

Assembly Bill No. 2310

Passed the Assembly August 25, 2014

Chief Clerk of the Assembly

Passed the Senate August 20, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add and repeal Section 3485 of the Civil Code, relating to unlawful detainer, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2310, Ridley-Thomas. Unlawful detainer: nuisance: unlawful weapons and ammunition.

(1) Existing law defines a nuisance and includes within this definition anything which is injurious to health, including the illegal sale of controlled substances. Existing law provides that a tenant who permits a nuisance to be maintained on leased property is guilty of unlawful detainer and may be evicted. Until January 1, 2014, the law authorized a city prosecutor or city attorney to file, in the name of the people, an action for unlawful detainer to abate the nuisance caused by illegal conduct involving unlawful weapons or ammunition on real property, as specified.

This bill would, until January 1, 2019, reenact provisions authorizing a city prosecutor or city attorney in specified counties to file an action for unlawful detainer to abate a nuisance caused by illegal conduct involving unlawful weapons or ammunition described above. The bill would require the action to be based on an arrest or warrant, as specified. The bill would require, prior to filing an action, specified notice to be provided to the owner of the property, requiring the removal of the person who is violating specified law, and would require notices to be served on both tenant and owner. The bill would authorize proof of giving the notice to be made by a declaration signed under penalty of perjury by an employee of the public entity giving the notice. The bill would require the owner to provide, within 30 calendar days of the mailing of the notice, all relevant information pertaining to the unlawful detainer case, or provide a written explanation regarding safety-related reasons for noncompliance, and an assignment of the right to bring an unlawful detainer action against the tenant. The bill would require the assignment to be on a form provided by the city prosecutor or city attorney and authorize it to contain a provision for costs of investigation, discovery, and reasonable

attorney's fees, not to exceed \$600. The bill would permit joinder of the owner if the owner fails to respond, as specified, would give the case priority over similar proceedings, and would authorize an award of specified costs and fees. The bill would require a court to dismiss, without prejudice, an unlawful detainer action if the grounds for an eviction have not been established and allow the court the discretion to dismiss the unlawful detainer action if the tenant establishes by clear and convincing evidence that the immediate eviction would pose an extreme hardship to the tenant and that the hardship outweighs the health, safety, or welfare of the neighbors or surrounding community, as specified.

Among other things, the bill would permit a court to order a partial eviction, as specified, and would define "unlawful weapons or ammunition purpose" for these purposes. The bill would impose reporting requirements regarding the implementation of these programs upon the city attorney and city prosecutor of the participating jurisdictions and would require the California Research Bureau to create a template for these local officials to submit information to the bureau, and the bureau in turn, would submit a report to the Senate and Assembly Committees on Judiciary, as specified, summarizing the information collected and evaluating the merits of the programs established. The bill would allow a defendant to raise as an affirmative defense, the failure of these jurisdictions to make a good faith effort to comply with the reporting requirements in order to bring unlawful detainer actions pursuant to these provisions. The bill would apply to the Counties of Alameda, Los Angeles, and Sacramento. By imposing new reporting requirements on local officials, and by expanding the scope of the crime of perjury, this bill would create a state-mandated local program.

(2) This bill would make legislative findings and declarations as to the necessity of a special statute for the Counties of Alameda, Los Angeles, and Sacramento.

(3) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 3485 is added to the Civil Code, to read:

3485. (a) To abate the nuisance caused by illegal conduct involving an unlawful weapons or ammunition on real property, 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 that unlawful weapons or ammunition purpose. In filing this action, which shall be based upon an arrest or warrant by a law enforcement agency, reporting an offense committed on the property and documented by the observations of a law enforcement officer or agent, 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 an unlawful weapons or ammunition 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 an advisement to the owner of the assignment provision contained in subparagraph (D). The notice shall be served upon the owner and the tenant in accordance with subdivision (e).

(C) The notice to the tenant shall, in at least 14-point bold type, meet the following requirements:

(i) The notice shall contain the following language:

“(Date)

(Name of tenant)
(Address of tenant)

Re: Civil Code Section 3485

Dear (name of tenant):

This letter is to inform you that an eviction action may soon be filed in court against you for suspected firearms activity. According to state law, Civil Code Section 3485 provides for eviction of persons engaging in such conduct, as described below.

(Name of police department) records indicate that you, (name of arrestee), were arrested on (date) for violations of (list violations) on (address of property).

A letter has been sent to the property owner(s) advising of your arrest and the requirements of state law, as well as the landlord’s option to assign the unlawful detainer action to the (name of city attorney or prosecutor’s office).

A list of legal assistance providers is provided below. Please note, this list is not exclusive and is provided for your information only; the (name of city attorney or prosecutor’s office) does not endorse or recommend any of the listed agencies.

Sincerely,

(Name of deputy city attorney or city prosecutor)
Deputy City (Attorney or Prosecutor)

Notice to Tenant: This notice is not a notice of eviction. You should call (name of the city attorney or prosecutor pursuing the action) at (telephone number) or a legal assistance provider to stop the eviction action if any of the following is applicable:

- (1) You are not the person named in this notice.
- (2) The person named in the notice does not live with you.
- (3) The person named in the notice has permanently moved.
- (4) You do not know the person named in the notice.
- (5) You want to request that only the person involved in the nuisance be evicted, allowing the other residents to stay.
- (6) 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 assistance if you are eligible.”

(ii) The notice shall be provided to the tenant in English and, as translated, in all of the languages identified in subdivision (b) of Section 1632 of the Civil Code.

(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). An owner shall only be required to pay the costs or fees upon acceptance of the assignment and the filing of the action for unlawful detainer by the city prosecutor or the city attorney.

