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AB-730 Transit districts: prohibition orders. (2017-2018)

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Date Published: 07/11/2017 04:00 AM

Assembly Bill No. 730

CHAPTER 46

An act to amend Sections 99171 and 99172 of the Public Utilities Code, relating to transit districts.

[Approved by Governor July 10, 2017. Filed with Secretary of State July 10, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 730, Quirk. Transit districts: prohibition orders.

Existing law prohibits certain acts by a person with respect to the property, facilities, or vehicles of a transit district. A violation is generally an infraction punishable by a fine not exceeding \$75 on a first offense, or on a subsequent offense by a fine not exceeding \$250 or by community service.

Existing law authorizes the Sacramento Regional Transit District, the Fresno Area Express, and, until January 1, 2018, the San Francisco Bay Area Rapid Transit District to issue a prohibition order to any person cited for committing one or more of certain prohibited acts in specified transit facilities. Existing law prohibits a person subject to the prohibition order from entering the property, facilities, or vehicles of the transit district for specified periods of time. Existing law establishes notice requirements in that regard and provides for initial and administrative review of the order.

This bill would permanently apply these provisions to the San Francisco Bay Area Rapid Transit District.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 99171 of the Public Utilities Code is amended to read:

99171. (a) (1) A transit district may issue a prohibition order to any person to whom either of the following applies:

(A) On at least three separate occasions within a period of 90 consecutive days, the person is cited for an infraction committed in or on a vehicle, bus stop, or train or light rail station of the transit district for any act that is a violation of paragraph (2) or (5) of subdivision (a) of Section 99170 of this code or paragraph (1), (2), (3), or (4) of subdivision (d) of Section 640 or Section 640.5 of the Penal Code.

(B) The person is arrested or convicted for a misdemeanor or felony committed in or on a vehicle, bus stop, or light rail station of the transit district for acts involving violence, threats of violence, lewd or lascivious behavior, or possession for sale or sale of a controlled substance.

(C) The person is convicted of a violation of Section 11532 of the Health and Safety Code or Section 653.22 of the Penal Code.

(2) A person subject to a prohibition order may not enter the property, facilities, or vehicles of the transit district for a period of time deemed appropriate by the transit district, provided that the duration of a prohibition order shall not exceed the following, as applicable:

(A) Thirty days if issued pursuant to subparagraph (A) of paragraph (1), provided that a second prohibition order within one year may not exceed 90 days, and a third or subsequent prohibition order within one year may not exceed 180 days.

(B) Thirty days if issued pursuant to an arrest pursuant to subparagraph (B) of paragraph (1). Upon conviction of a misdemeanor offense, the duration of the prohibition order for the conviction, when added to the duration of the prohibition order for the initial arrest, if any, may not exceed 180 days. Upon conviction of a felony offense, the duration of the prohibition order for the conviction, when added to the duration of the prohibition order for the initial arrest, if any, may not exceed one year.

(3) No prohibition order issued under this subdivision shall be effective unless the transit district first affords the person an opportunity to contest the transit district's proposed action in accordance with procedures adopted by the transit district for this purpose. A transit district's procedures shall provide, at a minimum, for the notice and other protections set forth in subdivisions (b) and (c), and the transit district shall provide reasonable notification to the public of the availability of those procedures.

(b) (1) A notice of a prohibition order issued under subdivision (a) shall set forth a description of the conduct underlying the violation or violations giving rise to the prohibition order, including reference to the applicable statutory provision, ordinance, or transit district rule violated, the date of the violation, the approximate time of the violation, the location where the violation occurred, the period of the proposed prohibition, and the scope of the prohibition. The notice shall include a clear and conspicuous statement indicating the procedure for contesting the prohibition order. The notice of prohibition order shall be personally served upon the violator. The notice of prohibition order, or a copy, shall be considered a record kept in the ordinary course of business of the transit district and shall be prima facie evidence of the facts contained in the notice establishing a rebuttable presumption affecting the burden of producing evidence. For purposes of this paragraph, "clear and conspicuous" means in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language.

(2) For purposes of this section, "personal service" means any of the following:

(A) In-person delivery.

(B) Delivery by any form of mail providing for delivery confirmation, postage prepaid, to at least one address provided by the person being served, including, but not limited to, the address set forth in any citation or in court records.

(C) Any alternate method approved in writing by the transit district and the person being served.

