

ASSEMBLY BILL

No. 1522

**Introduced by Committee on Judiciary (Assembly Members
Mark Stone (Chair), Alejo, Chau, Chiu, Cristina Garcia, Holden,
and O'Donnell)**

March 10, 2015

An act to amend Sections 3485 and 3486.5 of the Civil Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 1522, as introduced, Committee on Judiciary. Unlawful detainer: nuisance.

Existing law establishes the criteria for determining when a tenant is guilty of unlawful detainer, including, but not limited to, 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 prescribed localities, 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.

Existing law requires the city attorney or city prosecutor to provide prescribed information pertaining to action taken pursuant to these provisions to the California Research Bureau, and requires the bureau to 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 these provisions.

This bill would, instead, require that the bureau report once on or before April 20, 2016, and once on or before April 20, 2018.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 3485 of the Civil Code is amended to
2 read:

3 3485. (a) To abate the nuisance caused by illegal conduct
4 involving an unlawful weapons or ammunition on real property,
5 the city prosecutor or city attorney may file, in the name of the
6 people, an action for unlawful detainer against any person who is
7 in violation of the nuisance or illegal purpose provisions of
8 subdivision 4 of Section 1161 of the Code of Civil Procedure, with
9 respect to that unlawful weapons or ammunition purpose. In filing
10 this action, which shall be based upon an arrest or warrant by a
11 law enforcement agency, reporting an offense committed on the
12 property and documented by the observations of a law enforcement
13 officer or agent, the city prosecutor or city attorney shall utilize
14 the procedures set forth in Chapter 4 (commencing with Section
15 1159) of Title 3 of Part 3 of the Code of Civil Procedure, except
16 that in cases filed under this section, the following also shall apply:

17 (1) (A) Prior to filing an action pursuant to this section, the city
18 prosecutor or city attorney shall give 30 calendar days' written
19 notice to the owner, requiring the owner to file an action for the
20 removal of the person who is in violation of the nuisance or illegal
21 purpose provisions of subdivision 4 of Section 1161 of the Code
22 of Civil Procedure with respect to an unlawful weapons or
23 ammunition purpose.

24 (B) This notice shall include sufficient documentation
25 establishing a violation of the nuisance or illegal purpose provisions
26 of subdivision 4 of Section 1161 of the Code of Civil Procedure
27 and an advisement to the owner of the assignment provision
28 contained in subparagraph (D). The notice shall be served upon
29 the owner and the tenant in accordance with subdivision (e).

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

32 (i) The notice shall contain the following language:
33

1 “(Date)

2

3 (Name of tenant)

4 (Address of tenant)

5

6 Re: Civil Code Section 3485

7

8 Dear (name of tenant):

9

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

14

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

18

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

23

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

28

29 Sincerely,

30

31 (Name of deputy city attorney or city prosecutor)

32 Deputy City (Attorney or Prosecutor)

33

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

38

39 (1) You are not the person named in this notice.

40

- 1 (2) The person named in the notice does not live with you.
- 2
- 3 (3) The person named in the notice has permanently moved.
- 4
- 5 (4) You do not know the person named in the notice.
- 6
- 7 (5) You want to request that only the person involved in the
- 8 nuisance be evicted, allowing the other residents to stay.
- 9
- 10 (6) You have any other legal defense or legal reason to stop the
- 11 eviction action. A list of legal assistance providers is attached to
- 12 this notice. Some provide free legal assistance if you are eligible.”
- 13
- 14 (ii) The notice shall be provided to the tenant in English and,
- 15 as translated, in all of the languages identified in subdivision (b)
- 16 of Section 1632 of the Civil Code.
- 17 (D) The owner shall, within 30 calendar days of the mailing of
- 18 the written notice, either provide the city prosecutor or city attorney
- 19 with all relevant information pertaining to the unlawful detainer
- 20 case, or provide a written explanation setting forth any
- 21 safety-related reasons for noncompliance, and an assignment to
- 22 the city prosecutor or city attorney of the right to bring an unlawful
- 23 detainer action against the tenant.
- 24 (E) The assignment shall be on a form provided by the city
- 25 prosecutor or city attorney and may contain a provision for costs
- 26 of investigation, discovery, and reasonable attorney’s fees, in an
- 27 amount not to exceed six hundred dollars (\$600). An owner shall
- 28 only be required to pay the costs or fees upon acceptance of the
- 29 assignment and the filing of the action for unlawful detainer by
- 30 the city prosecutor or the city attorney.
- 31 (F) If the city prosecutor or city attorney accepts the assignment
- 32 of the right of the owner to bring the unlawful detainer action, the
- 33 owner shall retain all other rights and duties, including the handling
- 34 of the tenant’s personal property, following issuance of the writ
- 35 of possession and its delivery to and execution by the appropriate
- 36 agency.
- 37 (2) Upon the failure of the owner to file an action pursuant to
- 38 this section, or to respond to the city prosecutor or city attorney
- 39 as provided in paragraph (1), or having filed an action, if the owner
- 40 fails to prosecute it diligently and in good faith, the city prosecutor

1 or city attorney may file and prosecute the action, and join the
2 owner as a defendant in the action. This action shall have
3 precedence over any similar proceeding thereafter brought by the
4 owner, or to one previously brought by the owner and not
5 prosecuted diligently and in good faith. Service of the summons
6 and complaint upon the defendant owner shall be in accordance
7 with Sections 415.10, 415.20, 415.30, 415.40, and 415.50 of the
8 Code of Civil Procedure.

