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CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL**No. 2343****Introduced by Assembly Member Chiu****February 13, 2018**

An act to amend Section 1942.5 of the Civil Code, to amend Sections 1161, 1167, 1169, and 2020.410 of the Code of Civil Procedure, and to amend Sections 68096.1 and 68097.2 of the Government Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 2343, as introduced, Chiu. Real property: possession: unlawful detainer.

(1) Existing law prohibits a lessor who has retaliated against a lessee for exercising his or her rights from recovering possession of a dwelling, increasing the rent, or decreasing services within 180 days of the occurrence of specified events, provided that the lessee is not in default on his or her rent.

This bill would provide that these protections apply to a lessee who is in default on his or her rent if he or she lawfully organized or participated in a lessees' association or organization advocating lessees' rights. The bill would also provide that the above-described 180-day moratorium on a lessor taking certain actions against a lessee is triggered if the lessee lawfully organizes or participates in a lessees' association or organization advocating lessees' rights.

(2) Existing law establishes a procedure, known as an unlawful detainer action, that a landlord must follow in order to evict a tenant. Existing law provides that a tenant is subject to such an action if the tenant continues to possess the property without permission of the landlord in specified circumstances, including when the tenant has violated the lease by defaulting on rent or failing to perform a duty under the lease, but the landlord must first give the tenant a 3-day notice to vacate or cure the violation. For other more serious violations, such as waste, nuisance, or unlawful acts, existing law provides that a landlord may initiate an unlawful detainer action after serving the tenant with a 3-day notice to vacate.

This bill would change those notice periods to 10 days and 5 days, respectively. This bill would, with regard to a notice for a failure to perform a duty under the lease, require that the notice fully describe the nature of the alleged unperformed duty, as specified, and the manner in which the duty may be performed. The bill would also

require that the notice state that the tenant may request that the landlord provide reasonable accommodations to the tenant for any disability affecting his or her ability to perform the duty.

(3) Under existing law, a plaintiff that wishes to bring an action to obtain possession of real property must file a complaint and serve the defendant with a notice of summons, in which case the defendant has 5 days to file a response. If the defendant fails to appear and defend, the clerk of the court, upon receiving the plaintiff's written application and proof of service of summons and complaint, must enter a default judgment for restitution of the premises and issue a writ of execution thereon, as specified.

This bill would extend the period in which a defendant may respond to a notice of summons to 14 days, as specified. For defendants who fail to appear and defend, the bill would also impose a 14-day period before the clerk may enter the above-describe default judgment and writ of execution.

(4) Existing law provides for the discovery and submission of evidence in civil actions. Existing law prohibits a deposition subpoena to copy business records from commanding compliance earlier than 20 days after the subpoena is issued, or 15 days after it is served, whichever date is later.

This bill would shorten that timeframe in actions to obtain possession of real property to 5 days after the service of the deposition subpoena, unless the subpoena is to a witness for personal records of a consumer and the consumer's consent to release those records is not included with the subpoena, as specified.

(5) Existing law requires litigants to pay certain fees for subpoenaing government employees to testify in civil actions. Existing law provides for a waiver of certain court fees and costs for parties who, under penalty of perjury, demonstrate that they meet specified criteria.

This bill would provide that parties in actions to obtain possession of real property who qualify for that fee waiver are not required to pay those witness fees. Since perjury is a crime, this bill would expand the scope of an existing crime, thus imposing a state-mandated local program.

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 no reimbursement is required by this act for a specified reason.

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

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

SECTION 1. Section 1942.5 of the Civil Code is amended to read:

1942.5. (a) If the lessor retaliates against the lessee because of the exercise by the lessee of his or her rights under this chapter or because of his complaint to an appropriate agency as to tenantability of a dwelling, and if the lessee ~~of a dwelling~~ is not in default as to the payment of his or her ~~rent~~, *rent or has lawfully organized or participated in a lessees' association or organization advocating lessee's rights*, the lessor may not recover possession of a dwelling in any action or proceeding, cause the lessee to quit involuntarily, increase the rent, or decrease any services within 180 days of any of the following:

(1) After the date upon which the lessee, in good faith, has given notice pursuant to Section 1942, has provided notice of a suspected bed bug infestation, or has made an oral complaint to the lessor regarding tenantability.

