

AMENDED IN ASSEMBLY MAY 24, 1996

AMENDED IN ASSEMBLY MAY 2, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 2966

**Introduced by Assembly Member Brulte
(Principal coauthor: Assembly Member Machado)
(Coauthors: Assembly Members Alby, Goldsmith, House,
and Kaloogian)**

February 23, 1996

An act to amend Section 1167.2 of the Code of Civil Procedure, relating to unlawful detainer.

LEGISLATIVE COUNSEL'S DIGEST

AB 2966, as amended, Brulte. Unlawful detainer.

Existing law establishes, until July 1, 1998, a pilot project in courts determined by the Judicial Council, upon approval of the affected courts and the county in which the court is located. Within the pilot project, the plaintiff in specified unlawful detainer actions may demand that the defendant deposit with the court clerk 15 days' prospective rent, calculated as specified, unless the defendant has paid the rent through the month in which the action is filed, provided the plaintiff's complaint contains specified allegations. Existing law requires court clerks to issue receipts for the deposits and to remit the deposits to the county treasury, as specified. Existing law provides, among other things, for a filing fee to be paid by a plaintiff and deposited with the county treasurer

for exclusive use by the county and court for the support of this project.

This bill would extend the applicability of these provisions to ~~all specified courts in each county, except a city and county, with a population of over 500,000~~ *the counties of Los Angeles and San Bernardino.* ~~This~~ The bill would require the Judicial Council to prepare a reply form, as specified. *The bill would also extend the operative date of these provisions until December 31, 1998, and would repeal these provisions on January 1, 1999.* By requiring court clerks to issue receipts for the above-described deposits and to remit deposits to the county treasury, this bill would impose a state-mandated local program.

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 no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. The Legislature finds and declares as
- 2 follows:
- 3 (a) The landlord-tenant relationship is unique. Rent
- 4 may not be accepted by the owner during the pendency
- 5 of an unlawful detainer action without a potential waiver
- 6 of all of the owner’s rights under an eviction notice.
- 7 Moreover, during the pendency of unlawful detainer
- 8 proceedings (1) owners are not allowed to eliminate any
- 9 services provided to the tenant with the intent to cause
- 10 the tenant to vacate the premises, (2) owners are not
- 11 excused from making continuing real property tax,
- 12 mortgage, mortgage interest, utility, insurance or
- 13 maintenance payments for the premises, and (3) owners
- 14 are not allowed to retake possession by self-help.
- 15 (b) Millions of dollars are lost by owners of residential
- 16 rental property on a recurring annual basis and added to



1 the rent of rent-paying tenants as the result of
2 uncollectible unlawful detainer judgments and the delays
3 inherent in the state’s unlawful detainer system.

4 (c) Approximately 220,000 unlawful detainer cases are
5 filed annually in the state, involving less than 5 percent
6 of the state’s rental units, costing millions of dollars in
7 attorneys’ fees and court costs, and unnecessarily
8 burdening court administration and taxpayers.

9 (d) It is the intent of the Legislature in establishing a
10 statewide rent deposit project to mitigate the delays and
11 revenue losses in the current unlawful detainer process
12 by requiring deposit with the court of unpaid prospective
13 rent for the period from the date of the commencement
14 of the unlawful detainer action to the date of the
15 anticipated trial.

16 SEC. 2. Section 1167.2 of the Code of Civil Procedure
17 is amended to read:

18 1167.2. (a) (1) There is hereby established a pilot
19 ~~project in each county with a population of over 500,000.~~
20 ~~As used in this section, “county” does not include a city~~
21 ~~and county.~~ *project in the Los Angeles Municipal Court*
22 *downtown courthouse for the Los Angeles Judicial*
23 *District and the municipal courts for the County of San*
24 *Bernardino. Nothing herein shall preclude other*
25 *municipal courts from opting to implement the pilot*
26 *project.*

27 The pilot project shall be considered successful if delays
28 and abuses in the unlawful detainer system are reduced,
29 due process protections are maintained for all parties, and
30 significant administrative burdens are not imposed on the
31 courts. *Measurements of success shall include:*

32 (A) *A reduction of time from filing an unlawful*
33 *detainer action to regaining possession of property in*
34 *cases in which a deposit demand is made as compared to*
35 *cases in which a deposit demand is not made.*

