

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 568

Introduced by Assembly Member Lieu

February 25, 2009

An act to add *and repeal* Chapter 4 (commencing with Section 17800) ~~to~~ of 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 amended, 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 *nonresidential* building or place used for the purpose of willfully manufacturing, intentionally selling, or knowingly possessing for sale any counterfeit goods, defined to include counterfeit of a registered mark or any recording or audiovisual

work, the cover, box, jacket, or label of which does not disclose specified information, 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 *nonresidential* 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 changes to related provisions. *The bill's provisions would become inoperative on January 1, 2015.*

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. (a) Every *nonresidential* building or place used for the
8 purpose of willfully manufacturing, intentionally selling, or
9 knowingly possessing for sale any counterfeit goods is a nuisance
10 which shall be enjoined, abated, and prevented, and for which
11 damages may be recovered, whether it is a public or private
12 nuisance.

13 (b) As used in this chapter, "counterfeit goods" means (1) any
14 counterfeit of a mark registered with the Secretary of State or
15 registered on the Principal Register of the United States Patent and

1 Trademark Office or (2) any recording or audiovisual work, the
2 cover, box, jacket, or label of which does not disclose the
3 information as specified in subdivision (a) of Section 653w of the
4 Penal Code.

5 17801. Whenever there is reason to believe that a nuisance as
6 described in Section 17800 is kept, maintained, or exists in any
7 county, the district attorney of the county, the county counsel, or
8 the city prosecutor or city attorney of any incorporated city or of
9 any city and county, in the name of the people, may, or any citizen
10 of the state resident in the county, in his or her own name, may
11 maintain an action to abate and prevent the nuisance and
12 perpetually to enjoin the person conducting or maintaining it, and
13 the owner, lessee, or agent of the *nonresidential* building or place
14 in or upon which the nuisance exists from directly or indirectly
15 maintaining or permitting the nuisance.

16 17802. (a) To effectuate the purposes of this chapter, the
17 district attorney, the county counsel, city prosecutor, or city
18 attorney may file, in the name of the people, an action for unlawful
19 detainer against any person who is in violation of the nuisance or
20 illegal purpose provisions of subdivision 4 of Section 1161 of the
21 Code of Civil Procedure, with respect to a counterfeit goods
22 purpose. In filing this action, which shall be based upon an arrest
23 report or on another action or report by a regulatory or law
24 enforcement agency, the district attorney, county counsel, city
25 prosecutor, or city attorney shall utilize the procedures set forth
26 in Chapter 4 (commencing with Section 1159) of Title 3 of Part 3
27 of the Code of Civil Procedure, except that in cases filed under
28 this section, the following also shall apply:

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

36 (B) This notice shall include sufficient documentation
37 establishing a violation of the nuisance or illegal purpose provisions
38 of subdivision 4 of Section 1161 of the Code of Civil Procedure
39 and shall be served upon the owner and the tenant in accordance
40 with subdivision (e).

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

3
4 “Notice to Tenant: This notice is not a notice of eviction.

5
6 However, you should know that an eviction action may soon
7 be filed in court against you for suspected counterfeit goods
8 activity, as described above.

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

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

14 (ii) The person named in the notice does not ~~live~~ *occupy*
15 *the premises* with you.

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

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

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

20 A list of legal assistance providers is attached to this notice.
21 Some provide free legal help if you are eligible.”

22
23 (D) The owner shall, within 30 calendar days of the mailing of
24 the written notice, either provide the district attorney, county
25 counsel, city prosecutor, or city attorney with all relevant
26 information pertaining to the unlawful detainer case, or provide a
27 written explanation setting forth any safety-related reasons for
28 noncompliance, and an assignment to the district attorney, county
29 counsel, city prosecutor, or city attorney of the right to bring an
30 unlawful detainer action against the tenant.