(2) After the date upon which the lessee, in good faith, has filed a written complaint, or an oral complaint which is registered or otherwise recorded in writing, with an appropriate agency, of which the lessor has notice, for the purpose of obtaining correction of a condition relating to tenantability.

(3) After the date of an inspection or issuance of a citation, resulting from a complaint described in paragraph (2) of which the lessor did not have notice.

(4) After the filing of appropriate documents commencing a judicial or arbitration proceeding involving the issue of tenantability.

(5) After entry of judgment or the signing of an arbitration award, if any, when in the judicial proceeding or arbitration the issue of tenantability is determined adversely to the lessor.

(6) After the lessee has lawfully organized or participated in a lessees' association or an organization advocating lessee's rights.

In each instance, the 180-day period shall run from the latest applicable date referred to in paragraphs (1) to ~~(5)~~ (6), inclusive.

(b) A lessee may not invoke subdivision (a) more than once in any 12-month period.

(c) To report, or to threaten to report, the lessee or individuals known to the landlord to be associated with the lessee to immigration authorities is a form of retaliatory conduct prohibited under subdivision (a). This subdivision shall in no way limit the definition of retaliatory conduct prohibited under this section.

(d) Notwithstanding subdivision (a), it is unlawful for a lessor to increase rent, decrease services, cause a lessee to quit involuntarily, bring an action to recover possession, or threaten to do any of those acts, for the purpose of retaliating against the lessee because he or she has ~~lawfully organized or participated in a lessees' association or an organization advocating lessees' rights or has~~ lawfully and peaceably exercised any rights under the law. In an action brought by or against the lessee pursuant to this subdivision, the lessee shall bear the burden of producing evidence that the lessor's conduct was, in fact, retaliatory.

(e) To report, or to threaten to report, the lessee or individuals known to the landlord to be associated with the lessee to immigration authorities is a form of retaliatory conduct prohibited under subdivision (d). This subdivision shall in no way limit the definition of retaliatory conduct prohibited under this section.

(f) This section does not limit in any way the exercise by the lessor of his or her rights under any lease or agreement or any law pertaining to the hiring of property or his or her right to do any of the acts described in subdivision (a) or (d) for any lawful cause. Any waiver by a lessee of his or her rights under this section is void as contrary to public policy.

(g) Notwithstanding subdivisions (a) to (f), inclusive, a lessor may recover possession of a dwelling and do any of the other acts described in subdivision (a) within the period or periods prescribed therein, or within subdivision (d), if the notice of termination, rent increase, or other act, and any pleading or statement of issues in an arbitration, if any, states the ground upon which the lessor, in good faith, seeks to recover possession, increase rent, or do any of the other acts described in subdivision (a) or (d). If the statement is *Controverted*, the lessor shall establish its truth at the trial or other hearing.

(h) Any lessor or agent of a lessor who violates this section shall be liable to the lessee in a civil action for all of the following:

(1) The actual damages sustained by the lessee.

(2) Punitive damages in an amount of not less than one hundred dollars (\$100) nor more than two thousand dollars (\$2,000) for each retaliatory act where the lessor or agent has been guilty of fraud, oppression, or malice with respect to that act.

(i) In any action brought for damages for retaliatory eviction, the court shall award reasonable attorney's fees to the prevailing party if either party requests attorney's fees upon the initiation of the action.

(j) The remedies provided by this section shall be in addition to any other remedies provided by statutory or decisional law.

(k) A lessor does not violate subdivision (c) or (e) by complying with any legal obligation under any federal government program that provides for rent limitations or rental assistance to a qualified tenant.