(3) If a person served with a notice of prohibition order is not able, or refuses, to provide a mailing address, the notice of prohibition order shall set forth the procedure for obtaining any letters, notices, or orders related to the prohibition order from the administrative offices of the transit district. For purposes of this section, delivery shall be deemed to have been made on the following date, as applicable:

(A) On the date of delivery, if delivered in person.

(B) On the date of confirmed delivery, for any delivery by mail.

(C) For any alternate method of service, as provided in the writing specifying the alternate method.

(4) Proof of service of the notice shall be filed with the transit district.

(5) If a person contests a notice of prohibition order, the transit district shall proceed in accordance with subdivision (c). If the notice of prohibition order is not contested within 10 calendar days after delivery by personal service, the prohibition order shall be deemed final and shall go into effect, without further action by the transit district, for the period of time set forth in the order.

(6) All prohibition orders shall be subject to an automatic stay and shall not take effect until the latest of the following:

(A) Eleven calendar days after delivery of the prohibition order by personal service.

(B) If an initial review is timely requested under paragraph (1) of subdivision (c), 11 calendar days after delivery by personal service of the results of the review.

(C) If an administrative hearing is timely requested under paragraph (3) of subdivision (c), the date the hearing officer's decision is delivered by personal service.

(c) (1) For a period of 10 calendar days from the delivery of the prohibition order by personal service, the person may request an initial review of the prohibition order by the transit district. The request may be made by telephone, in writing, or in person. There shall be no charge for this review. In conducting its review and reaching a determination, the transit district shall determine whether the prohibition order meets the requirements of subdivision (a) and, unless the person has been convicted of the offense or offenses, whether the offense or offenses for which the person was cited or arrested are proven by a preponderance of the evidence. If, following the initial review, based on these findings, the transit district determines that the prohibition order is not adequately supported or that extenuating circumstances make dismissal of the prohibition order appropriate in the interest of justice, the transit district shall cancel the notice. If, following the initial review, based on these findings, the transit district determines that the prohibition order should be upheld in whole or in part, the transit district shall issue a written statement to that effect, including any modification to the period or scope of the prohibition order. The transit district shall serve the results of the initial review to the person contesting the notice by personal service.

(2) The transit district may modify or cancel a prohibition order in the interest of justice. The transit district shall cancel a prohibition order if it determines that the person did not understand the nature and extent of his or her actions or did not have the ability to control his or her actions. If the person is dependent upon the transit system for trips of necessity, including, but not limited to, travel to or from medical or legal appointments, school or training classes, places of employment, or obtaining food, clothing, and necessary household items, the transit district shall modify a prohibition order to allow for those trips. A person requesting a cancellation or modification in the interest of justice shall have the burden of establishing the qualifying circumstances by a preponderance of the evidence.

(3) If the person is dissatisfied with the results of the initial review, the person may request an administrative hearing of the prohibition order no later than 10 calendar days after the results of the initial review are delivered by personal service. The request may be made by telephone, in writing, or in person. An administrative hearing shall be held within 30 calendar days after the receipt of a request for an administrative hearing. The person requesting the hearing may request one continuance, not to exceed seven calendar days.

(4) The administrative hearing process shall include all of the following:

(A) The person requesting the hearing shall have the choice of a hearing by mail or in person. An in-person hearing shall be conducted within the jurisdiction of the transit district.

(B) The administrative hearing shall be conducted in accordance with written procedures established by the transit district and approved by the governing body or chief executive officer of the transit district. The hearing shall provide an independent, objective, fair, and impartial review of the prohibition order.

(C) The administrative review shall be conducted before a hearing officer designated to conduct the review by the transit district's governing body or chief executive officer. In addition to any other requirements, a hearing officer shall demonstrate the qualifications, training, and objectivity prescribed by the transit agency's governing body or chief executive officer as are necessary to fulfill and that are consistent with the duties and responsibilities set forth in this subdivision. The hearing officer's continued service, performance evaluation, compensation, and benefits, as applicable, shall not be directly or indirectly linked to the number of prohibition orders upheld by the hearing officer.

(D) The person who issued the notice of prohibition order shall not be required to participate in an administrative hearing, unless participation is requested by the person requesting the hearing. The request for participation must be made at least five calendar days prior to the date of the hearing and may be made by telephone, in writing, or in person. The notice of prohibition order, in proper form, shall be prima facie evidence of the violation or violations pursuant to subdivision (a) establishing a rebuttable presumption affecting the burden of producing evidence.