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

36 (F) If the district attorney, county counsel, city prosecutor, or
37 city attorney accepts the assignment of the right of the owner to
38 bring the unlawful detainer action, the owner shall retain all other
39 rights and duties, including the handling of the tenant’s personal

1 property, following issuance of the writ of possession and its
2 delivery to and execution by the appropriate agency.

3 (2) Upon the failure of the owner to file an action pursuant to
4 this section, or to respond to the district attorney, county counsel,
5 city prosecutor, or city attorney as provided in paragraph (1), or
6 having filed an action, if the owner fails to prosecute it diligently
7 and in good faith, the district attorney, county counsel, city
8 prosecutor, or city attorney may file and prosecute the action and
9 join the owner as a defendant in the action. This action shall have
10 precedence over any similar proceeding thereafter brought by the
11 owner, or to one previously brought by the owner and not
12 prosecuted diligently and in good faith. Service of the summons
13 and complaint upon the defendant owner shall be in accordance
14 with Sections 415.10, 415.20, 415.30, 415.40, and 415.50 of the
15 Code of Civil Procedure.

16 (3) If a jury or court finds the defendant tenant guilty of unlawful
17 detainer in a case filed pursuant to paragraph (2), the district
18 attorney, county counsel, city prosecutor, or city attorney may be
19 awarded costs, including the costs of investigation and discovery
20 and reasonable attorney's fees. These costs shall be assessed against
21 the defendant owner, to whom notice was directed pursuant to
22 paragraph (1), and once an abstract of judgment is recorded, it
23 shall constitute a lien on the subject real property.

24 (4) Nothing in this chapter shall prevent a local governing body
25 from adopting and enforcing laws, consistent with this chapter,
26 relating to counterfeit goods enforcement. Where local laws
27 duplicate or supplement this chapter, this chapter shall be construed
28 as providing alternative remedies and not preempting the field.

29 (5) Nothing in this chapter shall prevent a tenant from receiving
30 relief against a forfeiture of a lease pursuant to Section 1179 of
31 the Code of Civil Procedure.

32 (b) In any proceeding brought under this section, the court may,
33 upon a showing of good cause, issue a partial eviction ordering
34 the removal of any person, including, but not limited to, ~~members~~
35 ~~of the tenant's household~~ *any person occupying the premises with*
36 *the tenant*, if the court finds that the person has engaged in the
37 activities described in subdivision (a). Persons removed pursuant
38 to this section may be permanently barred from returning to or
39 reentering any portion of the entire premises. The court may further
40 order as an express condition of the tenancy that the remaining

1 tenants shall not give permission to or invite any person who has
2 been removed pursuant to this subdivision to return to or reenter
3 any portion of the entire premises.

4 (c) For the purposes of this section, “counterfeit goods purpose”
5 means willfully manufacturing, intentionally selling, or knowingly
6 possessing for sale (1) any counterfeit of a mark registered with
7 the Secretary of State or registered on the Principal Register of the
8 United States Patent and Trademark Office or (2) any recording
9 or audiovisual work, the cover, box, jacket, or label of which does
10 not disclose the information as specified in subdivision (a) of
11 Section 653w of the Penal Code.

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

16 (e) The notice and documentation described in paragraph (1)
17 of subdivision (a) shall be given in writing and may be given either
18 by personal delivery or by deposit in the United States mail in a
19 sealed envelope, postage prepaid, addressed to the owner at the
20 address known to the public entity giving the notice, or as shown
21 on the last equalized assessment roll, if not known. Separate notice
22 of not less than 30 calendar days and documentation shall be
23 provided to the tenant in accordance with this subdivision. Service
24 by mail shall be deemed to be completed at the time of deposit in
25 the United States mail. Proof of giving the notice may be made by
26 a declaration signed under penalty of perjury by any employee of
27 the public entity that shows service in conformity with this section.

