

ASSEMBLY BILL

No. 568

Introduced by Assembly Member Lieu

February 25, 2009

An act to add Chapter 4 (commencing with Section 17800) to Part 3 of Division 7 of the Business and Professions Code, and to amend Section 1161 of the Code of Civil Procedure, relating to counterfeit goods.

LEGISLATIVE COUNSEL'S DIGEST

AB 568, as introduced, Lieu. Counterfeit goods: unlawful detainer.

Existing law provides that every building or place used for the purpose of unlawfully selling, serving, storing, keeping, giving away, or manufacturing controlled substances, and every building or place wherein or upon which these acts take place, is a nuisance that shall be enjoined, abated, and prevented, whether it is a public or private nuisance. Existing law authorizes a district attorney, county counsel, city attorney, or citizen, as specified, to maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place in or upon which the nuisance exists from directly or indirectly maintaining or permitting the nuisance.

This bill would provide that every building or place used for the purpose of willfully manufacturing, intentionally selling, or knowingly possessing for sale any counterfeit of a registered mark is a nuisance that shall be enjoined, abated, and prevented, whether it is a public or private nuisance. The bill would authorize a district attorney, county counsel, city prosecutor, city attorney, or citizen, as specified, to maintain an action to abate and prevent the nuisance and perpetually

to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place in or upon which the nuisance exists from directly or indirectly maintaining or permitting the nuisance. The bill would provide that a violation or disobedience of the injunction or order for abatement is punishable as a contempt of court by a specified fine and imprisonment. The bill would make related provisions.

Because this bill would provide for criminal penalties, it 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. Chapter 4 (commencing with Section 17800) is
2 added to Part 3 of Division 7 of the Business and Professions Code,
3 to read:

4
5 CHAPTER 4. COUNTERFEITING ABATEMENT
6

7 17800. Every building or place used for the purpose of willfully
8 manufacturing, intentionally selling, or knowingly possessing for
9 sale any counterfeit of a mark registered with the Secretary of State
10 or registered on the Principal Register of the United States Patent
11 and Trademark Office, is a nuisance which shall be enjoined,
12 abated, and prevented, and for which damages may be recovered,
13 whether it is a public or private nuisance.

14 17801. Whenever there is reason to believe that a nuisance as
15 described in Section 17800 is kept, maintained, or exists in any
16 county, the district attorney of the county, the county counsel, or
17 the city prosecutor or city attorney of any incorporated city or of
18 any city and county, in the name of the people, may, or any citizen
19 of the state resident in the county, in his or her own name, may
20 maintain an action to abate and prevent the nuisance and
21 perpetually to enjoin the person conducting or maintaining it, and
22 the owner, lessee, or agent of the building or place in or upon

1 which the nuisance exists from directly or indirectly maintaining
2 or permitting the nuisance.

3 17802. (a) To effectuate the purposes of this chapter, the
4 district attorney, the county counsel, city prosecutor, or city
5 attorney may file, in the name of the people, an action for unlawful
6 detainer against any person who is in violation of the nuisance or
7 illegal purpose provisions of subdivision 4 of Section 1161 of the
8 Code of Civil Procedure, with respect to counterfeit goods. In
9 filing this action, which shall be based upon an arrest report or on
10 another action or report by a regulatory or law enforcement agency,
11 the district attorney, county counsel, city prosecutor, or city
12 attorney shall utilize the procedures set forth in Chapter 4
13 (commencing with Section 1159) of Title 3 of Part 3 of the Code
14 of Civil Procedure, except that in cases filed under this section,
15 the following also shall apply:

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

23 (B) This notice shall include sufficient documentation
24 establishing a violation of the nuisance or illegal purpose provisions
25 of subdivision 4 of Section 1161 of the Code of Civil Procedure
26 and shall be served upon the owner and the tenant in accordance
27 with subdivision (e).

28 (C) The notice to the tenant shall also include on the bottom of
29 its front page, in at least 14-point bold type, the following:

30
31 "Notice to Tenant: This notice is not a notice of eviction.

32
33 However, you should know that an eviction action may soon
34 be filed in court against you for suspected counterfeit goods
35 activity, as described above.