36 (B) *A minimal number of appeals in cases in which a*
37 *demand for prospective rent is made.*

38 (C) *A reduction of total administrative and judicial*
39 *time for the courts when disposing of unlawful detainer*



1 *actions in which a deposit demand is made as compared*
2 *to cases in which a deposit demand is not made.*

3 (D) *No increase in costs to the courts in cases in which*
4 *a deposit demand is made as compared to cases in which*
5 *no deposit demand is made.*

6 (E) *Less than 1 percent of the unlawful detainer cases*
7 *in which a deposit demand was made involved property*
8 *subject to an outstanding violation.*

9 (2) Criteria to be considered for determining the
10 success of the pilot project shall include, but not be
11 limited to, all of the following:

12 (A) The time for disposition of unlawful detainer cases
13 using the pretrial rent deposit procedure as compared to
14 cases under subdivision 2 of Section 1161 from previous
15 years for which records are available and other unlawful
16 detainer cases in the same time period, in which a deposit
17 is not demanded.

18 (B) The percentage of hearings that are contested as
19 compared to failures of parties to appear at the hearing,
20 the number of deposits ordered to be made after a
21 hearing, the number of deposits actually made, and the
22 number of occasions the court found a substantial conflict
23 as to material fact or facts.

24 (C) The effect of the procedure on the ability of the
25 parties to prepare and present a case at the hearing.

26 (D) Analysis of compliance with subdivision (d) using
27 random samples that are sufficient to produce statistically
28 valid data.

29 (E) Assessment by the courts as to the efficiency of the
30 procedure, and whether there was an overall increase or
31 decrease in the administrative burden of dealing with
32 unlawful detainer cases.

33 Each court participating in the pilot project shall
34 develop procedures to survey participants in the process
35 and to gather data on its experience with the process.
36 Survey participants shall include, but not be limited to,
37 members of the judiciary, court administration, court
38 clerks, counsel for plaintiffs and defendants, landlords,
39 tenants, sheriffs, and marshals.



1 The presiding judges of participating courts shall
2 report on the success of the pilot project to the Judicial
3 Council on or before September 30, ~~1997~~ 1998, and the
4 Judicial Council shall report to the Legislature on or
5 before December 31, ~~1997~~ 1998.

6 (b) (1) In any action for unlawful detainer brought
7 under subdivision (2) of Section 1161, the plaintiff may
8 make a demand for a pretrial prospective rent deposit,
9 provided the plaintiff has alleged in the body of the
10 unlawful detainer complaint that no citation of a type
11 described in subdivision (c) is outstanding as of the date
12 the complaint is filed. The demand shall be made in the
13 body of the unlawful detainer complaint, on the first page
14 thereof immediately under the case number, and on the
15 summons issued by the court.

16 (2) The summons and complaint shall be accompanied
17 by a reply form. The reply form shall be prepared by the
18 Judicial Council to allow the defendant to advise the court
19 and the plaintiff that the defendant denies the allegations
20 of the unlawful detainer complaint and intends to appear
21 and defend the action. The information to be contained
22 in the form shall include, but not be limited to, the
23 following:

24 (A) A statement that in order for the defendant to
25 protect his or her rights, the form should be completed
26 and returned to the court immediately, but in no event
27 later than five days from receipt of the summons and
28 complaint. The form shall be returned to the court by
29 personal delivery or by registered or certified mail,
30 return receipt requested, postmarked within five days
31 from receipt of the summons and complaint.

32 (B) A statement that, if the form is not returned to the
33 court in the time and manner prescribed herein, the
34 defendant shall be required to deposit with the court the
35 prospective rent as defined in subdivision (e) by the date
36 of the hearing in order to preserve the right to have a trial
37 of this matter.

38 (C) A statement that if the defendant does not return
39 the form to the court as prescribed herein and
40 subsequently fails to deposit the amount of prospective



1 rent as defined in subdivision (d) up to and including the
2 date of the hearing, the court shall order judgment for
3 possession of the premises to be entered in favor of the
4 plaintiff at the pretrial hearing.