SEC. 2. Section 1161 of the Code of Civil Procedure is amended to read:

1161. A tenant of real property, for a term less than life, or the executor or administrator of his or her estate heretofore qualified and now acting or hereafter to be qualified and act, is guilty of unlawful detainer:

1. When he or she continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him or her; provided the expiration is of a nondefault nature however brought about without the permission of his or her landlord, or the successor in estate of his or her landlord, if applicable; including the case where the person to be removed became the occupant of the premises as a servant, employee, agent, or licensee and the relation of master and servant, or employer and employee, or principal and agent, or licensor and licensee, has been lawfully terminated or the time fixed for occupancy by the

agreement between the parties has expired; but nothing in this subdivision shall be construed as preventing the removal of the occupant in any other lawful manner; but in case of a tenancy at will, it must first be terminated by notice, as prescribed in the Civil Code.

2. When he or she continues in possession, in person or by subtenant, without the permission of his or her landlord, or the successor in estate of his or her landlord, if applicable, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and ~~three ten~~ days' notice, in writing, requiring its payment, stating the amount which is due, the name, telephone number, and address of the person to whom the rent payment shall be made, and, if payment may be made personally, the usual days and hours that person will be available to receive the payment (provided that, if the address does not allow for personal delivery, then it shall be conclusively presumed that upon the mailing of any rent or notice to the owner by the tenant to the name and address provided, the notice or rent is deemed received by the owner on the date posted, if the tenant can show proof of mailing to the name and address provided by the owner), or the number of an account in a financial institution into which the rental payment may be made, and the name and street address of the institution (provided that the institution is located within five miles of the rental property), or if an electronic funds transfer procedure has been previously established, that payment may be made pursuant to that procedure, or possession of the property, shall have been served upon him or her and if there is a subtenant in actual occupation of the premises, also upon the subtenant.

The notice may be served at any time within one year after the rent becomes due. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than 60 days after the expiration of the term without any demand of possession or notice to quit by the landlord or the successor in estate of his or her landlord, if applicable, he or she shall be deemed to be holding by permission of the landlord or successor in estate of his or her landlord, if applicable, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during that year, and the holding over for that period shall be taken and construed as a consent on the part of a tenant to hold for another year.

3. When he or she continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for the payment of rent, and ~~three ten~~ days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him or her, and if there is a subtenant in actual occupation of the premises, also, upon the subtenant. *The notice shall fully describe the nature of the alleged unperformed duty, including the date, place, witnesses, and any other relevant facts, as well as the manner in which the duty may be performed. The notice shall also state that, upon request, the landlord must provide reasonable accommodations to the tenant for any disability of the tenant that affects his or her ability to perform the duty.* Within ~~three ten~~ days after the service of the notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture; provided, if the conditions and covenants of the lease, violated by the lessee, cannot afterward be performed, then no notice, as last prescribed herein, need be given to the lessee or his or her subtenant, demanding the performance of the violated conditions or covenants of the lease.

A tenant may take proceedings, similar to those prescribed in this chapter, to obtain possession of the premises let to a subtenant or held by a servant, employee, agent, or licensee, in case of his or her unlawful detention of the premises underlet to him or her or held by him or her.

4. Any tenant, subtenant, or executor or administrator of his or her estate heretofore qualified and now acting, or hereafter to be qualified and act, assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his or her lease, or maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises or using the premises for an unlawful purpose, thereby terminates the lease, and the landlord, or his or her successor in estate, shall upon service of ~~three five~~ days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of the demised premises under this chapter. For purposes of this subdivision, a person who commits or maintains a public nuisance as described in Section 3482.8 of the Civil Code, or who commits an offense described in subdivision (c) of Section 3485 of the Civil Code, or subdivision (c) of Section 3486 of the Civil Code, or uses the premises to further the purpose of that offense shall be deemed to have committed a nuisance upon the premises.

5. When he or she gives written notice as provided in Section 1946 of the Civil Code of his or her intention to terminate the hiring of the real property, or makes a written offer to surrender which is accepted in writing by

the landlord, but fails to deliver possession at the time specified in that written notice, without the permission of his or her landlord, or the successor in estate of the landlord, if applicable.

As used in this section, tenant includes any person who hires real property except those persons whose occupancy is described in subdivision (b) of Section 1940 of the Civil Code.

