

Assembly Bill No. 2485

Passed the Assembly August 22, 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 amend Section 3486 of, and to add and repeal Section 3486.5 of the Civil Code, relating to civil law, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL’S DIGEST

AB 2485, Dickinson. Unlawful detainer: nuisance: controlled substances.

Existing law establishes the criteria for determining when a tenant is guilty of unlawful detainer, including conduct involving illegally selling a controlled substance, or the commission of an offense involving the unlawful possession or use of illegal weapons or ammunition or the use of the premises to further that purpose. Any of those acts may be deemed to constitute committing a nuisance on the premises. Existing law authorizes, for real property situated in the City of Los Angeles only, a city prosecutor or city attorney to file an action for unlawful detainer in the name of the people against any person who is in violation of the nuisance or the illegal purpose provisions of the unlawful detainer provision described above, with respect to controlled substances.

This bill would, until January 1, 2019, extend the unlawful detainer provisions above regarding illegally selling controlled substances, applicable only to real property situated in the City of Los Angeles, to also include real property situated in the County of Sacramento and the City of Oakland. The bill would require a court hearing an unlawful detainer action pursuant to these provisions to enter a specified order depending on whether grounds for an eviction or a partial eviction have been established. The court would have discretion to dismiss the action or stay the execution of an order of eviction for a reasonable time if the tenant can show, by clear and convincing evidence, that immediate eviction would pose extreme hardship that outweighs the benefit to the community. The bill would also, until January 1, 2019, require the County of Sacramento and the City of Oakland to comply with specified reporting requirements to the California Research Bureau, on or before January 20 annually, regarding prosecutions and evictions carried out under these provisions. The

bill would require 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. By establishing new reporting requirements for local officials, this bill would impose a state-mandated local program.

This bill would make legislative findings and declarations as to the necessity of a special statute for the County of Sacramento and the City of Oakland.

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.

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 3486 of the Civil Code is amended to read:

3486. (a) To abate the nuisance caused by illegal conduct involving a controlled substance purpose 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 controlled substance purpose. In filing this action, which shall be based upon an arrest report by a law enforcement agency, reporting an offense committed on the property and documented by the observations of a police officer, the city prosecutor or city attorney shall use 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 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 3486

Dear (name of tenant):

This letter is to inform you that an eviction action may soon be filed in court against you for suspected drug activity. According to state law, Civil Code Section 3486 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 (a) 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 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) Nothing in this section 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 section, this section shall be construed as providing alternative remedies and not preempting the field.

(5) Nothing in this section 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 of the Health and Safety 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) In an unlawful detainer action filed pursuant to this section, the court shall make one of the following orders:

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

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

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

(B) 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 this hardship outweighs the health, safety, or welfare of the neighbors or surrounding community. However, the court may not find an extreme hardship solely on the basis on an economic hardship or the financial inability of the tenant to pay for and secure other housing or lodging accommodations.

(3) 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 may not order the tenancy be terminated.

(g) This section shall apply only in the County of Los Angeles to any court having jurisdiction over unlawful detainer cases involving real property situated in the City of Los Angeles.

(h) This section shall become operative on January 1, 2014, only if the City of Los Angeles has regularly reported to the California Research Bureau as required by this section as it read during the period from January 1, 2010, to January 1, 2014, inclusive. For purposes of this section, the City of Los Angeles shall be deemed to have complied with this reporting requirement if the 2013 report to the Legislature by the California Research Bureau indicates that the City of Los Angeles has regularly reported to the bureau.

SEC. 2. Section 3486.5 is added to the Civil Code, to read:

3486.5. (a) Notwithstanding subdivision (g) of Section 3486, Section 3486 shall apply in the County of Sacramento, in any court with jurisdiction over unlawful detainer cases involving real property situated in the City of Sacramento and in the County of Alameda in any court having jurisdiction over unlawful detainer cases involving real property situated in the City of Oakland.

(b) (1) In a template provided by the California Research Bureau, the city attorney and city prosecutor of the County of Sacramento and the city attorney and city prosecutor of the City of Oakland shall provide to the California Research Bureau the following information pertaining to cases filed pursuant to Section 3486:

(A) The number of notices provided pursuant to paragraph (1) of subdivision (a) of Section 3486.

(B) For each notice provided pursuant to paragraph (1) of subdivision (a) of Section 3486, 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) of Section 3486.

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

(E) Whether the assignment was executed by the owner to the city attorney or 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 is 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 the tenant prevailed.

(iii) Whether there was another disposition, and 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 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 cases in which a notice was provided pursuant to subdivision (a) of Section 3486, 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) of Section 3486 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 other reason.

(iv) Whether there was another resolution and 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 pilot programs established by this section. The report for this section shall be submitted in compliance with Section 9795 of the Government Code and may be combined with the California Research Bureau report submitted for the pilot program established by Section 3485. The 2018 report shall indicate whether the City of Sacramento and the City of Oakland have regularly reported to the bureau.

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

(c) A participating jurisdiction shall not be permitted to file, in the name of the people, an action for unlawful detainer pursuant to this section unless that jurisdiction has made a good faith effort

to collect and timely report all information to the California Research Bureau required by subdivision (b).

(d) 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. 3. 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 the City of Sacramento and the City of Oakland have unique and historic roles in reporting data regarding city attorney sponsored unlawful detainer actions and outcomes to the California Research Bureau in assessing the effectiveness of this program.

SEC. 4. 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.

SEC. 5. 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 City of Sacramento and the City of Oakland have all the tools they need for the protection of public safety at the earliest time, it is necessary that the bill go into effect immediately.

Approved _____, 2014

Governor