

Assembly Bill No. 2523

Passed the Assembly August 12, 2004

Chief Clerk of the Assembly

Passed the Senate July 2, 2004

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Section 11571.1 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 2523, Frommer. Controlled substances: unlawful detainer.

Existing law, scheduled to be repealed by its own terms on January 1, 2005, provides that the city prosecutor or city attorney of specified judicial districts in the County of Los Angeles may file, in the name of the people, an action for unlawful detainer against any tenant who is unlawfully engaged in specified controlled substance offenses, as specified. Existing law requires the city attorney and city prosecutor to report annually to the Judicial Council information on these unlawful detainer actions, as specified.

This bill would provide for the law to continue until January 1, 2010, revise notice and reporting elements of the program, and expand the program to include actions by city prosecutors or city attorneys in courts in Alameda County and San Diego County that have jurisdiction over unlawful detainer actions involving real property situated in specified cities in those counties.

This bill would contain legislative findings as to the necessity of a special statute.

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

SECTION 1. Section 11571.1 of the Health and Safety Code is amended to read:

11571.1. (a) To effectuate the purposes of this article, the city prosecutor or city attorney may file, in the name of the people, an action for unlawful detainer against any person who is in violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure, with respect to a controlled substance purpose. In filing this action, which shall be based upon an arrest report or on another action or report by a regulatory or law enforcement agency, the city prosecutor or city attorney shall utilize the procedures set forth in Chapter 4



(commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, except that in cases filed under this section, the following also shall apply:

(1) (A) Prior to filing an action pursuant to this section, the city prosecutor or city attorney shall give 30-calendar days' written notice to the owner, requiring the owner to file an action for the removal of the person who is in violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure with respect to a controlled substance purpose.

(B) This notice shall include sufficient documentation establishing a violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure and shall be served upon the owner and the tenant in accordance with subdivision (e) of this section.

(C) The notice to the tenant shall also include on the bottom of its front page, in at least 14-point bold type, the following:

“Notice to Tenant: This notice is not a notice of eviction. However, you should know that an eviction action may soon be filed in court against you for suspected drug activity, as described above. You should call (insert name and telephone number of the city attorney or prosecutor pursuing the action) or legal aid to stop the eviction action if any of the following is applicable:

- (i) You are not the person named in this notice.
- (ii) The person named in the notice does not live with you.
- (iii) The person named in the notice has permanently moved.
- (iv) You do not know the person named in the notice.
- (v) You have any other legal defense or legal reason to stop the eviction action.

A list of legal assistance providers is attached to this notice. Some provide free legal help if you are eligible.”

(D) The owner shall, within 30-calendar days of the mailing of the written notice, either provide the city prosecutor or city attorney with all relevant information pertaining to the unlawful detainer case, or provide a written explanation setting forth any safety-related reasons for noncompliance, and an assignment to the city prosecutor or city attorney of the right to bring an unlawful detainer action against the tenant.

(E) The assignment shall be on a form provided by the city prosecutor or city attorney and may contain a provision for costs



of investigation, discovery, and reasonable attorney's fees, in an amount not to exceed six hundred dollars (\$600).

(F) If the city prosecutor or city attorney accepts the assignment of the right of the owner to bring the unlawful detainer action, the owner shall retain all other rights and duties, including the handling of the tenant's personal property, following issuance of the writ of possession and its delivery to and execution by the appropriate agency.

(2) Upon the failure of the owner to file an action pursuant to this section, or to respond to the city prosecutor or city attorney as provided in paragraph (1), or having filed an action, if the owner fails to prosecute it diligently and in good faith, the city prosecutor or city attorney may file and prosecute the action, and join the owner as a defendant in the action. This action shall have precedence over any similar proceeding thereafter brought by the owner, or to one previously brought by the owner and not prosecuted diligently and in good faith. Service of the summons and complaint upon the defendant owner shall be in accordance with Sections 415.10, 415.20, 415.30, 415.40, and 415.50 of the Code of Civil Procedure.

(3) If a jury or court finds the defendant tenant guilty of unlawful detainer in a case filed pursuant to paragraph (2), the city prosecutor or city attorney may be awarded costs, including the costs of investigation and discovery and reasonable attorney's fees. These costs shall be assessed against the defendant owner, to whom notice was directed pursuant to paragraph (1), and once an abstract of judgment is recorded, it shall constitute a lien on the subject real property.

(4) Nothing in this article shall prevent a local governing body from adopting and enforcing laws, consistent with this article relating to drug abatement. Where local laws duplicate or supplement this article, this article shall be construed as providing alternative remedies and not preempting the field.

(5) Nothing in this article shall prevent a tenant from receiving relief against a forfeiture of a lease pursuant to Section 1179 of the Code of Civil Procedure.