28 17803. For purposes of this chapter, an action to abate a
29 nuisance may be taken by the district attorney of the county, the
30 county counsel, the city attorney, or the city prosecutor of the city
31 or city and county within which the nuisance exists, is kept, or is
32 maintained. An action by a county counsel, city attorney, or city
33 prosecutor shall be accorded the same precedence as an action
34 maintained by the district attorney of the county.

35 17804. Unless filed by the district attorney, county counsel,
36 city prosecutor, or city attorney, the complaint in the action shall
37 be verified.

38 17805. (a) If the existence of the nuisance is shown in the
39 action to the satisfaction of the court or judge, either by verified
40 complaint or affidavit, the court or judge shall allow a temporary

restraining order or injunction to abate and prevent the continuance or recurrence of the nuisance.

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

17806. (a) At the time of application for issuance of a temporary restraining order or injunction pursuant to Section 17805, if proof of the existence of the nuisance depends, in whole or part, upon the affidavits of witnesses who are not peace officers, upon a showing of prior threats of violence or acts of violence by any defendant or other person, the court may issue orders to protect those witnesses, including, but not limited to, nondisclosure of the name, address, or any other information which may identify those witnesses.

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

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

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

1 (3) The nature and extent of any effect that the nuisance has
2 upon other persons, such as ~~residents~~ *tenants* or businesses.

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

6 (5) The effect of granting the request upon any ~~resident~~ or
7 occupant of the premises who is not named in the action, including
8 the availability of ~~alternative housing~~ *an alternative building* or
9 relocation assistance, the pendency of any action to evict ~~a resident~~
10 ~~or an~~ occupant, and any evidence of participation by ~~a resident~~ or
11 ~~an~~ occupant in the nuisance activity.

12 (c) In making an order of closure pursuant to this section, the
13 court may order the premises vacated and may issue any other
14 orders necessary to effectuate the closure. However, all tenants
15 who may be affected by the order shall be provided reasonable
16 notice and an opportunity to be heard at all hearings regarding the
17 closure request prior to the issuance of any order.

18 (d) In making an order of closure pursuant to this section, the
19 court shall order the defendant to provide relocation assistance to
20 any tenant ordered to vacate the premises, provided the court
21 determines that the tenant was not actively involved in the nuisance
22 activity. The relocation assistance ordered to be paid by the
23 defendant shall be in the amount necessary to cover moving costs,
24 security deposits for utilities and ~~comparable housing for a~~
25 *comparable building*, adjustment in any lost rent, and any other
26 reasonable expenses the court may deem fair and reasonable as a
27 result of the court's order.

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

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

34 (2) Order the local agency seeking closure pursuant to this
35 section to make reasonable attempts to seek additional sources of
36 funds for relocation assistance to displaced tenants, if deemed
37 necessary.

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

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

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

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

9 (B) Improved interior or exterior lighting.

10 (C) Security guards.

11 (D) Posting of signs.

12 (E) Owner membership in neighborhood or local merchants'
13 associations.

14 (F) Attending property management training programs.

15 (G) Making cosmetic improvements to the property.

16 (H) Requiring the owner or person in control of the property to
17 ~~reside in~~ *occupy* the property until the nuisance is abated. The
18 order shall specify the number of hours per day or per week the
19 owner or person in control of the property must be physically
20 present in the property. In determining this amount, the court shall
21 consider the nature and severity of the nuisance.

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

25 17807. On granting the temporary writ, the court or judge shall
26 require an undertaking on the part of the applicant to the effect
27 that the applicant will pay to the defendant enjoined any damages,
28 not exceeding an amount to be specified, as the defendant sustains
29 by reason of the injunction if the court finally decides that the
30 applicant was not entitled to the injunction. This bond requirement
31 shall not apply to any action brought by the district attorney, county
32 counsel, city attorney, or city prosecutor.

33 17808. The action shall have precedence over all other actions,
34 except criminal proceedings, election contests, hearings on
35 injunctions, and actions to forfeit vehicles under Division 10
36 (commencing with Section 11000) of the Health and Safety Code.

