

**Assembly Bill No. 2966**

**CHAPTER 698**

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

[Approved by Governor September 21, 1996. Filed with Secretary of State September 23, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2966, 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 specified courts in the Counties of Los Angeles and San Bernardino and would revise the measurements of the pilot project's success, as specified. The bill would require the Judicial Council to prepare a reply form, as specified, and a form to inform defendants of certain information regarding the pretrial hearing, including the consequences for defendants of going directly to trial on the same date as the date scheduled for the pretrial hearing. 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.



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

SECTION 1. The Legislature finds and declares as follows:

(a) The landlord-tenant relationship is unique. Rent may not be accepted by the owner during the pendency of an unlawful detainer action without a potential waiver of all of the owner's rights under an eviction notice. Moreover, during the pendency of unlawful detainer proceedings (1) owners are not allowed to eliminate any services provided to the tenant with the intent to cause the tenant to vacate the premises, (2) owners are not excused from making continuing real property tax, mortgage, mortgage interest, utility, insurance or maintenance payments for the premises, and (3) owners are not allowed to retake possession by self-help.

(b) Millions of dollars are lost by owners of residential rental property on a recurring annual basis and added to the rent of rent-paying tenants as the result of uncollectible unlawful detainer judgments and the delays inherent in the state's unlawful detainer system.

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

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

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

1167.2. (a) (1) There is hereby established a pilot project in the Los Angeles Municipal Court downtown courthouse for the Los Angeles Judicial District, for those cases within the venue of the Central Division, and the municipal courts for the County of San Bernardino. Nothing herein shall be construed to preclude those municipal courts that were implementing the pilot project as of January 1, 1996, from continuing to do so subject to the provisions of this section as amended by Assembly Bill 2966 of the 1995-96 Regular Session. Nothing herein shall preclude other municipal courts from opting to implement the pilot project.

The pilot project shall be considered successful if delays and abuses in the unlawful detainer system are reduced, due process protections are maintained for all parties, and significant administrative burdens are not imposed on the courts. Failure to meet one or more of the numerical measurements of success shall not be interpreted as a lack of success of the project if, in the Judicial Council's view, the totality



of circumstances reflect success of the project. Measurements of success shall include:

(A) A 50 percent reduction of time from filing an unlawful detainer action to regaining possession of property in cases in which a deposit demand is made as compared to cases in which a deposit demand is not made. The measurement of this reduction shall exclude any action to obtain possession of any nonresidential premises and any action in which the trial was held on the date set for the pretrial hearing and the defendant was not represented by counsel at this trial.

(B) No more than 5 percent of the unlawful detainer cases are appealed in which a demand for prospective rent is made. The measurement of this percentage shall exclude any action to obtain possession of a nonresidential premises and any action in which the trial was held on the date set for the pretrial hearing and the defendant was not represented by counsel at this trial.

(C) A 40 percent reduction of total administrative and judicial time for the courts when disposing of unlawful detainer actions in which a deposit demand is made as compared to cases in which a deposit demand is not made.

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

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

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

(A) The time for disposition of unlawful detainer cases using the pretrial rent deposit procedure as compared to cases under subdivision 2 of Section 1161 from previous years for which records are available and other unlawful detainer cases in the same time period, in which a deposit is not demanded. However, this comparison shall exclude any action to obtain possession of any nonresidential premises and any action in which the trial was held on the date set for the pretrial hearing and the defendant was not represented by counsel at this trial.

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

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

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



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

(F) The number of cases in which trials are held at the time and date set for the pretrial hearing and the disposition of the cases.

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

The presiding judges of participating courts shall report on the success of the pilot project to the Judicial Council on or before September 30, 1998, and the Judicial Council shall report to the Legislature on or before December 31, 1998.

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

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

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

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

(C) A statement that if the defendant does not return the form to the court as prescribed herein and subsequently fails to deposit the amount of prospective rent as defined in subdivision (d) up to and including the date of the hearing, the court shall order judgment for



possession of the premises to be entered in favor of the plaintiff at the pretrial hearing.

(3) Upon the filing of the proof of service of the summons and complaint for unlawful detainer containing a demand for a pretrial prospective rent deposit, the clerk of the court shall set a pretrial hearing date no less than eight nor more than 13 days from the filing of the proof of service, and give notice of that date to all parties by first-class mail if the plaintiff pays the fee required by Section 72055 of the Government Code, plus an additional sum in an amount set by the court to cover actual costs of the court associated with the procedure established by this section. The proceeds from this additional fee shall be deposited with the county treasurer and, upon appropriation, be available solely to the court and the county in which the court is located and shall be used exclusively for costs associated with this procedure. If the court provides procedures for holding a trial on the same date as the day scheduled for the pretrial hearing, the court shall use a Judicial Council form to inform defendants of the date, time, and place of the pretrial hearing. The form shall include a statement that is substantially in the following form:

“If you are represented by counsel on the date set for the pretrial hearing, the court may ask you to waive your right to the pretrial hearing and proceed directly to trial. If you agree, the trial will begin and you will be expected to have all your evidence and witnesses present in the courtroom. You should seriously consider whether it is in your interest to waive your right to a pretrial hearing. If you agree to waive your right to a pretrial hearing and lose at trial, judgment will be entered against you for eviction and money damages. Whereas, if you lose your pretrial hearing and fail to make the pretrial rent deposit within two court days, the court can only enter judgment for eviction without any money damages.”