36 You should call (insert name and telephone number of the
37 district attorney, county counsel, city prosecutor, or city
38 attorney pursuing the action) or legal aid to stop the eviction
39 action if any of the following is applicable:

40 (i) You are not the person named in this notice.

1 (ii) The person named in the notice does not live with you.

2 (iii) The person named in the notice has permanently moved.

3 (iv) You do not know the person named in the notice.

4 (v) You have any other legal defense or legal reason to stop
5 the eviction action.

6 A list of legal assistance providers is attached to this notice.

7 Some provide free legal help if you are eligible.”

8
9 (D) The owner shall, within 30 calendar days of the mailing of
10 the written notice, either provide the district attorney, county
11 counsel, city prosecutor, or city attorney with all relevant
12 information pertaining to the unlawful detainer case, or provide a
13 written explanation setting forth any safety-related reasons for
14 noncompliance, and an assignment to the district attorney, county
15 counsel, city prosecutor, or city attorney of the right to bring an
16 unlawful detainer action against the tenant.

17 (E) The assignment shall be on a form provided by the district
18 attorney, county counsel, city prosecutor, or city attorney and may
19 contain a provision for costs of investigation, discovery, and
20 reasonable attorney’s fees, in an amount not to exceed six hundred
21 dollars (\$600).

22 (F) If the district attorney, county counsel, city prosecutor, or
23 city attorney accepts the assignment of the right of the owner to
24 bring the unlawful detainer action, the owner shall retain all other
25 rights and duties, including the handling of the tenant’s personal
26 property, following issuance of the writ of possession and its
27 delivery to and execution by the appropriate agency.

28 (2) Upon the failure of the owner to file an action pursuant to
29 this section, or to respond to the district attorney, county counsel,
30 city prosecutor, or city attorney as provided in paragraph (1), or
31 having filed an action, if the owner fails to prosecute it diligently
32 and in good faith, the district attorney, county counsel, city
33 prosecutor, or city attorney may file and prosecute the action and
34 join the owner as a defendant in the action. This action shall have
35 precedence over any similar proceeding thereafter brought by the
36 owner, or to one previously brought by the owner and not
37 prosecuted diligently and in good faith. Service of the summons
38 and complaint upon the defendant owner shall be in accordance
39 with Sections 415.10, 415.20, 415.30, 415.40, and 415.50 of the
40 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 district attorney, county counsel, 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 chapter shall prevent a local governing body from adopting and enforcing laws, consistent with this chapter, relating to counterfeit goods enforcement. Where local laws duplicate or supplement this chapter, this chapter shall be construed as providing alternative remedies and not preempting the field.

(5) Nothing in this chapter 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, "counterfeit goods purpose" means willfully manufacturing, intentionally selling, or knowingly possessing for sale any counterfeit of a mark registered with the Secretary of State or registered on the Principal Register of the United States Patent and Trademark Office.

(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

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 that shows service in conformity with this section.

9 17803. For purposes of this chapter, an action to abate a
10 nuisance may be taken by the district attorney of the county, the
11 county counsel, the city attorney, or the city prosecutor of the city
12 or city and county within which the nuisance exists, is kept, or is
13 maintained. An action by a county counsel, city attorney, or city
14 prosecutor shall be accorded the same precedence as an action
15 maintained by the district attorney of the county.

16 17804. Unless filed by the district attorney, county counsel,
17 city prosecutor, or city attorney, the complaint in the action shall
18 be verified.

19 17805. (a) If the existence of the nuisance is shown in the
20 action to the satisfaction of the court or judge, either by verified
21 complaint or affidavit, the court or judge shall allow a temporary
22 restraining order or injunction to abate and prevent the continuance
23 or recurrence of the nuisance.

24 (b) A temporary restraining order or injunction may enjoin
25 subsequent owners, commercial lessees, or agents who acquire the
26 building or place where the nuisance exists with notice of the
27 temporary restraining order or injunction, specifying that the owner
28 of the property subject to the temporary restraining order or
29 injunction shall notify any prospective purchaser, commercial
30 lessee, or other successor in interest of the existence of the order
31 or injunction, and of its application to successors in interest, prior
32 to entering into any agreement to sell or lease the property. The
33 temporary restraining order or injunction shall not constitute a title
34 defect, lien, or encumbrance on the real property.