5 (3) Upon the filing of the proof of service of the
6 summons and complaint for unlawful detainer containing
7 a demand for a pretrial prospective rent deposit, the clerk
8 of the court shall set a pretrial hearing date no less than
9 eight nor more than 13 days from the filing of the proof
10 of service, and give notice of that date to all parties by
11 first-class mail if the plaintiff pays the fee required by
12 Section 72055 of the Government Code, plus an additional
13 sum in an amount set by the court to cover actual costs of
14 the court associated with the procedure established by
15 this section. The proceeds from this additional fee shall be
16 deposited with the county treasurer and, upon
17 appropriation, be available solely to the court and the
18 county in which the court is located and shall be used
19 exclusively for costs associated with this procedure.

20 (c) (1) At the pretrial hearing, the court shall
21 determine whether a substantial conflict exists as to a
22 material fact or facts relevant to the unlawful detainer for
23 purposes of requiring the defendant to deposit with the
24 clerk of the court prospective rent as defined in
25 subdivision (e) as a condition of continuing to trial. If at
26 the pretrial hearing the court determines, based upon the
27 written declarations or oral testimony of the parties, that
28 (A) the plaintiff is the landlord of the premises, the
29 defendant failed to pay contract rent, the defendant was
30 properly served with a three-day notice, and the
31 defendant failed to tender the rent or quit the premises,
32 and (B) no substantial conflict exists as to a material fact
33 or facts relevant to the unlawful detainer after
34 considering any written or oral answer to the unlawful
35 detainer complaint made by the defendant and any and
36 all affirmative defenses offered by the defendant, and
37 considering any oral testimony and written declarations
38 presented by all of the parties, then the court shall have
39 the discretion to order the defendant to deposit, with the
40 clerk of the court, prospective rent as defined in



1 subdivision (e). If the court orders a deposit of
2 prospective rent and if the defendant fails to deposit the
3 prospective rent within two court days from the date of
4 the hearing, judgment for the plaintiff for possession of
5 the premises shall be entered and a writ of possession for
6 the premises shall be issued forthwith. If the defendant
7 has not returned the reply form as described in paragraph
8 (2) of subdivision (b) in the time and manner required,
9 any deposit of prospective rent ordered by the court shall
10 be made by the date of the hearing. If a defendant has not
11 returned the reply form and then fails to deposit the
12 prospective rent on the day of the hearing, judgment for
13 the plaintiff for possession of the premises shall be
14 entered and a writ of possession shall be issued forthwith.
15 Upon entry of judgment for possession of the premises for
16 the plaintiff pursuant to this subdivision, the court shall
17 dismiss any claim for money relief without prejudice.

18 (2) For purposes of the pretrial hearing held pursuant
19 to paragraph (1), the parties shall have the right to offer
20 declarations, affidavits, and documentary evidence in
21 addition to oral testimony of the parties, but no witnesses
22 other than the parties may be called to testify. The court
23 shall consult the parties to ascertain whether there is a
24 substantial conflict as to a material fact or facts relevant
25 to the unlawful detainer. The pretrial hearing of the case
26 shall be informal, the object being to dispense justice
27 promptly, fairly, and inexpensively. Except as provided in
28 paragraph (3), for the purposes of the pilot project in Los
29 Angeles County, no attorney may take part in the
30 conduct of the pretrial hearing unless the attorney is
31 appearing to maintain an action (A) by or against himself
32 or herself, (B) by or against a partnership in which he or
33 she is a general partner and in which all the partners are
34 attorneys, or (C) by a corporation. If an attorney appears
35 at the pretrial hearing to maintain an action as authorized
36 by this paragraph, an attorney may appear for the
37 opposing party in this action.

38 (3) Notwithstanding whether the defendant has
39 returned the reply form pursuant to paragraph (2) of
40 subdivision (b), a defendant may respond to the



1 summons and complaint with an oral answer at the
2 pretrial hearing or by written answer, motion, or
3 demurrer. An oral answer shall, at the discretion of the
4 court, be reduced to a writing by the court clerk,
5 recorded electronically, or recorded by a court reporter.
6 The court, in issuing its decision, shall make findings as to
7 the matters specified in paragraph (1) of subdivision (b),
8 including any defenses. The decision and findings shall be
9 reduced to a writing. If the defendant responds to the
10 unlawful detainer by demurrer or motion, this motion or
11 demurrer shall be filed and served pursuant to Sections
12 1167 and 1167.3 of the Code of Civil Procedure and shall
13 be heard and decided at the pretrial hearing held
14 pursuant to this section. Notwithstanding paragraph (2)
15 of subdivision (c), attorneys may appear in any county for
16 parties prosecuting or contesting a demurrer or motion.
17 Notwithstanding Section 1005, papers opposing the
18 defendant's motion or demurrer may be filed and
19 personally served no later than one day prior to the day
20 appointed for the hearing. If the defendant fails to
21 respond to the unlawful detainer by written answer,
22 motion, demurrer, or oral answer at the pretrial hearing,
23 the court shall order judgment for possession of the
24 premises to be entered in favor of the plaintiff forthwith
25 at the pretrial hearing.