~~This section shall become operative on January 1, 2012.~~

SEC. 3. Section 1167 of the Code of Civil Procedure is amended to read:

1167. (a) The summons shall be in the form specified in Section 412.20 except that when the defendant is served, the defendant's response shall be filed within ~~five~~ **14** days, including Saturdays and Sundays but excluding all other judicial holidays, after the complaint is served upon him or her. If the last day for filing the response falls on a Saturday or Sunday, the response period shall be extended to and including the next court day.

(b) In all other respects the summons shall be issued and served and returned in the same manner as a summons in a civil action.

SEC. 4. Section 1169 of the Code of Civil Procedure is amended to read:

1169. If, at the time appointed, any defendant served with a summons does not appear and defend, *and after at least 14 calendar days following filing of the proof of service of the summons and complaint*, the clerk, upon written application of the ~~plaintiff and proof of the service of summons and complaint~~, *plaintiff*, shall enter the default of any defendant so served, and, if requested by the plaintiff, immediately shall enter judgment for restitution of the premises and shall issue a writ of execution thereon. The application for default judgment and the default judgment shall include a place to indicate that the judgment includes tenants, subtenants, if any, named claimants, if any, and any other occupants of the premises. Thereafter, the plaintiff may apply to the court for any other relief demanded in the complaint, including the costs, against the defendant, or defendants, or against one or more of the defendants.

SEC. 5. Section 2020.410 of the Code of Civil Procedure is amended to read:

2020.410. (a) A deposition subpoena that commands only the production of business records for copying shall designate the business records to be produced either by specifically describing each individual item or by reasonably particularizing each category of item, and shall specify the form in which any electronically stored information is to be produced, if a particular form is desired.

(b) Notwithstanding subdivision (a), specific information identifiable only to the deponent's records system, like a policy number or the date when a consumer interacted with the witness, is not required.

(c) (1) A deposition subpoena that commands only the production of business records for copying need not be accompanied by an affidavit or declaration showing good cause for the production of the business records designated in it. It shall be directed to the custodian of those records or another person qualified to certify the records. It shall command compliance in accordance with Section 2020.430 on a date that is no earlier than 20 days after the issuance, or 15 days after the service, of the deposition subpoena, whichever date is later.

(2) *Notwithstanding paragraph (1), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, a deposition subpoena shall command compliance in accordance with Section 2020.430 on a date that is no earlier than five days after the service of the deposition subpoena. This paragraph does not apply to a subpoena issued to a witness for personal records pertaining to a consumer, unless the subpoena is accompanied by the consumer's written authorization to release the records pursuant to Section 1985.3.*

(d) If, under Section 1985.3 or 1985.6, the one to whom the deposition subpoena is directed is a witness, and the business records described in the deposition subpoena are personal records pertaining to a consumer, the service of the deposition subpoena shall be accompanied either by a copy of the proof of service of the notice to the consumer described in subdivision (e) of Section 1985.3, or subdivision (b) of Section 1985.6, as applicable, or by the consumer's written authorization to release personal records described in paragraph (2) of subdivision (c) of Section 1985.3, or paragraph (2) of subdivision (c) of Section 1985.6, as applicable.

SEC. 6. Section 68096.1 of the Government Code is amended to read:

68096.1. (a) Any employee of a local agency who is obliged by a subpoena to attend a civil action or proceeding as a witness in litigation in a matter regarding an event or transaction that he or she perceived or investigated in the course of his or her duties, to which that local agency is not a party, shall receive the salary or other compensation to which he or she is normally entitled from that local agency during the time that he or she prepares for his or her response and appearance, during the time that he or she travels to and from the place where the court or other tribunal is located and while he or she is required to remain at that place pursuant to the subpoena. He or she shall also receive from that local agency the actual necessary and reasonable traveling expenses he or she incurred in complying with the subpoena.