35 17806. (a) At the time of application for issuance of a
36 temporary restraining order or injunction pursuant to Section
37 17805, if proof of the existence of the nuisance depends, in whole
38 or part, upon the affidavits of witnesses who are not peace officers,
39 upon a showing of prior threats of violence or acts of violence by
40 any defendant or other person, the court may issue orders to protect

1 those witnesses, including, but not limited to, nondisclosure of the
2 name, address, or any other information which may identify those
3 witnesses.

4 (b) A temporary restraining order or injunction issued pursuant
5 to Section 17805 may include closure of the premises pending trial
6 when a prior order or injunction does not result in the abatement
7 of the nuisance. The duration of the order or injunction shall be
8 within the court's discretion. In no event shall the total period of
9 closure pending trial exceed one year. Prior to ruling on a request
10 for closure, the court may order that some or all of the rent
11 payments owing to the defendant be placed in an escrow account
12 for a period of up to 90 days or until the nuisance is abated. If the
13 court subsequently orders a closure of the premises, the money in
14 the escrow account shall be used to pay for relocation assistance
15 pursuant to subdivision (d). In ruling upon a request for closure,
16 whether for a defined or undefined duration, the court shall consider
17 all of the following factors:

18 (1) The extent and duration of the nuisance at the time of the
19 request.

20 (2) Prior efforts by the defendant to comply with previous court
21 orders to abate the nuisance.

22 (3) The nature and extent of any effect that the nuisance has
23 upon other persons, such as residents or businesses.

24 (4) Any effect of prior orders placing displaced residents' or
25 occupants' rent payments into an escrow account upon the
26 defendant's efforts to abate the nuisance.

27 (5) The effect of granting the request upon any resident or
28 occupant of the premises who is not named in the action, including
29 the availability of alternative housing or relocation assistance, the
30 pendency of any action to evict a resident or occupant, and any
31 evidence of participation by a resident or occupant in the nuisance
32 activity.

33 (c) In making an order of closure pursuant to this section, the
34 court may order the premises vacated and may issue any other
35 orders necessary to effectuate the closure. However, all tenants
36 who may be affected by the order shall be provided reasonable
37 notice and an opportunity to be heard at all hearings regarding the
38 closure request prior to the issuance of any order.

39 (d) In making an order of closure pursuant to this section, the
40 court shall order the defendant to provide relocation assistance to

1 any tenant ordered to vacate the premises, provided the court
2 determines that the tenant was not actively involved in the nuisance
3 activity. The relocation assistance ordered to be paid by the
4 defendant shall be in the amount necessary to cover moving costs,
5 security deposits for utilities and comparable housing, adjustment
6 in any lost rent, and any other reasonable expenses the court may
7 deem fair and reasonable as a result of the court's order.

8 (e) At the hearing to order closure pursuant to this section, the
9 court may make the following orders with respect to any displaced
10 tenant not actively involved in the nuisance:

11 (1) Priority for senior citizens, physically handicapped persons,
12 or persons otherwise suffering from a permanent or temporary
13 disability for claims against money for relocation assistance.

14 (2) Order the local agency seeking closure pursuant to this
15 section to make reasonable attempts to seek additional sources of
16 funds for relocation assistance to displaced tenants, if deemed
17 necessary.

18 (3) Appoint a receiver to oversee the disbursement of relocation
19 assistance funds, whose services shall be paid from the escrow
20 fund.

21 (4) Where a defendant has paid relocation assistance pursuant
22 to subdivision (d), the escrow account under subdivision (b) may
23 be released to the defendant and no appointment under paragraph
24 (3) shall be made.

25 (f) (1) The remedies set forth in this section shall be in addition
26 to any other existing remedies for nuisance abatement actions,
27 including, but not limited to, the following:

28 (A) Capital improvements to the property, such as security gates.

29 (B) Improved interior or exterior lighting.

30 (C) Security guards.

