

Assembly Bill No. 1059

CHAPTER 542

An act to amend Section 1942.5 of, and to add Section 1940.2 to, the Civil Code, relating to landlord and tenant.

[Approved by Governor September 27, 2003. Filed with Secretary of State September 29, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1059, Lieber. Landlord and tenant: menacing and retaliatory acts.

(1) Existing law defines the crime of theft to include the felonious taking of another's personal property, the fraudulent appropriation of another's property held in trust, or defrauding another of money, labor, or property. Existing law defines the crime of extortion as obtaining another's property, with consent, or obtaining an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.

This bill would provide that a tenant is entitled to a civil penalty of not more than \$2,000 for each act of a landlord, made for the purpose of influencing the tenant to vacate a dwelling, that constitutes theft or extortion as defined above, or the use, or threatened use, of force, threats, or menacing conduct constituting a course of conduct that interferes with the tenant's right to quiet enjoyment of the premises that would create an apprehension of harm in a reasonable person. The bill would provide that certain warning notices and explanations do not violate these provisions.

(2) Existing law provides that a lessor or the agent of a lessor is liable to a lessee for, among other things, punitive damages of not less than \$100 nor more than \$1,000 for specified retaliatory acts where the lessor or agent has been guilty of fraud, oppression, or malice with respect to that act.

This bill would increase the maximum punitive damages allowed from \$1,000 to \$2,000. The bill would also make other technical, nonsubstantive changes.

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

SECTION 1. Section 1940.2 is added to the Civil Code, to read:
1940.2. (a) It is unlawful for a landlord to do any of the following for the purpose of influencing a tenant to vacate a dwelling:



(1) Engage in conduct that violates subdivision (a) of Section 484 of the Penal Code.

(2) Engage in conduct that violates Section 518 of the Penal Code.

(3) Use, or threaten to use, force, willful threats, or menacing conduct constituting a course of conduct that interferes with the tenant's quiet enjoyment of the premises in violation of Section 1927 that would create an apprehension of harm in a reasonable person. Nothing in this paragraph requires a tenant to be actually or constructively evicted in order to obtain relief.

(4) Commit a significant and intentional violation of Section 1954.

(b) A tenant who prevails in a civil action, including an action in small claims court, to enforce his or her rights under this section is entitled to a civil penalty in an amount not to exceed two thousand dollars (\$2,000) for each violation.

(c) An oral or written warning notice, given in good faith, regarding conduct by a tenant, occupant, or guest that violates, may violate, or violated the applicable rental agreement, rules, regulations, lease, or laws, is not a violation of this section. An oral or written explanation of the rental agreement, rules, regulations, lease, or laws given in the normal course of business is not a violation of this section.

(d) Nothing in this section shall enlarge or diminish a landlord's right to terminate a tenancy pursuant to existing state or local law; nor shall this section enlarge or diminish any ability of local government to regulate or enforce a prohibition against a landlord's harassment of a tenant.

SEC. 2. 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 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 rent, 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, 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.

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

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

(c) 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.

(d) Nothing in this section shall be construed as limiting 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 (c) for any lawful cause. Any waiver by a lessee of his or her rights under this section is void as contrary to public policy.

(e) Notwithstanding subdivisions (a) to (d), 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 (c), 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 (c). If the statement is controverted, the lessor shall establish its truth at the trial or other hearing.

(f) 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.



(g) 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.

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