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

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

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

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

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

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

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

34 (ii) Dismiss the unlawful detainer action with or without
35 prejudice or stay execution of an eviction order for a reasonable
36 length of time if the tenant establishes by clear and convincing
37 evidence that the immediate eviction would pose an extreme
38 hardship to the tenant and that the hardship outweighs the health,
39 safety, or welfare of the neighbors or surrounding community. The
40 court shall not find an extreme hardship solely on the basis of

1 economic hardship or the financial inability of the tenant to pay
2 for and secure other housing or lodging accommodations.

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

7 (b) In any proceeding brought under this section, the court may,
8 upon a showing of good cause, issue a partial eviction ordering
9 the removal of any person, including, but not limited to, members
10 of the tenant's household if the court finds that the person has
11 engaged in the activities described in subdivision (a). Persons
12 removed pursuant to this section may be permanently barred from
13 returning to or reentering any portion of the entire premises. The
14 court may further order as an express condition of the tenancy that
15 the remaining tenants shall not give permission to or invite any
16 person who has been removed pursuant to this subdivision to return
17 to or reenter any portion of the entire premises.

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

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

24 (2) Any ammunition, as defined in subdivision (b) of Section
25 16150 of the Penal Code or in Section 16650 or 16660 of the Penal
26 Code.

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

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

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

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

37 (e) The notice and documentation described in paragraph (1)
38 of subdivision (a) shall be given in writing and may be given either
39 by personal delivery or by deposit in the United States mail in a
40 sealed envelope, postage prepaid, addressed to the owner at the

1 address known to the public entity giving the notice, or as shown
2 on the last equalized assessment roll, if not known. Separate notice
3 of not less than 30 calendar days and documentation shall be
4 provided to the tenant in accordance with this subdivision. Service
5 by mail shall be deemed to be completed at the time of deposit in
6 the United States mail. Proof of giving the notice may be made by
7 a declaration signed under penalty of perjury by any employee of
8 the public entity which shows service in conformity with this
9 section.

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

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

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

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

20 (g) (1) In a template provided by the California Research
21 Bureau, the city attorney and city prosecutor of each participating
22 jurisdiction shall provide to the California Research Bureau the
23 following information:

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

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

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

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

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

36 (iv) The date the initial notice was issued.

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

- 1 (D) Whether, upon notice, the case was filed by the owner, and
2 if so, the filing date and number.
- 3 (E) Whether the assignment was executed by the owner to the
4 city attorney or city prosecutor.
- 5 (F) Whether 3-day, 30-day, or 60-day notices were issued by
6 the city attorney or city prosecutor, and if so, the date each was
7 issued.
- 8 (G) Whether the case was filed by the city attorney or city
9 prosecutor, and if so, the filing date and case number.
- 10 (H) Whether the owner was joined as a defendant pursuant to
11 this section.
- 12 (I) For the cases filed by an owner, the city attorney, or the city
13 prosecutor, the following information:
- 14 (i) If a judgment was entered, the date of the judgment, whether
15 the judgment ordered an eviction or partial eviction, and whether
16 the judgment was a default judgment, stipulated judgment, or
17 judgment following trial.
- 18 (ii) Whether the case was withdrawn or in which the tenant
19 prevailed.
- 20 (iii) Whether there was another disposition, and specifying the
21 type of disposition.
- 22 (iv) Whether the defendant was represented by counsel.
- 23 (v) Whether the case was a trial by the court or a trial by a jury.
- 24 (vi) Whether an appeal was taken, and, if so, the result of the
25 appeal and the date of the result.
- 26 (vii) Whether a partial eviction was requested, and whether the
27 court ordered a partial eviction.
- 28 (J) For the cases in which a notice was provided pursuant to
29 subdivision (a), but no case was filed, the following information:
- 30 (i) Whether a tenant voluntarily vacated subsequent to receiving
31 the notice, and if so, the date vacated.
- 32 (ii) Whether a tenant vacated a unit prior to the providing of the
33 notice, and if so, the date vacated.
- 34 (iii) Whether the notice provided pursuant to subdivision (a)
35 was erroneously sent to the tenant. This shall include a list of the
36 reasons, if known, for the erroneously sent notice, such as reliance
37 on information on the suspected violator's name or address that
38 was incorrect, a clerical error, or any other reason.
- 39 (iv) Whether there was another resolution, and specifying the
40 type of resolution.