31 (D) Posting of signs.

32 (E) Owner membership in neighborhood or local merchants'
33 associations.

34 (F) Attending property management training programs.

35 (G) Making cosmetic improvements to the property.

36 (H) Requiring the owner or person in control of the property to
37 reside in the property until the nuisance is abated. The order shall
38 specify the number of hours per day or per week the owner or
39 person in control of the property must be physically present in the

1 property. In determining this amount, the court shall consider the
2 nature and severity of the nuisance.

3 (2) At all stages of an action brought pursuant to this chapter,
4 the court has equitable powers to order steps necessary to remedy
5 the problem and enhance the abatement process.

6 17807. On granting the temporary writ, the court or judge shall
7 require an undertaking on the part of the applicant to the effect
8 that the applicant will pay to the defendant enjoined any damages,
9 not exceeding an amount to be specified, as the defendant sustains
10 by reason of the injunction if the court finally decides that the
11 applicant was not entitled to the injunction. This bond requirement
12 shall not apply to any action brought by the district attorney, county
13 counsel, city attorney, or city prosecutor.

14 17808. The action shall have precedence over all other actions,
15 except criminal proceedings, election contests, hearings on
16 injunctions, and actions to forfeit vehicles under Division 10
17 (commencing with Section 11000) of the Health and Safety Code.

18 17809. In any action for abatement instituted pursuant to this
19 chapter, all evidence otherwise authorized by law, including
20 evidence of reputation in a community, as provided in the Evidence
21 Code, shall be admissible to prove the existence of a nuisance.

22 17810. If the complaint is filed by a citizen, it shall not be
23 dismissed by him or her for want of prosecution except upon a
24 sworn statement made by him or her and his or her attorney, setting
25 forth the reasons why the action should be dismissed, and by
26 dismissal ordered by the court.

27 17811. In case of failure to prosecute the action with reasonable
28 diligence, or at the request of the plaintiff, the court, in its
29 discretion, may substitute any other citizen consenting thereto for
30 the plaintiff.

31 17812. If the action is brought by a citizen and the court finds
32 there was no reasonable ground or cause for the action, the costs
33 shall be taxed against him or her.

34 17813. If the existence of the nuisance is established in the
35 action, an order of abatement shall be entered as part of the
36 judgment in the case, and plaintiff's costs in the action are a lien
37 upon the building or place. The lien is enforceable and collectible
38 by execution issued by order of the court.

39 17814. A violation or disobedience of the injunction or order
40 for abatement is punishable as a contempt of court by a fine of not

1 less than five hundred dollars (\$500) nor more than ten thousand
2 dollars (\$10,000), or by imprisonment in the county jail for not
3 less than one nor more than six months, or by both.

4 A contempt may be based on a violation of any court order,
5 including failure to pay relocation assistance. Notwithstanding any
6 other provision of law, any fines assessed for contempt shall first
7 be held by the court and applied to satisfaction of the court's order
8 for relocation assistance pursuant to subdivision (d) of Section
9 17806.

10 Evidence concerning the duration and repetitive nature of the
11 violations shall be considered by the court in determining the
12 contempt penalties.

13 17815. (a) If the existence of the nuisance is established in the
14 action, an order of abatement shall be entered as a part of the
15 judgment, which order shall direct the removal from the building
16 or place of all fixtures, musical instruments, and other movable
17 property used in conducting, maintaining, aiding, or abetting the
18 nuisance and shall direct their sale in the manner provided for the
19 sale of chattels under execution.

20 (b) (1) The order shall provide for the effectual closing of the
21 building or place against its use for any purpose, and for keeping
22 it enclosed for a period of one year. This subdivision is intended
23 to give priority to closure. Any alternative to closure may be
24 considered only as provided in this section.

25 (2) In addition, the court may assess a civil penalty not to exceed
26 twenty-five thousand dollars (\$25,000) against any or all of the
27 defendants, based upon the severity of the nuisance and its duration.