(b) In any proceeding brought under this section, the court may, upon a showing of good cause, issue a partial eviction ordering the removal of any person, including, but not limited to, members of the tenant's household if the court finds that the person has



engaged in the activities described in subdivision (a). Persons removed pursuant to this section may be permanently barred from returning to or reentering any portion of the entire premises. The court may further order as an express condition of the tenancy that the remaining tenants shall not give permission to or invite any person who has been removed pursuant to this subdivision to return to or reenter any portion of the entire premises.

(c) For the purposes of this section, “controlled substance purpose” means the manufacture, cultivation, importation into the state, transportation, possession, possession for sale, sale, furnishing, administering, or giving away, or providing a place to use or fortification of a place involving, cocaine, phencyclidine, heroin, methamphetamine, or any other controlled substance, in a violation of subdivision (a) of Section 11350, Section 11351, 11351.5, 11352, or 11359, subdivision (a) of Section 11360, or Section 11366, 11366.6, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11383, if the offense occurs on the subject real property and is documented by the observations of a peace officer.

(d) Notwithstanding subdivision (b) of Section 68097.2 of the Government Code, a public entity may waive all or part of the costs incurred in furnishing the testimony of a peace officer in an unlawful detainer action brought pursuant to this section.

(e) The notice and documentation described in paragraph (1) of subdivision (a) shall be given in writing and may be given either by personal delivery or by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to the owner at the address known to the public entity giving the notice, or as shown on the last equalized assessment roll, if not known. Separate notice of not less than 30-calendar days and documentation shall be provided to the tenant in accordance with this subdivision. Service by mail shall be deemed to be completed at the time of deposit in the United States mail. Proof of giving the notice may be made by a declaration signed under penalty of perjury by any employee of the public entity which shows service in conformity with this section.

(f) This section shall only apply to the following courts:

(1) In the County of Los Angeles, any court having jurisdiction over unlawful detainer cases involving real property situated in the City of Los Angeles or in the City of Long Beach.



(2) In the County of San Diego, any court having jurisdiction over unlawful detainer cases involving real property situated in the City of San Diego.

(3) In the County of Alameda, any court with jurisdiction over unlawful detainer cases involving real property situated in the City of Oakland.

(g) (1) The city attorney and city prosecutor of each participating jurisdiction shall provide to the Judicial Council the following information:

(A) The number of notices provided pursuant to paragraph (1) of subdivision (a).

(B) The number of cases filed by an owner, upon notice.

(C) The number of assignments executed by owners to the city attorney or city prosecutor.

(D) The number of three-day, 30-day, or 60-day notices issued by the city attorney or city prosecutor.

(E) The number of cases filed by the city attorney or city prosecutor.

(F) The number of times that an owner is joined as a defendant pursuant to this section.

(G) As to each case filed by an owner, the city attorney, or the city prosecutor, the following information:

(i) The number of judgments ordering an eviction or partial eviction (specify whether default, stipulated, or following trial).

(ii) The number of cases, listed by separate categories, in which the case was withdrawn or in which the tenant prevailed.

(iii) The number of other dispositions (specify disposition).

(iv) The number of defendants represented by counsel.

(v) Whether the case was a trial by the court or a trial by a jury.

(vi) Whether an appeal was taken, and, if so, the result of the appeal.

(vi) The number of cases in which partial eviction was requested, and the number of cases in which the court ordered a partial eviction.

(H) As to each case in which a notice was issued, but no case was filed, the following information:

(i) The number of instances in which a tenant voluntarily vacated the unit.

(ii) The number of instances in which a tenant vacated a unit prior to the providing of the notice.



(iii) The number of cases in which the notice provided pursuant to subdivision (a) was erroneously sent to the tenant. (List reasons, if known, for the erroneously sent notice, such as reliance on information on the suspected controlled substance law violator's name or address that was incorrect; clerical error; or any other reason)

(iv) The number of other resolutions (specify resolution).

(2) (A) Information compiled pursuant to this section shall be reported annually to the Judicial Council on or before January 30 of each year.

(B) The Judicial Council shall thereafter submit a brief report to the Senate and Assembly Judiciary Committees once on or before April 15, 2007, and once on or before April 15, 2009, summarizing the information collected pursuant to this section and evaluating the merits of the pilot programs established by this section.

(h) This section shall remain in effect only until January 1, 2010, and as of that date is repealed unless a later enacted statute deletes or extends that date.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances surrounding the drug problem in the jurisdictions specified in the bill. The facts constituting the special circumstances that distinguish these court jurisdictions in Los Angeles, San Diego, and Alameda Counties from other jurisdictions are the severity of the drug trafficking problem and the widespread use of rental housing to facilitate drug trafficking.



Approved _____, 2004

Governor