(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) This section shall not prevent a local governing body from adopting and enforcing laws, consistent with this section, relating to weapons or ammunition abatement. If local laws duplicate or supplement this section, this section shall be construed as providing alternative remedies and not preempting the field.

(5) This section shall not prevent a tenant from receiving relief against a forfeiture of a lease pursuant to Section 1179 of the Code of Civil Procedure.

(6) In an unlawful detainer action filed pursuant to this section, the court shall make one of the following orders:

(A) If the grounds for an eviction have not been established pursuant to this section, the court shall dismiss, without prejudice, the unlawful detainer action.

(B) If the grounds for an eviction have been established pursuant to this section, the court shall do either of the following:

(i) Order that the tenant and all occupants be immediately evicted from the property.

(ii) Dismiss the unlawful detainer action with or without prejudice or stay execution of an eviction order for a reasonable length of time if the tenant establishes by clear and convincing evidence that the immediate eviction would pose an extreme hardship to the tenant and that the hardship outweighs the health,

safety, or welfare of the neighbors or surrounding community. The court shall not find an extreme hardship solely on the basis of economic hardship or the financial inability of the tenant to pay for and secure other housing or lodging accommodations.

(C) If the grounds for a partial eviction have been established pursuant to subdivision (b), the court shall order that those persons be immediately removed and barred from the property, but the court shall not order the tenancy be terminated.

(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 purposes of this section, "unlawful weapons or ammunition purpose" means the illegal use, manufacture, causing to be manufactured, importation, possession, possession for sale, sale, furnishing, or giving away of any of the following:

(1) A firearm, as defined in subdivision (a) of Section 16520 of the Penal Code.

(2) Any ammunition, as defined in subdivision (b) of Section 16150 of the Penal Code or in Section 16650 or 16660 of the Penal Code.

(3) Any assault weapon, as defined in Section 30510 or 30515 of the Penal Code.

(4) Any .50 BMG rifle, as defined in Section 30530 of the Penal Code.

(5) Any tear gas weapon, as defined in Section 17250 of the Penal Code.

(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 apply only 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 the City of Long Beach.

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

(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) In a template provided by the California Research Bureau, the city attorney and city prosecutor of each participating jurisdiction shall provide to the California Research Bureau the following information:

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

(B) For each notice provided pursuant to paragraph (1) of subdivision (a), the following information:

(i) The name and age, as provided by the landlord, of each person residing at the noticed address.

(ii) The racial or ethnic identity of the tenant against whom the unlawful detainer is sought.

(iii) Whether the person has previously received a notice pursuant to this section from the reporting city attorney or city prosecutor, and if so, whether the tenant vacated or was evicted as a result.

(iv) The date the initial notice was issued.

(C) Whether the tenant has previously been arrested (other than an arrest that is the basis of this notice) for any of the offenses specified in subdivision (c).

(D) Whether, upon notice, the case was filed by the owner, and if so, the filing date and number.

(E) Whether the assignment was executed by the owner to the city attorney or city prosecutor.

(F) Whether 3-day, 30-day, or 60-day notices were issued by the city attorney or city prosecutor, and if so, the date each was issued.

(G) Whether the case was filed by the city attorney or city prosecutor, and if so, the filing date and case number.

(H) Whether the owner was joined as a defendant pursuant to this section.

(I) For the cases filed by an owner, the city attorney, or the city prosecutor, the following information:

(i) If a judgment was entered, the date of the judgment, whether the judgment ordered an eviction or partial eviction, and whether the judgment was a default judgment, stipulated judgment, or judgment following trial.

(ii) Whether the case was withdrawn or in which the tenant prevailed.

(iii) Whether there was another disposition, and specifying the type of disposition.

(iv) Whether the defendant was 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 and the date of the result.

(vii) Whether a partial eviction was requested, and whether the court ordered a partial eviction.

(J) For the cases in which a notice was provided pursuant to subdivision (a), but no case was filed, the following information:

(i) Whether a tenant voluntarily vacated subsequent to receiving the notice, and if so, the date vacated.

(ii) Whether a tenant vacated a unit prior to the providing of the notice, and if so, the date vacated.

(iii) Whether the notice provided pursuant to subdivision (a) was erroneously sent to the tenant. This shall include a list of the reasons, if known, for the erroneously sent notice, such as reliance

on information on the suspected violator's name or address that was incorrect, a clerical error, or any other reason.

(iv) Whether there was another resolution, and specifying the type of resolution.

(K) The street address, city, and ZIP Code of residence where the tenants relocated, to the extent known.

(L) Whether the tenant continued to engage in unlawful activity at his or her new place of residence, to the extent known.

(2) (A) Information compiled pursuant to this section shall be reported annually to the California Research Bureau on or before January 20.

(B) The California Research Bureau shall thereafter submit a brief report to the Senate and Assembly Committees on Judiciary once on or before March 20, 2016, and once on or before March 20, 2018, summarizing the information collected pursuant to this section and evaluating the merits of the programs established by this section. The report shall be submitted in compliance with Section 9795 of the Government Code.

(3) Personally identifiable information submitted to the California Research Bureau pursuant to this section shall be confidential and shall not be publicly disclosed.

(h) A defendant may raise as an affirmative defense, the failure of the participating jurisdiction to make a good faith effort to collect and timely report all information to the California Research Bureau required by subdivision (g) for the reporting period preceding the unlawful detainer action.

(i) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, 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 particular needs of the counties identified in this act and their unique experience with the law as it previously read.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, 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.

However, if the Commission on State Mandates determines that this act contains other 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.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the counties specified in Section 1 of this act will have all the tools they need for the protection of public safety at the earliest time, it is necessary that this bill go into effect immediately.

Approved _____, 2014

Governor