(c) (1) At the pretrial hearing, the court shall determine whether a substantial conflict exists as to a material fact or facts relevant to the unlawful detainer for purposes of requiring the defendant to deposit with the clerk of the court prospective rent as defined in subdivision (e) as a condition of continuing to trial. If at the pretrial hearing the court determines, based upon the written declarations or oral testimony of the parties, that (A) the plaintiff is the landlord of the premises, the defendant failed to pay contract rent, the defendant was properly served with a three-day notice, and the defendant failed to tender the rent or quit the premises, and (B) no substantial conflict exists as to a material fact or facts relevant to the unlawful detainer after considering any written or oral answer to the unlawful detainer complaint made by the defendant and any and all affirmative defenses offered by the defendant, and considering any oral



testimony and written declarations presented by all of the parties, then the court shall have the discretion to order the defendant to deposit, with the clerk of the court, prospective rent as defined in subdivision (e). If the court orders a deposit of prospective rent and if the defendant fails to deposit the prospective rent within two court days from the date of the hearing, judgment for the plaintiff for possession of the premises shall be entered and a writ of possession for the premises shall be issued forthwith. If the defendant has not returned the reply form as described in paragraph (2) of subdivision (b) in the time and manner required, any deposit of prospective rent ordered by the court shall be made by the date of the hearing. If a defendant has not returned the reply form and then fails to deposit the prospective rent on the day of the hearing, judgment for the plaintiff for possession of the premises shall be entered and a writ of possession shall be issued forthwith. Upon entry of judgment for possession of the premises for the plaintiff pursuant to this subdivision, the court shall dismiss any claim for money relief without prejudice.

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

(3) Notwithstanding whether the defendant has returned the reply form pursuant to paragraph (2) of subdivision (b), a defendant may respond to the summons and complaint with an oral answer at the pretrial hearing or by written answer, motion, or demurrer. An oral answer shall be reduced to a writing by the court clerk, recorded electronically, or recorded by a court reporter. The court, in issuing its decision, shall make findings as to the matters specified in paragraph (1) of subdivision (b), including any defenses. The decision and findings shall be reduced to a writing. If the defendant responds to the unlawful detainer by demurrer or motion, this motion or demurrer shall be filed and served pursuant to Sections 1167 and 1167.3 and shall be heard and decided at the pretrial hearing



held pursuant to this section. Notwithstanding paragraph (2) of subdivision (c), attorneys may appear in any county for parties prosecuting or contesting a demurrer or motion. Notwithstanding Section 1005, papers opposing the defendant's motion or demurrer may be filed and personally served no later than one day prior to the day appointed for the hearing. If the defendant fails to respond to the unlawful detainer by written answer, motion, demurrer, or oral answer at the pretrial hearing, the court shall order judgment for possession of the premises to be entered in favor of the plaintiff forthwith at the pretrial hearing.

(4) A defendant who is represented by counsel at the pretrial hearing may be asked to stipulate to holding the trial on the date set for the pretrial hearing where the court has advised the defendant of the following in the summons: (1) that the court may ask the defendant to stipulate to holding the trial on the same date as the pretrial hearing if the defendant is represented by counsel; (2) that he or she has the right to post a deposit and have the trial set at a later date if the court determines that a deposit is required at the pretrial hearing; (3) that if the deposit is not made, judgment for possession can only be entered against the defendant, and (4) that if trial is held, judgments for money and possession can be entered against the defendant.

In no case shall the trial be held on the same date selected for the pretrial hearing unless the defendant is represented by counsel and has been given notice as provided in paragraph (4). These provisions are nonwaivable.

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

(e) "Prospective rent," for purposes of this section, means up to 15 days' prospective rent not to exceed five hundred dollars (\$500). The prospective rent shall be calculated on a prorated basis utilizing a 30-day rental period and the lowest monthly rent charged for the premises during the prior six months of the defendant's occupancy. Any deposit made by the defendant pursuant to this section shall be deposited with the clerk, by cash, cashier's check, or money order made payable to the clerk. Receipt of the deposit shall be acknowledged in writing and deposited and retained by the clerk pursuant to Section 24353 of the Government Code until further order of the court. The receipt and amount of a deposit of prospective rent shall be included in the order of the court at the conclusion of the pretrial hearing.

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

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

(h) This section does not apply to actions for possession of a mobilehome or manufactured home, as those terms are defined in subdivision (a) of Section 1161a, and does not apply to actions for possession of real property in a mobilehome park subject to the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), or to a manufactured housing community, as defined in Section 18801 of the Health and Safety Code.

(i) Section 473 shall apply to this section.

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

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

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

