An act to add Part 2.2 (commencing with Section 53.8) to Division 1 of, the Civil Code, and to amend Section 647 of the Penal Code, relating to homelessness.

LEGISLATIVE COUNSEL’S DIGEST

SB 608, as introduced, Liu. Homelessness.
Existing law, the Unruh Civil Rights Act, provides that all persons within the state are free and equal, regardless of their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation, and are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

This bill would enact the Right to Rest Act, which would afford persons experiencing homelessness the right to use public space without discrimination based on their housing status. Because the bill would require local agencies to perform additional duties, it would impose a state-mandated local program. The bill would describe basic human and civil rights that may be exercised without being subject to criminal or civil sanctions or harassment, 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, the right to perform religious observances in public spaces, and the right to occupy a motor vehicle or a recreational vehicle legally parked or parked with the permission of the property owner, as specified.

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.

Existing law provides that any person who lodges in any building, structure, vehicle, or place without the permission of the owner or person entitled to the possession or in control of it, is guilty of disorderly conduct.

The bill would also exempt conduct that is protected by the bill from this definition of the crime of disorderly conduct.

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.


The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as “The Right to Rest Act.”

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

(a) According to the Housing and Urban Development’s report to Congress, 136,826 people were estimated to be homeless in California in 2013, a rate that is unprecedented following a deep and prolonged economic recession, a severe shortage of safe and affordable housing, a failed veteran and civilian mental health system, and a diminished social safety net.

(b) According to the United States Department of Education, 259,656 school children were known to have experienced homelessness in the 2012–13 school year.

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

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

(e) These local ordinances do not reduce the incidence of homelessness or crime. Instead, they result in increased incarceration rates and financial indebtedness of people who simply have no means of support and prolong homelessness by making it more difficult for people to secure housing, employment, and medical care.

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

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

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

(i) Lacking the resources necessary to obtain adequate legal representation, homeless persons are often denied relief or damages through the courts.

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

(k) Homelessness and the increasing criminalization of homelessness and discrimination against those experiencing homelessness are widespread throughout California and are matters of statewide concern.

(l) 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,” without
qualification as to whether or not a person is, or appears to be,
homeless.

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

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

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

SEC. 3. Part 2.2 (commencing with Section 53.8) is added to
Division 1 of the Civil Code, to read:

PART 2.2. HOMELESS PERSONS

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

(a) “BID” means a business improvement district, as established
pursuant to 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 pursuant to Chapter 1 (commencing with
Section 36500) 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, 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 business
improvement district.

(c) “Discrimination based on housing status” includes any
distinction, exclusion, or restriction based on the status of having
or not having a fixed or regular residence or that disproportionately impacts person of a particular housing status. Measures taken to ensure equal enjoyment or exercise of the human right to rest shall not be deemed discriminatory.

(d) “Harassment” means a knowing or 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, threatening, tormenting, or terrorizing.

(e) (1) “Homeless persons,” “homeless people,” or “persons experiencing homelessness” means those individuals or members of families who lack a fixed, regular, and adequate nighttime residence including all of the following:

(A) Individuals and members of families who are sharing the housing of other persons due to a loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in a hospital; or are awaiting foster care placement.

(B) Individuals and members of families who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground.

(C) Individuals and members of families who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings.

(D) Individuals and members of families who, in the preceding 36 months, have moved between jurisdictions in order to obtain temporary or seasonal employment in agriculture or fishing work, or have migrated 20 miles or more to a temporary residence to engage in a fishing activity.

(2) This definition includes unaccompanied youth and homeless families with children and youth who have experienced a long-term period without living independently in permanent housing, have experienced persistent instability as measured by frequent moves over that period, and can be expected to continue in that status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of
a child or youth with a disability, or multiple barriers to employment.

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

(g) “Public space” means any property that is owned, in whole or in part, by any state or local government entity or any property 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 facilities and services, public buildings, shopping centers, and parks.

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

(i) “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.

53.81. (a) Persons experiencing homelessness shall be permitted to use public space in the same manner as any other person, without discrimination based on their housing status. In addition, the existence of homelessness requires that civil and human rights that are amply protected in the home and in other private places be extended to the public areas in which homeless persons live to ensure the equal rights of all Californians, whether homeless or housed.