37 17809. In any action for abatement instituted pursuant to this
38 chapter, all evidence otherwise authorized by law, including
39 evidence of reputation in a community, as provided in the Evidence
40 Code, shall be admissible to prove the existence of a nuisance.

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

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

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

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

17814. A violation or disobedience of the injunction or order for abatement is punishable as a contempt of court by a fine of not less than five hundred dollars (\$500) nor more than ten thousand dollars (\$10,000), or by imprisonment in the county jail for not less than one nor more than six months, or by both.

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

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

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

(b) (1) The order shall provide for the effectual closing of the *nonresidential* building or place against its use for any purpose,

1 and for keeping it enclosed for a period of one year. This
2 subdivision is intended to give priority to closure. Any alternative
3 to closure may be considered only as provided in this section.

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

7 (3) One-half of the civil penalties collected pursuant to this
8 section shall be deposited in the Restitution Fund in the State
9 Treasury, the proceeds of which shall be available only upon
10 appropriation by the Legislature to indemnify persons filing claims
11 pursuant to Article 1 (commencing with Section 13959) of Chapter
12 5 of Part 4 of Division 3 of Title 2 of the Government Code, and
13 one-half of the civil penalties collected shall be paid to the city in
14 which the judgment was entered, if the action was brought by the
15 city attorney or city prosecutor. If the action was brought by a
16 district attorney or county counsel, one-half of the civil penalties
17 collected shall be paid to the treasurer of the county in which the
18 judgment was entered.

19 (c) (1) If the court finds that any vacancy resulting from closure
20 of the *nonresidential* building or place may create a nuisance or
21 that closure is otherwise harmful to the community, in lieu of
22 ordering the *nonresidential* building or place closed, the court may
23 order the person who is responsible for the existence of the
24 nuisance, or the person who knowingly permits the manufacture
25 or sale of counterfeit goods, to pay damages in an amount equal
26 to the fair market rental value of the *nonresidential* building or
27 place for one year to the city or county in whose jurisdiction the
28 nuisance is located for the purpose of carrying out counterfeit
29 goods abatement programs. If awarded to a city, eligible programs
30 may include those developed as a result of cooperative programs
31 among schools, community agencies, and the local law enforcement
32 agency. These funds shall not be used to supplant existing city,
33 county, state, or federal resources used for counterfeit goods
34 enforcement or education programs.

35 (2) For purposes of this subdivision, the actual amount of rent
36 being received for the rental of the *nonresidential* building or place,
37 or the existence of any vacancy therein, may be considered, but
38 shall not be the sole determinant of the fair market rental value.
39 Expert testimony may be used to determine the fair market rental
40 value.

1 17816. While the order of abatement remains in effect, the
2 *nonresidential* building or place is in the custody of the court.

3 17817. For removing and selling the movable property, the
4 officer is entitled to charge and receive the same fees as he or she
5 would for levying upon and selling like property on execution;
6 and for closing the premises and keeping them closed, a reasonable
7 sum shall be allowed by the court.

8 17818. The proceeds of the sale of the movable property shall
9 be applied as follows:

10 (a) To the fees and costs of the removal and sale.

11 (b) To the allowances and costs of closing and keeping closed
12 the *nonresidential* building or place.

13 (c) To the payment of the plaintiff's costs in the action.

14 (d) The balance, if any, to the owner of the property.

15 17819. If the proceeds of the sale of the movable property do
16 not fully discharge all of the costs, fees, and allowances, the
17 building and place shall then also be sold under execution issued
18 upon the order of the court or judge and the proceeds of the sale
19 shall be applied in like manner.