28 (3) One-half of the civil penalties collected pursuant to this
29 section shall be deposited in the Restitution Fund in the State
30 Treasury, the proceeds of which shall be available only upon
31 appropriation by the Legislature to indemnify persons filing claims
32 pursuant to Article 1 (commencing with Section 13959) of Chapter
33 5 of Part 4 of Division 3 of Title 2 of the Government Code, and
34 one-half of the civil penalties collected shall be paid to the city in
35 which the judgment was entered, if the action was brought by the
36 city attorney or city prosecutor. If the action was brought by a
37 district attorney or county counsel, one-half of the civil penalties
38 collected shall be paid to the treasurer of the county in which the
39 judgment was entered.

1 (c) (1) If the court finds that any vacancy resulting from closure
2 of the building or place may create a nuisance or that closure is
3 otherwise harmful to the community, in lieu of ordering the
4 building or place closed, the court may order the person who is
5 responsible for the existence of the nuisance, or the person who
6 knowingly permits the manufacture or sale of counterfeit goods,
7 to pay damages in an amount equal to the fair market rental value
8 of the building or place for one year to the city or county in whose
9 jurisdiction the nuisance is located for the purpose of carrying out
10 counterfeit goods abatement programs. If awarded to a city, eligible
11 programs may include those developed as a result of cooperative
12 programs among schools, community agencies, and the local law
13 enforcement agency. These funds shall not be used to supplant
14 existing city, county, state, or federal resources used for counterfeit
15 goods enforcement or education programs.

16 (2) For purposes of this subdivision, the actual amount of rent
17 being received for the rental of the building or place, or the
18 existence of any vacancy therein, may be considered, but shall not
19 be the sole determinant of the fair market rental value. Expert
20 testimony may be used to determine the fair market rental value.

21 17816. While the order of abatement remains in effect, the
22 building or place is in the custody of the court.

23 17817. For removing and selling the movable property, the
24 officer is entitled to charge and receive the same fees as he or she
25 would for levying upon and selling like property on execution;
26 and for closing the premises and keeping them closed, a reasonable
27 sum shall be allowed by the court.

28 17818. The proceeds of the sale of the movable property shall
29 be applied as follows:

- 30 (a) To the fees and costs of the removal and sale.
31 (b) To the allowances and costs of closing and keeping closed
32 the building or place.
33 (c) To the payment of the plaintiff's costs in the action.
34 (d) The balance, if any, to the owner of the property.

35 17819. If the proceeds of the sale of the movable property do
36 not fully discharge all of the costs, fees, and allowances, the
37 building and place shall then also be sold under execution issued
38 upon the order of the court or judge and the proceeds of the sale
39 shall be applied in like manner.

1 17820. (a) If the owner of the building or place has not been
2 guilty of any contempt of court in the proceedings, and appears
3 and pays all costs, fees, and allowances that are a lien on the
4 building or place and files a bond in the full value of the property
5 conditioned that the owner will immediately abate any nuisance
6 that may exist at the building or place and prevent it from being
7 established or kept thereat within a period of one year thereafter,
8 the court or judge may, if satisfied of the owner's good faith, order
9 the building or place to be delivered to the owner, and the order
10 of abatement should be canceled so far as it may relate to the
11 property.

12 (b) The release of property under this chapter does not release
13 it from any judgment, lien, penalty, or liability to which it may be
14 subject.

15 17821. Whenever the owner of a building or place upon which
16 the act or acts constituting the contempt have been committed, or
17 the owner of any interest therein, has been guilty of a contempt of
18 court, and fined in any proceedings under this chapter, the fine is
19 a lien upon the building or place to the extent of his or her interest
20 in it. The lien is enforceable and collectible by execution issued
21 by order of the court.

22 SEC. 2. Section 1161 of the Code of Civil Procedure, as
23 amended by Section 2 of Chapter 440 of the Statutes of 2008, is
24 amended to read:

25 1161. A tenant of real property, for a term less than life, or the
26 executor or administrator of his or her estate heretofore qualified
27 and now acting or hereafter to be qualified and act, is guilty of
28 unlawful detainer:

29 1. When he or she continues in possession, in person or by
30 subtenant, of the property, or any part thereof, after the expiration
31 of the term for which it is let to him or her; provided the expiration
32 is of a nondefault nature however brought about without the
33 permission of his or her landlord, or the successor in estate of his
34 or her landlord, if applicable; including the case where the person
35 to be removed became the occupant of the premises as a servant,
36 employee, agent, or licensee and the relation of master and servant,
37 or employer and employee, or principal and agent, or licensor and
38 licensee, has been lawfully terminated or the time fixed for
39 occupancy by the agreement between the parties has expired; but
40 nothing in this subdivision shall be construed as preventing the

1 removal of the occupant in any other lawful manner; but in case
2 of a tenancy at will, it must first be terminated by notice, as
3 prescribed in the Civil Code.