(b) Every person in the state shall have the following basic human and civil rights, that may be exercised without being subject to criminal or civil sanctions or harassment by law enforcement, public or private security personnel, or BID agents:

(1) The right to use and to move freely in public spaces, without discrimination and without time limitations that discriminate based upon housing status.

(2) The right to rest in public spaces and to protect oneself from the elements, in a nonobstructive manner.

(3) The right to eat, share, accept, or give food in any public space in which having food is not otherwise generally prohibited.

(4) The right to pray, meditate, worship, or practice religion in public spaces, without discrimination based upon housing status.

(5) The right to occupy a motor vehicle or a recreational vehicle, provided that the vehicle is legally parked on public property or parked on private property with permission of the property owner.
53.82. (a) Any person whose rights have been violated pursuant to 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 attorney’s fees and costs to a prevailing party.

SEC. 4. Section 647 of the Penal Code is amended to read:

647. Except as provided in subdivision (l), every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, “prostitution” includes any lewd act between persons for money or other consideration.

(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

(e) Who lodges in any building, structure, vehicle, or place; whether public or private, without the permission of the owner or person entitled to the possession or in control of it. This subdivision does not apply to conduct that is protected pursuant to Section 53.81 of the Civil Code.
(f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled substance, or toluene, in a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.

(g) When a person has violated subdivision (f), a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody. The person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force which would be lawful were he or she effecting an arrest for a misdemeanor without a warrant. A person who has been placed in civil protective custody shall not thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to this placement. This subdivision shall not apply to the following persons:

(1) Any person who is under the influence of any drug, or under the combined influence of intoxicating liquor and any drug.

(2) Any person who a peace officer has probable cause to believe has committed any felony, or who has committed any misdemeanor in addition to subdivision (f).

(3) Any person who a peace officer in good faith believes will attempt escape or will be unreasonably difficult for medical personnel to control.

(h) Who loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant. As used in this subdivision, “loiter” means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

(i) Who, while loitering, prowling, or wandering upon the private property of another, at any time, peeks in the door or window of
any inhabited building or structure, without visible or lawful
business with the owner or occupant.
(j) (1) Any person who looks through a hole or opening, into,
or otherwise views, by means of any instrumentality, including,
but not limited to, a periscope, telescope, binoculars, camera,
motion picture camera, camcorder, or mobile phone, the interior
of a bedroom, bathroom, changing room, fitting room, dressing
room, or tanning booth, or the interior of any other area in which
the occupant has a reasonable expectation of privacy, with the
intent to invade the privacy of a person or persons inside. This
subdivision shall not apply to those areas of a private business
used to count currency or other negotiable instruments.
(2) Any person who uses a concealed camcorder, motion picture
camera, or photographic camera of any type, to secretly videotape,
film, photograph, or record by electronic means, another,
identifiable person under or through the clothing being worn by
that other person, for the purpose of viewing the body of, or the
undergarments worn by, that other person, without the consent or
knowledge of that other person, with the intent to arouse, appeal
to, or gratify the lust, passions, or sexual desires of that person and
invade the privacy of that other person, under circumstances in
which the other person has a reasonable expectation of privacy.
(3) (A) Any person who uses a concealed camcorder, motion
picture camera, or photographic camera of any type, to secretly
videotape, film, photograph, or record by electronic means, another,
identifiable person who may be in a state of full or partial undress,
for the purpose of viewing the body of, or the undergarments worn
by, that other person, without the consent or knowledge of that
other person, in the interior of a bedroom, bathroom, changing
room, fitting room, dressing room, or tanning booth, or the interior
of any other area in which that other person has a reasonable
expectation of privacy, with the intent to invade the privacy of that
other person.
(B) Neither of the following is a defense to the crime specified
in this paragraph:
(i) The defendant was a cohabitant, landlord, tenant, cotenant,
employer, employee, or business partner or associate of the victim,
or an agent of any of these.
(ii) The victim was not in a state of full or partial undress.
(4) (A) Any person who intentionally distributes the image of
the intimate body part or parts of another identifiable person, or
an image of the person depicted engaged in an act of sexual
intercourse, sodomy, oral copulation, sexual penetration, or an
image of masturbation by the person depicted or in which the
person depicted participates, under circumstances in which the
persons agree or understand that the image shall remain private,
the person distributing the image knows or should know that
distribution of the image will cause serious emotional distress, and
the person depicted suffers that distress.

