

House Bill 3115

Sponsored by Representative KOTEK

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that local law regulating sitting, lying, sleeping or keeping warm and dry outdoors on public property that is open to public must be objectively reasonable as to time, place and manner with regards to persons experiencing homelessness. Creates affirmative defense to charge of violating such local law that law is not objectively reasonable. Creates cause of action for person experiencing homelessness to challenge objective reasonableness of such local law. Authorizes court to award attorney fees to prevailing plaintiff in such suit in certain circumstances.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the regulation of public property with respect to persons experiencing homelessness; and
3 declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1) As used in this section:**

6 (a) **"City or county law" does not include policies developed pursuant to ORS 203.077 or**
7 **203.079.**

8 (b)(A) **"Keeping warm and dry" means using measures necessary for an individual to**
9 **survive outdoors given the environmental conditions.**

10 (B) **"Keeping warm and dry" does not include using any measure that involves fire or**
11 **flame.**

12 (c) **"Public property" has the meaning given that term in ORS 131.705.**

13 (2) **Any city or county law that regulates the acts of sitting, lying, sleeping or keeping**
14 **warm and dry outdoors on public property that is open to the public must be objectively**
15 **reasonable as to time, place and manner with regards to persons experiencing homelessness.**

16 (3) **It is an affirmative defense to a charge of violating a city or county law described in**
17 **subsection (2) of this section that the law is not objectively reasonable.**

18 (4) **A person experiencing homelessness may bring suit for injunctive or declaratory relief**
19 **to challenge the objective reasonableness of a city or county law described in subsection (2)**
20 **of this section. The action must be brought in the circuit court of the county that enacted**
21 **the law or of the county in which the city that enacted the law is located.**

22 (5) **For purposes of subsections (2) and (3) of this section, reasonableness shall be deter-**
23 **mined based on the totality of the circumstances, including, but not limited to, the impact**
24 **of the law on persons experiencing homelessness.**

25 (6) **In any suit brought pursuant to subsection (4) of this section, the court, in its dis-**
26 **cretion, may award reasonable attorney fees to a prevailing plaintiff if the plaintiff:**

27 (a) **Was not seeking to vindicate an interest unique to the plaintiff; and**

28 (b) **At least 90 days before the action was filed, provided written notice to the governing**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **body of the city or county that enacted the law being challenged of an intent to bring the**
2 **action and the notice provided the governing body with actual notice of the basis upon which**
3 **the plaintiff intends to challenge the law.**

4 **(7) Nothing in this section creates a private right of action for monetary damages for any**
5 **person.**

6 **SECTION 2. Section 1 of this 2021 Act becomes operative on July 1, 2023.**

7 **SECTION 3. This 2021 Act being necessary for the immediate preservation of the public**
8 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
9 **on its passage.**

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