4 2. When he or she continues in possession, in person or by
5 subtenant, without the permission of his or her landlord, or the
6 successor in estate of his or her landlord, if applicable, after default
7 in the payment of rent, pursuant to the lease or agreement under
8 which the property is held, and three days' notice, in writing,
9 requiring its payment, stating the amount which is due, the name,
10 telephone number, and address of the person to whom the rent
11 payment shall be made, and, if payment may be made personally,
12 the usual days and hours that person will be available to receive
13 the payment (provided that, if the address does not allow for
14 personal delivery, then it shall be conclusively presumed that upon
15 the mailing of any rent or notice to the owner by the tenant to the
16 name and address provided, the notice or rent is deemed received
17 by the owner on the date posted, if the tenant can show proof of
18 mailing to the name and address provided by the owner), or the
19 number of an account in a financial institution into which the rental
20 payment may be made, and the name and street address of the
21 institution (provided that the institution is located within five miles
22 of the rental property), or if an electronic funds transfer procedure
23 has been previously established, that payment may be made
24 pursuant to that procedure, or possession of the property, shall
25 have been served upon him or her and if there is a subtenant in
26 actual occupation of the premises, also upon the subtenant.

27 The notice may be served at any time within one year after the
28 rent becomes due. In all cases of tenancy upon agricultural lands,
29 where the tenant has held over and retained possession for more
30 than 60 days after the expiration of the term without any demand
31 of possession or notice to quit by the landlord or the successor in
32 estate of his or her landlord, if applicable, he or she shall be deemed
33 to be holding by permission of the landlord or successor in estate
34 of his or her landlord, if applicable, and shall be entitled to hold
35 under the terms of the lease for another full year, and shall not be
36 guilty of an unlawful detainer during that year, and the holding
37 over for that period shall be taken and construed as a consent on
38 the part of a tenant to hold for another year.

39 3. When he or she continues in possession, in person or by
40 subtenant, after a neglect or failure to perform other conditions or

1 covenants of the lease or agreement under which the property is
2 held, including any covenant not to assign or sublet, than the one
3 for the payment of rent, and three days' notice, in writing, requiring
4 the performance of such conditions or covenants, or the possession
5 of the property, shall have been served upon him or her, and if
6 there is a subtenant in actual occupation of the premises, also, upon
7 the subtenant. Within three days after the service of the notice, the
8 tenant, or any subtenant in actual occupation of the premises, or
9 any mortgagee of the term, or other person interested in its
10 continuance, may perform the conditions or covenants of the lease
11 or pay the stipulated rent, as the case may be, and thereby save the
12 lease from forfeiture; provided, if the conditions and covenants of
13 the lease, violated by the lessee, cannot afterward be performed,
14 then no notice, as last prescribed herein, need be given to the lessee
15 or his or her subtenant, demanding the performance of the violated
16 conditions or covenants of the lease.

17 A tenant may take proceedings, similar to those prescribed in
18 this chapter, to obtain possession of the premises let to a subtenant
19 or held by a servant, employee, agent, or licensee, in case of his
20 or her unlawful detention of the premises underlet to him or her
21 or held by him or her.