(B) A person intentionally distributes an image described in
subparagraph (A) when he or she personally distributes the image,
or arranges, specifically requests, or intentionally causes another
person to distribute that image.

(C) As used in this paragraph, “intimate body part” means any
portion of the genitals, the anus and in the case of a female, also
includes any portion of the breasts below the top of the areola, that
is either uncovered or clearly visible through clothing.

(D) It shall not be a violation of this paragraph to distribute an
image described in subparagraph (A) if any of the following
applies:
   (i) The distribution is made in the course of reporting an
       unlawful activity.
   (ii) The distribution is made in compliance with a subpoena or
        other court order for use in a legal proceeding.
   (iii) The distribution is made in the course of a lawful public
        proceeding.

(5) This subdivision shall not preclude punishment under any
section of law providing for greater punishment.

(k) In any accusatory pleading charging a violation of
subdivision (b), if the defendant has been once previously convicted
of a violation of that subdivision, the previous conviction shall be
charged in the accusatory pleading. If the previous conviction is
found to be true by the jury, upon a jury trial, or by the court, upon
a court trial, or is admitted by the defendant, the defendant shall
be imprisoned in a county jail for a period of not less than 45 days
and shall not be eligible for release upon completion of sentence,
on probation, on parole, on work furlough or work release, or on
any other basis until he or she has served a period of not less than
45 days in a county jail. In all cases in which probation is granted,
the court shall require as a condition thereof that the person be
 confined in a county jail for at least 45 days. In no event does the
court have the power to absolve a person who violates this
subdivision from the obligation of spending at least 45 days in
confinement in a county jail.

In any accusatory pleading charging a violation of subdivision
(b), if the defendant has been previously convicted two or more
times of a violation of that subdivision, each of these previous
convictions shall be charged in the accusatory pleading. If two or
more of these previous convictions are found to be true by the jury,
upon a jury trial, or by the court, upon a court trial, or are admitted
by the defendant, the defendant shall be imprisoned in a county
jail for a period of not less than 90 days and shall not be eligible
for release upon completion of sentence, on probation, on parole,
on work furlough or work release, or on any other basis until he
or she has served a period of not less than 90 days in a county jail.
In all cases in which probation is granted, the court shall require
as a condition thereof that the person be confined in a county jail
for at least 90 days. In no event does the court have the power to
absolve a person who violates this subdivision from the obligation
of spending at least 90 days in confinement in a county jail.

In addition to any punishment prescribed by this section, a court
may suspend, for not more than 30 days, the privilege of the person
to operate a motor vehicle pursuant to Section 13201.5 of the
Vehicle Code for any violation of subdivision (b) that was
committed within 1,000 feet of a private residence and with the
use of a vehicle. In lieu of the suspension, the court may order a
person’s privilege to operate a motor vehicle restricted, for not
more than six months, to necessary travel to and from the person’s
place of employment or education. If driving a motor vehicle is
necessary to perform the duties of the person’s employment, the
court may also allow the person to drive in that person’s scope of
employment.

(1) A second or subsequent violation of subdivision (j) is
punishable by imprisonment in a county jail not exceeding one
year, or by a fine not exceeding two thousand dollars ($2,000), or
by both that fine and imprisonment.

(2) If the victim of a violation of subdivision (j) was a minor at
the time of the offense, the violation is punishable by imprisonment
in a county jail not exceeding one year, or by a fine not exceeding
two thousand dollars ($2,000), or by both that fine and
imprisonment.

(m) (1) If a crime is committed in violation of subdivision (b)
and the person who was solicited was a minor at the time of the
offense, and if the defendant knew or should have known that the
person who was solicited was a minor at the time of the offense,
the violation is punishable by imprisonment in a county jail for
not less than two days and not more than one year, or by a fine not
exceeding ten thousand dollars ($10,000), or by both that fine and
imprisonment.

(2) The court may, in unusual cases, when the interests of justice
are best served, reduce or eliminate the mandatory two days of
imprisonment in a county jail required by this subdivision. If the
court reduces or eliminates the mandatory two days’ imprisonment,
the court shall specify the reason on the record.

SEC. 5. 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.