(b) (1) The party at whose request the subpoena is issued shall reimburse the local agency for the full cost incurred by the local agency in paying the employee his or her salary or other compensation and traveling expenses as provided for in this section, for each day that the employee is required to remain in attendance pursuant to the subpoena. The amount of two hundred seventy-five dollars (\$275), together with the subpoena, shall be tendered to that local agency for each day that the employee is required to remain in attendance pursuant to the subpoena.

(2) A party who meets the standards of eligibility and application requirements under Sections 68632 and 68633 is not subject to the fees specified in paragraph (1) if both of the following apply:

(A) The action for which the subpoena is issued is an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure.

(B) The witness whose testimony is requested is a code enforcement officer, building inspector, or other government official responsible for the enforcement of Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code, whose attendance is reasonably necessary for the prosecution or defense of the case, and who is subpoenaed to testify regarding the premises that are the subject of the action.

(c) If the actual expenses should later prove to be less than the amount tendered, the excess of the amount tendered shall be refunded.

(d) If the actual expenses should later prove to be more than the amount tendered, the difference shall be paid to the local agency by the party at whose request the subpoena was issued.

(e) If a court continues a proceeding on its own motion, no additional witness fee shall be required prior to the issuance of a subpoena or the making of any order directing the employee to appear on the date to which the proceeding is continued.

(f) As used in this section, "local agency" means a city, county, city and county, special district, redevelopment agency, or any other political subdivision of the state.

SEC. 7. Section 68097.2 of the Government Code is amended to read:

68097.2. (a) Any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, any firefighter, any state employee, any trial court employee, or any county employee, who is obliged by a subpoena issued pursuant to Section 68097.1 to attend as a witness, shall receive the salary or other compensation to which he or she is normally entitled from the public entity by which he or she is employed during the time that he or she travels to and from the place where the court or other tribunal is located and while he or she is required to remain at that place pursuant to the subpoena. He or she shall also receive from the public entity by which he or she is employed the actual necessary and reasonable traveling expenses incurred by him or her in complying with the subpoena.

(b) (1) The party at whose request the subpoena is issued shall reimburse the public entity for the full cost to the public entity incurred in paying the peace officer, firefighter, state employee, trial court employee, or specified county employee his or her salary or other compensation and traveling expenses as provided for in this section, for each day that the peace officer, firefighter, state employee, trial court employee, or specified county employee is required to remain in attendance pursuant to the subpoena. The amount of two hundred seventy-five dollars (\$275), together with the subpoena, shall be tendered to the person accepting the subpoena for each day that the peace officer, firefighter, state employee, trial court employee, or specified county employee is required to remain in attendance pursuant to the subpoena.

(2) A party who meets the standards of eligibility and application requirements under Sections 68632 and 68633 is not subject to the fees specified in paragraph (1) if both of the following apply:

(A) The action for which the subpoena is issued is an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure.

(B) The witness whose testimony is requested is a code enforcement officer, building inspector, or other government official responsible for the enforcement of Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code, whose attendance is reasonably necessary for the prosecution or defense of the case, and who is subpoenaed to testify regarding the premises that are the subject of the action.

(c) If the actual expenses should later prove to be less than the amount tendered, the excess of the amount tendered shall be refunded.

(d) If the actual expenses should later prove to be more than the amount deposited, the difference shall be paid to the public entity by the party at whose request the subpoena is issued.

(e) If a court continues a proceeding on its own motion, no additional witness fee shall be required prior to the issuance of a subpoena or the making of an order directing the peace officer, firefighter, state employee, or trial court employee to appear on the date to which the proceeding is continued.

(f) For the purposes of the payment of the salary or other compensation of a volunteer firefighter pursuant to subdivision (a), a volunteer firefighter who is subpoenaed to appear as a witness in connection with a matter regarding an event or transaction that he or she has perceived or investigated in the course of his or her duties as a volunteer firefighter, shall be deemed to be entitled to reasonable compensation evidenced by the compensation paid to firefighters in jurisdictions with similar geographic and economic characteristics. However, the requirements of subdivision (a) and of this subdivision are not applicable if a volunteer firefighter will receive his or her regular salary or other compensation pursuant to the policy of his or her regular employer, for the periods during which compensation is required under subdivision (a).

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.