22 4. Any tenant, subtenant, or executor or administrator of his or
23 her estate heretofore qualified and now acting, or hereafter to be
24 qualified and act, assigning or subletting or committing waste upon
25 the demised premises, contrary to the conditions or covenants of
26 his or her lease, or maintaining, committing, or permitting the
27 maintenance or commission of a nuisance upon the demised
28 premises or using the premises for an unlawful purpose, thereby
29 terminates the lease, and the landlord, or his or her successor in
30 estate, shall upon service of three days' notice to quit upon the
31 person or persons in possession, be entitled to restitution of
32 possession of the demised premises under this chapter. For
33 purposes of this subdivision, a person who commits an offense
34 included in ~~paragraph (1) of subdivision (c) of Section 11571.1 of~~
35 ~~the Health and Safety Code, or subdivision (c) of Section 3485 of~~
36 ~~the Civil Code, or subdivision (c) of Section 17802 of the Business~~
37 ~~and Professions Code, or uses the premises to further the purpose~~
38 ~~of that offense shall be deemed to have committed a nuisance upon~~
39 ~~the premises. For purposes of this subdivision, if a person commits~~
40 ~~an act of domestic violence as defined in Section 6211 of the~~

1 Family Code, sexual assault as defined in Section 261, 261.5, 262,
2 286, 288a, or 289 of the Penal Code, or stalking as defined in
3 Section 1708.7, against another tenant or subtenant on the premises
4 there is a rebuttable presumption affecting the burden of proof that
5 the person has committed a nuisance upon the premises, provided,
6 however, that this shall not apply if the victim of the act of
7 domestic violence, sexual assault, or stalking, or a household
8 member of the victim, other than the perpetrator, has not vacated
9 the premises. This subdivision shall not be construed to supersede
10 the provisions of the Violence Against Women and Department
11 of Justice Reauthorization Act of 2005 (Public Law 109-162) that
12 permit the removal from a lease of a tenant who engages in criminal
13 acts of physical violence against cotenants.

14 5. When he or she gives written notice as provided in Section
15 1946 of the Civil Code of his or her intention to terminate the
16 hiring of the real property, or makes a written offer to surrender
17 which is accepted in writing by the landlord, but fails to deliver
18 possession at the time specified in that written notice, without the
19 permission of his or her landlord, or the successor in estate of the
20 landlord, if applicable.

21 As used in this section, tenant includes any person who hires
22 real property except those persons whose occupancy is described
23 in subdivision (b) of Section 1940 of the Civil Code.

24 This section shall remain in effect only until January 1, 2012,
25 and as of that date is repealed, unless a later enacted statute, that
26 is enacted before January 1, 2012, deletes or extends that date.

27 SEC. 3. Section 1161 of the Code of Civil Procedure, as added
28 by Section 3 of Chapter 440 of the Statutes of 2008, is amended
29 to read:

30 1161. A tenant of real property, for a term less than life, or the
31 executor or administrator of his or her estate heretofore qualified
32 and now acting or hereafter to be qualified and act, is guilty of
33 unlawful detainer:

34 1. When he or she continues in possession, in person or by
35 subtenant, of the property, or any part thereof, after the expiration
36 of the term for which it is let to him or her; provided the expiration
37 is of a nondefault nature however brought about without the
38 permission of his or her landlord, or the successor in estate of his
39 or her landlord, if applicable; including the case where the person
40 to be removed became the occupant of the premises as a servant,

1 employee, agent, or licensee and the relation of master and servant,
2 or employer and employee, or principal and agent, or licensor and
3 licensee, has been lawfully terminated or the time fixed for
4 occupancy by the agreement between the parties has expired; but
5 nothing in this subdivision shall be construed as preventing the
6 removal of the occupant in any other lawful manner; but in case
7 of a tenancy at will, it must first be terminated by notice, as
8 prescribed in the Civil Code.

9 2. When he or she continues in possession, in person or by
10 subtenant, without the permission of his or her landlord, or the
11 successor in estate of his or her landlord, if applicable, after default
12 in the payment of rent, pursuant to the lease or agreement under
13 which the property is held, and three days' notice, in writing,
14 requiring its payment, stating the amount which is due, the name,
15 telephone number, and address of the person to whom the rent
16 payment shall be made, and, if payment may be made personally,
17 the usual days and hours that person will be available to receive
18 the payment (provided that, if the address does not allow for
19 personal delivery, then it shall be conclusively presumed that upon
20 the mailing of any rent or notice to the owner by the tenant to the
21 name and address provided, the notice or rent is deemed received
22 by the owner on the date posted, if the tenant can show proof of
23 mailing to the name and address provided by the owner), or the
24 number of an account in a financial institution into which the rental
25 payment may be made, and the name and street address of the
26 institution (provided that the institution is located within five miles
27 of the rental property), or if an electronic funds transfer procedure
28 has been previously established, that payment may be made
29 pursuant to that procedure, or possession of the property, shall
30 have been served upon him or her and if there is a subtenant in
31 actual occupation of the premises, also upon the subtenant.

