any state or local government entity or upon which there is an easement for public use and that is held open to the public, including, but not limited to, plazas, courtyards, parking lots, sidewalks, public transportation, public buildings and parks. "Public space" does not include a private business establishment.*

*(f) "Rest" means the state of not moving, holding certain postures that include, but are not limited to, sitting, standing, leaning, kneeling, squatting, sleeping, or lying.*

*(g) "Soliciting donations" means asking for food, water, or money, which includes panhandling.*

*53.2. (a) The existence of homelessness requires that fundamental rights that are amply protected in the home and in private places be extended to the public domain to ensure the equal rights of all Californians, homeless and housed. Every homeless person in the state shall have all of the following basic human rights and legal and civil protections, except when prohibited by federal law:*

*(1) The right to move freely in the same manner as any other person in public spaces without being subject to criminal or civil sanctions, harassment or arrest by law enforcement, public or private security personnel, or BID agents because he or she is homeless.*

*(2) The right to rest in a public space in the same manner as any other person without being subject to criminal or civil sanctions, harassment, or arrest by law enforcement, public or private security personnel, or BID agents because he or she is homeless, as long as that rest does not maliciously or substantially obstruct a passageway.*

*(3) The right to eat, share, accept, or give food or water in public spaces in the same manner as any other person without being subject to criminal or civil sanctions, harassment, or arrest by law enforcement, public or private security personnel, or BID agents because he or she is homeless.*

*(4) The right to solicit donations in public spaces in the same manner as any other person without being subject to criminal or civil sanctions, harassment, or arrest by law enforcement, public or private security personnel, or BID agents because he or she is homeless.*

*(5) The right to the same protections that law enforcement agencies afford any other person, including, but not limited to, the right to reasonable protection from assault, domestic violence, sexual assault, or robberies.*

*(6) The right to rest in a public space, without being subject to criminal or civil sanctions, harassment, or arrest by law enforcement, public or private security personnel, or BID agents, except that law enforcement may enforce existing local laws if all of the following are true: (1) the person's county of residence maintains 12 months per year of nonmedical assistance provided for in Section 17000 of the Welfare and Institutions Code for employable, able-bodied adults without dependents who are compliant with program rules established by the county, including work requirements; (2) the locality is not a geographical area identified by the United States Department of Labor in accordance with Subpart A of Part 654 of Section 20 of the Code of Federal Regulations as an area of concentrated unemployment or underemployment or an area of labor surplus; and (3) the public housing waiting list maintained by the county contains fewer than 50 persons.*

*(7) The right to engage in lawful self-employment in the same manner as any other person, including, but not limited to, the right to seek self-employment in junk removal and recycling that requires the collection, possession, redemption, and storage of goods for reuse and recycling, without being subject to criminal or civil sanctions, harassment, or arrest by law enforcement, public or private security personnel, or BID agents because he or she is homeless.*

*(8) The right to pray, meditate, or practice religion in public spaces in the same manner as any other person, without being subject to criminal or civil sanctions, harassment, or arrest by law enforcement, public or private security personnel, or BID agents because he or she is homeless.*

*(9) The right to decline admittance to a public or private shelter or any other accommodation, including social services programs, for any reason he or she sees fit, without being subject to criminal or civil sanctions, harassment, or arrest from law enforcement, public or private security personnel, or BID agents.*

(10) The right to occupy a motor vehicle, as defined in Section 415 of the Vehicle Code, or recreational vehicle, as defined in Section 18010 of the Health and Safety Code, either to rest, sleep, or use for the purposes of shelter, provided that the vehicle is legally parked on public property, without being subject to criminal or civil sanctions, harassment, or arrest from law enforcement, public or private security personnel, or BID agents.

(11) The right to confidentiality of his or her records and information by homeless shelters, medical centers, schools, or any other publicly funded human service provider to law enforcement agencies, employers, or landlords, except that the records or information may be disclosed if the disclosure is based on appropriate legal authority. Disclosure of an individual's records or information shall not be allowed unless the individual received oral and written notice of the legal authority to disclose this information and the individual's right to opt out of having the records or information disclosed.

(12) (A) The right to assistance of counsel, if a county chooses to initiate judicial proceedings under any law set forth in Section 53.5. The accused shall be advised of this right to counsel before entering a plea, and any waiver of this right shall be explicit. If the district attorney's office or its agent is representing the state in any part of an infraction proceeding, the accused shall have the right to assistance of counsel with regard to that infraction.

(B) The county where the citation was issued shall pay the cost of providing counsel under this paragraph.

(C) This paragraph shall not be construed to eliminate any protection or right to representation available under Sections 5365 and 6500 of the Welfare and Institutions Code or any other provision of law.