20 17820. (a) If the owner of the *nonresidential* building or place
21 has not been guilty of any contempt of court in the proceedings,
22 and appears and pays all costs, fees, and allowances that are a lien
23 on the *nonresidential* building or place and files a bond in the full
24 value of the property conditioned that the owner will immediately
25 abate any nuisance that may exist at the *nonresidential* building
26 or place and prevent it from being established or kept thereat within
27 a period of one year thereafter, the court or judge may, if satisfied
28 of the owner's good faith, order the *nonresidential* building or
29 place to be delivered to the owner, and the order of abatement
30 should be canceled so far as it may relate to the property.

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

34 17821. Whenever the owner of a *nonresidential* building or
35 place upon which the act or acts constituting the contempt have
36 been committed, or the owner of any interest therein, has been
37 guilty of a contempt of court, and fined in any proceedings under
38 this chapter, the fine is a lien upon the *nonresidential* building or
39 place to the extent of his or her interest in it. The lien is enforceable
40 and collectible by execution issued by order of the court.

1 17822. *This chapter shall remain in effect only until January*
2 *1, 2015, and as of that date is repealed, unless a later enacted*
3 *statute, that is enacted before January 1, 2015, deletes or extends*
4 *that date.*

5 SEC. 2. Section 1161 of the Code of Civil Procedure, as
6 amended by Section 2 of Chapter 440 of the Statutes of 2008, is
7 amended to read:

8 1161. A tenant of real property, for a term less than life, or the
9 executor or administrator of his or her estate heretofore qualified
10 and now acting or hereafter to be qualified and act, is guilty of
11 unlawful detainer:

12 1. When he or she continues in possession, in person or by
13 subtenant, of the property, or any part thereof, after the expiration
14 of the term for which it is let to him or her; provided the expiration
15 is of a nondefault nature however brought about without the
16 permission of his or her landlord, or the successor in estate of his
17 or her landlord, if applicable; including the case where the person
18 to be removed became the occupant of the premises as a servant,
19 employee, agent, or licensee and the relation of master and servant,
20 or employer and employee, or principal and agent, or licensor and
21 licensee, has been lawfully terminated or the time fixed for
22 occupancy by the agreement between the parties has expired; but
23 nothing in this subdivision shall be construed as preventing the
24 removal of the occupant in any other lawful manner; but in case
25 of a tenancy at will, it must first be terminated by notice, as
26 prescribed in the Civil Code.

27 2. When he or she continues in possession, in person or by
28 subtenant, without the permission of his or her landlord, or the
29 successor in estate of his or her landlord, if applicable, after default
30 in the payment of rent, pursuant to the lease or agreement under
31 which the property is held, and three days' notice, in writing,
32 requiring its payment, stating the amount which is due, the name,
33 telephone number, and address of the person to whom the rent
34 payment shall be made, and, if payment may be made personally,
35 the usual days and hours that person will be available to receive
36 the payment (provided that, if the address does not allow for
37 personal delivery, then it shall be conclusively presumed that upon
38 the mailing of any rent or notice to the owner by the tenant to the
39 name and address provided, the notice or rent is deemed received
40 by the owner on the date posted, if the tenant can show proof of

1 mailing to the name and address provided by the owner), or the
2 number of an account in a financial institution into which the rental
3 payment may be made, and the name and street address of the
4 institution (provided that the institution is located within five miles
5 of the rental property), or if an electronic funds transfer procedure
6 has been previously established, that payment may be made
7 pursuant to that procedure, or possession of the property, shall
8 have been served upon him or her and if there is a subtenant in
9 actual occupation of the premises, also upon the subtenant.

10 The notice may be served at any time within one year after the
11 rent becomes due. In all cases of tenancy upon agricultural lands,
12 where the tenant has held over and retained possession for more
13 than 60 days after the expiration of the term without any demand
14 of possession or notice to quit by the landlord or the successor in
15 estate of his or her landlord, if applicable, he or she shall be deemed
16 to be holding by permission of the landlord or successor in estate
17 of his or her landlord, if applicable, and shall be entitled to hold
18 under the terms of the lease for another full year, and shall not be
19 guilty of an unlawful detainer during that year, and the holding
20 over for that period shall be taken and construed as a consent on
21 the part of a tenant to hold for another year.