32 The notice may be served at any time within one year after the
33 rent becomes due. In all cases of tenancy upon agricultural lands,
34 where the tenant has held over and retained possession for more
35 than 60 days after the expiration of the term without any demand
36 of possession or notice to quit by the landlord or the successor in
37 estate of his or her landlord, if applicable, he or she shall be deemed
38 to be holding by permission of the landlord or successor in estate
39 of his or her landlord, if applicable, and shall be entitled to hold
40 under the terms of the lease for another full year, and shall not be

1 guilty of an unlawful detainer during that year, and the holding
2 over for that period shall be taken and construed as a consent on
3 the part of a tenant to hold for another year.

4 3. When he or she continues in possession, in person or by
5 subtenant, after a neglect or failure to perform other conditions or
6 covenants of the lease or agreement under which the property is
7 held, including any covenant not to assign or sublet, than the one
8 for the payment of rent, and three days' notice, in writing, requiring
9 the performance of such conditions or covenants, or the possession
10 of the property, shall have been served upon him or her, and if
11 there is a subtenant in actual occupation of the premises, also, upon
12 the subtenant. Within three days after the service of the notice, the
13 tenant, or any subtenant in actual occupation of the premises, or
14 any mortgagee of the term, or other person interested in its
15 continuance, may perform the conditions or covenants of the lease
16 or pay the stipulated rent, as the case may be, and thereby save the
17 lease from forfeiture; provided, if the conditions and covenants of
18 the lease, violated by the lessee, cannot afterward be performed,
19 then no notice, as last prescribed herein, need be given to the lessee
20 or his or her subtenant, demanding the performance of the violated
21 conditions or covenants of the lease.

22 A tenant may take proceedings, similar to those prescribed in
23 this chapter, to obtain possession of the premises let to a subtenant
24 or held by a servant, employee, agent, or licensee, in case of his
25 or her unlawful detention of the premises underlet to him or her
26 or held by him or her.

27 4. Any tenant, subtenant, or executor or administrator of his or
28 her estate heretofore qualified and now acting, or hereafter to be
29 qualified and act, assigning or subletting or committing waste upon
30 the demised premises, contrary to the conditions or covenants of
31 his or her lease, or maintaining, committing, or permitting the
32 maintenance or commission of a nuisance upon the demised
33 premises or using the premises for an unlawful purpose, thereby
34 terminates the lease, and the landlord, or his or her successor in
35 estate, shall upon service of three days' notice to quit upon the
36 person or persons in possession, be entitled to restitution of
37 possession of the demised premises under this chapter. For
38 purposes of this subdivision, a person who commits an offense
39 included in ~~paragraph (1) of subdivision (c) of Section 11571.1 of~~
40 the Health and Safety Code, ~~or subdivision (c) of Section 3485 of~~

1 the Civil Code, or subdivision (c) of Section 17802 of the Business
2 and Professions Code, or uses the premises to further the purpose
3 of that offense shall be deemed to have committed a nuisance upon
4 the premises.

5 5. When he or she gives written notice as provided in Section
6 1946 of the Civil Code of his or her intention to terminate the
7 hiring of the real property, or makes a written offer to surrender
8 which is accepted in writing by the landlord, but fails to deliver
9 possession at the time specified in that written notice, without the
10 permission of his or her landlord, or the successor in estate of the
11 landlord, if applicable.

12 As used in this section, tenant includes any person who hires
13 real property except those persons whose occupancy is described
14 in subdivision (b) of Section 1940 of the Civil Code.

15 This section shall become operative on January 1, 2012.

16 SEC. 4. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.