(E) In issuing a decision, the hearing officer shall determine whether the prohibition order meets the requirements of subdivision (a) and, unless the person has been convicted of the offense or offenses, whether the offense or offenses for which the person was cited or arrested are proven by a preponderance of the evidence. Based upon these findings, the hearing officer may uphold the prohibition order in whole, determine that the prohibition order is not adequately supported, or cancel or modify the prohibition order in the interest of justice. The hearing officer shall cancel a prohibition order if he or she determines that the person did not understand the nature and extent of his or her actions or did not have the ability to control his or her actions. If the person is dependent upon the transit system for trips of necessity, including, but not limited to, travel to or from medical or legal appointments, school or training classes, places of employment, or obtaining food, clothing, and necessary household items, the transit district shall modify a prohibition order to allow for those trips. A person requesting a cancellation or modification in the interest of justice shall have the burden of establishing the qualifying circumstances by a preponderance of the evidence.

(F) The hearing officer's decision following the administrative hearing shall be delivered by personal service.

(G) A person aggrieved by the final decision of the hearing officer may seek judicial review of the decision within 90 days of the date of delivery of the decision by personal service, as provided by Section 1094.6 of the Code of Civil Procedure.

(d) A person issued a prohibition order under subdivision (a) may, within 10 calendar days of the date the order goes into effect under paragraph (6) of subdivision (b), request a refund for any prepaid fare media rendered unusable in whole or in part by the prohibition order, including, but not limited to, monthly passes. If the fare media remain usable for one or more days outside the period of the prohibition order, the refund shall be prorated based on the number of days the fare media will be unusable. The issuance of a refund may be made contingent on surrender of the fare media.

(e) For purposes of this section, "transit district" means the Sacramento Regional Transit District, the Fresno Area Express, or the San Francisco Bay Area Rapid Transit District.

SEC. 2. Section 99172 of the Public Utilities Code is amended to read:

99172. (a) Prior to exercising the authority given in subdivision (a) of Section 99171 to issue prohibition orders, a transit district shall do all of the following:

(1) Establish an advisory committee for the purpose of evaluating the procedures for and issuance of prohibition orders and recommending a course of training for personnel charged with issuance and enforcement of prohibition orders.

(2) Ensure that personnel to be charged with issuance and enforcement of prohibition orders have received training as recommended by the advisory committee.

(3) Provide reasonable notification to transit district riders that persons who engage in disorderly conduct may be subject to a prohibition order barring the person from the transit district's property, facilities, or vehicles for a period of up to one year. "Reasonable notification" may include, but is not limited to, information on the transit district's Internet Web site, in written materials, at transit stations, and on citations issued by the transit district of the types of conduct that may result in issuance of a prohibition order.

(b) The advisory committee shall be composed of at least five members appointed by the legislative body of the transit district. At least one of the members of the advisory committee shall have experience working with individuals with psychiatric, developmental, or other disabilities, at least one member shall be a youth advocate, and at least one member shall have law enforcement experience.

(c) The advisory committee shall be tasked, at a minimum, with all of the following:

(1) Providing recommendations, in consultation with the county mental health director within the service area of the transit district, regarding the type and extent of training that should be undertaken by individuals with responsibility for issuance and enforcement of prohibition orders, with particular emphasis on training designed to assist those individuals in identifying and interacting with persons who are homeless or who have psychiatric, developmental, or other disabilities.

(2) Identifying, in consultation with the county mental health director within the service area of the transit district, services and programs to which persons who are homeless or who have psychiatric, developmental, or other disabilities may be referred by transit district enforcement personnel prior to or in conjunction with issuance of a prohibition order.

(3) Monitoring the issuance of prohibition orders to assist the transit district in ensuring compliance with Section 51 of the Civil Code.

(4) Providing the governing board of the transit district and the Legislature with an annual report summarizing the number of prohibition orders that were issued by the transit district during the preceding year, including, but not limited to, the types and numbers of citations by category, and the number of exclusion orders appealed, the appeals granted, the reasons granted, and other relevant information directly related to those orders.

(d) The transit district may use an existing advisory committee to fulfill the requirements of this section, provided that the composition and purpose of the existing advisory committee meet or are modified to meet the requirements of this section.

(e) For purposes of this section, "transit district" means the Sacramento Regional Transit District, the Fresno Area Express, or the San Francisco Bay Area Rapid Transit District.