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

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

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

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

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

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

23 (i) This section shall remain in effect only until January 1, 2019,
24 and as of that date is repealed, unless a later enacted statute, that
25 is enacted before January 1, 2019, deletes or extends that date.

26 SEC. 2. Section 3486.5 of the Civil Code is amended to read:

27 3486.5. (a) Notwithstanding subdivision (g) of Section 3486,
28 Section 3486 shall apply in the County of Sacramento, in any court
29 with jurisdiction over unlawful detainer cases involving real
30 property situated in the City of Sacramento and in the County of
31 Alameda in any court having jurisdiction over unlawful detainer
32 cases involving real property situated in the City of Oakland.

33 (b) (1) In a template provided by the California Research
34 Bureau, the city attorney and city prosecutor of the County of
35 Sacramento and the city attorney and city prosecutor of the City
36 of Oakland shall provide to the California Research Bureau the
37 following information pertaining to cases filed pursuant to Section
38 3486:

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

- 1 (B) For each notice provided pursuant to paragraph (1) of
2 subdivision (a) of Section 3486, the following information:
- 3 (i) The name and age, as provided by the landlord, of each
4 person residing at the noticed address.
- 5 (ii) The racial or ethnic identity of the tenant against whom the
6 unlawful detainer is sought.
- 7 (iii) Whether the person has previously received a notice
8 pursuant to this section from the reporting city attorney or city
9 prosecutor, and if so, whether the tenant vacated or was evicted
10 as a result.
- 11 (iv) The date the initial notice was issued.
- 12 (C) Whether the tenant has previously been arrested (other than
13 an arrest that is the basis of this notice) for any of the offenses
14 specified in subdivision (c) of Section 3486.
- 15 (D) Whether, upon notice, the case was filed by the owner, and
16 if so, the filing date and case number.
- 17 (E) Whether the assignment was executed by the owner to the
18 city attorney or prosecutor.
- 19 (F) Whether 3-day, 30-day, or 60-day notices were issued by
20 the city attorney or city prosecutor, and if so, the date each was
21 issued.
- 22 (G) Whether the case was filed by the city attorney or city
23 prosecutor, and if so, the filing date and case number.
- 24 (H) Whether the owner is joined as a defendant pursuant to this
25 section.
- 26 (I) For the cases filed by an owner, the city attorney, or the city
27 prosecutor, the following information:
- 28 (i) If a judgment was entered, the date of the judgment, whether
29 the judgment ordered an eviction or partial eviction, and whether
30 the judgment was a default judgment, stipulated judgment, or
31 judgment following trial.
- 32 (ii) Whether the case was withdrawn or the tenant prevailed.
- 33 (iii) Whether there was another disposition, and the type of
34 disposition.
- 35 (iv) Whether the defendant was represented by counsel.
- 36 (v) Whether the case was a trial by the court or a trial by jury.
- 37 (vi) Whether an appeal was taken, and, if so, the result of the
38 appeal and the date of the result.
- 39 (vii) Whether a partial eviction was requested, and whether the
40 court ordered a partial eviction.

1 (J) For cases in which a notice was provided pursuant to
2 subdivision (a) of Section 3486, but no case was filed, the
3 following information:

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

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

8 (iii) Whether the notice provided pursuant to subdivision (a) of
9 Section 3486 was erroneously sent to the tenant. This shall include
10 a list of the reasons, if known, for the erroneously sent notice, such
11 as reliance on information on the suspected violator's name or
12 address that was incorrect, a clerical error, or other reason.

13 (iv) Whether there was another resolution and the type of
14 resolution.

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

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

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

22 (B) The California Research Bureau shall thereafter submit a
23 brief report to the Senate and Assembly Committees on Judiciary
24 once on or before ~~March~~ *April* 20, 2016, and once on or before
25 ~~March~~ *April* 20, 2018, summarizing the information collected
26 pursuant to this section and evaluating the merits of the pilot
27 programs established by this section. The report for this section
28 shall be submitted in compliance with Section 9795 of the
29 Government Code and may be combined with the California
30 Research Bureau report submitted for the pilot program established
31 by Section 3485. The 2018 report shall indicate whether the City
32 of Sacramento and the City of Oakland have regularly reported to
33 the bureau.

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

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

- 1 to collect and timely report all information to the California
- 2 Research Bureau required by subdivision (b).
- 3 (d) This section shall remain in effect only until January 1, 2019,
- 4 and as of that date is repealed, unless a later enacted statute, that
- 5 is enacted before January 1, 2019, deletes or extends that date.