53.3. (a) A public employee shall not be retaliated against by his or her employer, for offering available public resources to a homeless person in order to protect that person from harm, including, but not limited to, offering or providing food, blankets, first-aid supplies, or water.

(b) Any person or organization offering food or water in a public space to any homeless person shall not be subject to criminal or civil sanctions, arrest, or harassment by law enforcement, public or private security personnel, or BID agents.

53.4. (a) Every local government and disadvantaged unincorporated community within the state shall have sufficient health and hygiene centers available 24 hours a day, seven days a week, for use by homeless people. These facilities may be part of the Neighborhood Health Center Program.

(b) For purposes of subdivision (a), the health and hygiene centers shall be funded by the State Department of Public Health through those county agencies that oversee public health programs, and, at a minimum, shall contain public bathroom and shower facilities.

(c) The State Department of Public Health shall distribute public bulletins and notices identifying the facilities to be used as health and hygiene centers.

(d) For purposes of this section, "disadvantaged unincorporated community" shall be defined as in Section 65302.10 of the Government Code.

53.5. (a) To ensure equitable and cost-effective enforcement of the Homeless Person's Bill of Rights and Fairness Act (Ch.\_\_\_\_, Stats. 2013), every local law enforcement agency shall annually compile and review the number of citations, arrests, and other enforcement activities made pursuant to laws prohibiting the following:

(1) Obstructing a sidewalk, whether by a person or personal property.

(2) Loitering.

(3) Sitting.

(4) Lying down.

(5) Camping.

(6) Public lodging, including the prohibition specified in subdivision (e) of Section 647 of the Penal Code.

(7) Sleeping in a public place.

(8) Soliciting donations.

(9) Soliciting donations at certain restricted locations, including citing people for panhandling under Section 22520.5 of the Vehicle Code.

(10) *Bathing in public places.*

(11) *Sharing or receiving food.*

(12) *Inhabiting or sleeping in a vehicle.*

(13) *Violating public park closure laws.*

(14) *Crossing streets or highways at particular locations, including subdivisions (c) and (d) of Section 21451 of, subdivision (d) of Section 21453 of, subdivision (b) of Section 21456 of, Section 21461.5 of, subdivision (b) of Section 21950 of, Section 21954 of, Section 21955 of, and subdivision (a) of Section 21956 of, the Vehicle Code.*

(15) *Trespassing, unless the trespassing charge is coupled with any misdemeanor or felony, except those misdemeanors that are included in Section 372 of, and subdivisions (h) to (j), inclusive, and subdivisions (l) and (m), of Section 602 of, the Penal Code.*

(16) *Falling to appear, pay a fine, post bail, or comply with a condition of a court order, as described in Section 40508 of the Vehicle Code or Section 853.6, 853.7, or 853.8 of the Penal Code.*

(17) *Any other local or state law enforced against homeless persons and identified by the Attorney General's office, or a city attorney's office.*

(b) *A local law enforcement agency shall make this information publicly available under the terms set forth in the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).*

(c) *A local law enforcement agency shall report the information specified in this section to the Attorney General's office on an annual basis.*

**53.6. (a)** *Any person whose rights have been violated under this part may enforce those rights in a civil action.*

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

**SEC. 5. SEC. 4.** Section 11135 of the Government Code is amended to read:

**11135. (a)** No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, *housing status*, 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. Notwithstanding Section 11000, this section applies to the California State University.

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

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

(2) The Legislature finds and declares that the amendments made to this act are declarative of existing law. The Legislature further finds and declares that in enacting Senate Bill 105 of the 2001-02 Regular Session (Chapter 1102 of the Statutes of 2002), it was the intention of the Legislature to apply subdivision (d) to the California State University in the same manner that subdivisions (a), (b), and (c) already applied to the California State University, notwithstanding Section 11000. In clarifying that the California State University is subject to paragraph (2) of subdivision (d), it is not the intention of the Legislature to increase the cost of developing or procuring electronic and information technology. The California State University shall, however, in determining the cost of developing or procuring electronic or information technology, consider whether technology that meets the standards applicable pursuant to paragraph (2) of subdivision (d) will reduce the long-term cost incurred by the California State University in providing access or accommodations to future users of this technology who are persons with disabilities, as required by existing law, including this section, Title II of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 and following); *et seq.*), and Section 504 of the Rehabilitation

Act of 1973 (29 U.S.C. Sec. 794).

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

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

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

(e) As used in this section, "sex" and "sexual orientation" have the same meanings as those terms are defined in subdivisions (q) and (r) of Section 12926.

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

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

(h) For purposes of this section, "housing status" means status as a "homeless person" as defined in Section 53.1 of the Civil Code.

**SEC. 5.** *The Legislature finds and declares that the need to address discriminatory practices is a matter of statewide concern and is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this act shall apply to all cities, including charter cities.*

**SEC. 6.** *The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.*

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