26 (d) No deposit of prospective rent as defined in this
27 section shall be required if the defendant has paid, or
28 deposited with the court, all rent through the month in
29 which the action is filed. No deposit of rent pursuant to
30 this section shall be required if the action involves
31 premises as to which, as of the date the complaint was
32 filed, there was an outstanding citation issued by a state
33 or local government agency for violations of law
34 pertaining to health, safety, housing, building, or fire
35 standards.

36 (e) "Prospective rent," for purposes of this section,
37 means up to 15 days' prospective rent not to exceed five
38 hundred dollars (\$500). The prospective rent shall be
39 calculated on a prorated basis utilizing a 30-day rental
40 period and the lowest monthly rent charged for the



1 premises during the prior six months of the defendant's
2 occupancy. Any deposit made by the defendant pursuant
3 to this section shall be deposited with the clerk, by cash,
4 cashier's check, or money order made payable to the
5 clerk. Receipt of the deposit shall be acknowledged in
6 writing and deposited and retained by the clerk pursuant
7 to Section 24353 of the Government Code until further
8 order of the court. The receipt and amount of a deposit
9 of prospective rent shall be included in the order of the
10 court at the conclusion of the pretrial hearing.

11 (f) If at trial the court determines that a breach of the
12 warranty of habitability has occurred, that the defendant,
13 or his or her guests or invitees did not cause the breach
14 of this warranty, that the breach of this warranty is
15 sufficient to diminish the value of the premises in an
16 amount greater than 60 percent of the contract rent, and
17 that the defendant had given the owner notice to repair
18 or eliminate the breach, the court shall order the entire
19 amount of prospective rent deposited by the defendant
20 pursuant to this section returned to the defendant. In this
21 case, the obligation of payment of past rent for the period
22 covered by the eviction notice shall be extinguished. In
23 order to remain in the premises, the defendant shall pay
24 the reduced rent from the time of trial until the defect is
25 cured. The rights and remedies in this paragraph are in
26 addition to any other rights and remedies relating to the
27 habitability of dwelling units.

28 (g) Notwithstanding paragraph (1) of subdivision (c),
29 any deposit made by the defendant pursuant to this
30 section shall be awarded to the party entitled thereto by
31 the trial court. The defendant shall be given credit to the
32 extent of the deposit against any money judgment
33 ordered against the defendant in a subsequent action.

34 (h) This section does not apply to actions for possession
35 of a mobilehome or manufactured home, as those terms
36 are defined in subdivision (a) of Section 1161a, and does
37 not apply to actions for possession of real property in a
38 mobilehome park subject to the Mobilehome Residency
39 Law (Chapter 2.5 (commencing with Section 798) of
40 Title 2 of Part 2 of Division 2 of the Civil Code), or to a



1 manufactured housing community, as defined in Section
2 18801 of the Health and Safety Code.

3 (i) Section 473 shall apply to this section.

4 (j) This section shall become inoperative on ~~July~~
5 *December 31*, 1998, and shall be repealed on ~~January~~ *July*
6 1, 1999, unless a later enacted statute, which is enacted
7 before ~~January~~ *July* 1, 1999, deletes or extends that date.

8 SEC. 3. No reimbursement is required by this act
9 pursuant to Section 6 of Article XIII B of the California
10 Constitution because the only costs that may be incurred
11 by a local agency or school district will be incurred
12 because this act creates a new crime or infraction,
13 eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section
15 17556 of the Government Code, or changes the definition
16 of a crime within the meaning of Section 6 of Article
17 XIII B of the California Constitution.

18 Notwithstanding Section 17580 of the Government
19 Code, unless otherwise specified, the provisions of this act
20 shall become operative on the same date that the act
21 takes effect pursuant to the California Constitution.