22 3. When he or she continues in possession, in person or by
23 subtenant, after a neglect or failure to perform other conditions or
24 covenants of the lease or agreement under which the property is
25 held, including any covenant not to assign or sublet, than the one
26 for the payment of rent, and three days' notice, in writing, requiring
27 the performance of such conditions or covenants, or the possession
28 of the property, shall have been served upon him or her, and if
29 there is a subtenant in actual occupation of the premises, also, upon
30 the subtenant. Within three days after the service of the notice, the
31 tenant, or any subtenant in actual occupation of the premises, or
32 any mortgagee of the term, or other person interested in its
33 continuance, may perform the conditions or covenants of the lease
34 or pay the stipulated rent, as the case may be, and thereby save the
35 lease from forfeiture; provided, if the conditions and covenants of
36 the lease, violated by the lessee, cannot afterward be performed,
37 then no notice, as last prescribed herein, need be given to the lessee
38 or his or her subtenant, demanding the performance of the violated
39 conditions or covenants of the lease.

1 A tenant may take proceedings, similar to those prescribed in
2 this chapter, to obtain possession of the premises let to a subtenant
3 or held by a servant, employee, agent, or licensee, in case of his
4 or her unlawful detention of the premises underlet to him or her
5 or held by him or her.

6 4. Any tenant, subtenant, or executor or administrator of his or
7 her estate heretofore qualified and now acting, or hereafter to be
8 qualified and act, assigning or subletting or committing waste upon
9 the demised premises, contrary to the conditions or covenants of
10 his or her lease, or maintaining, committing, or permitting the
11 maintenance or commission of a nuisance upon the demised
12 premises or using the premises for an unlawful purpose, thereby
13 terminates the lease, and the landlord, or his or her successor in
14 estate, shall upon service of three days' notice to quit upon the
15 person or persons in possession, be entitled to restitution of
16 possession of the demised premises under this chapter. For
17 purposes of this subdivision, a person who commits an offense
18 included in subdivision (c) of Section 11571.1 of the Health and
19 Safety Code, subdivision (c) of Section 3485 of the Civil Code,
20 or subdivision (c) of Section 17802 of the Business and Professions
21 Code, or uses the premises to further the purpose of that offense
22 shall be deemed to have committed a nuisance upon the premises.
23 For purposes of this subdivision, if a person commits an act of
24 domestic violence as defined in Section 6211 of the Family Code,
25 sexual assault as defined in Section 261, 261.5, 262, 286, 288a, or
26 289 of the Penal Code, or stalking as defined in Section 1708.7,
27 against another tenant or subtenant on the premises there is a
28 rebuttable presumption affecting the burden of proof that the person
29 has committed a nuisance upon the premises, provided, however,
30 that this shall not apply if the victim of the act of domestic violence,
31 sexual assault, or stalking, or a household member of the victim,
32 other than the perpetrator, has not vacated the premises. This
33 subdivision shall not be construed to supersede the provisions of
34 the Violence Against Women and Department of Justice
35 Reauthorization Act of 2005 (Public Law 109-162) that permit the
36 removal from a lease of a tenant who engages in criminal acts of
37 physical violence against cotenants.

38 5. When he or she gives written notice as provided in Section
39 1946 of the Civil Code of his or her intention to terminate the
40 hiring of the real property, or makes a written offer to surrender

1 which is accepted in writing by the landlord, but fails to deliver
2 possession at the time specified in that written notice, without the
3 permission of his or her landlord, or the successor in estate of the
4 landlord, if applicable.

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

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

11 SEC. 3. Section 1161 of the Code of Civil Procedure, as added
12 by Section 3 of Chapter 440 of the Statutes of 2008, is amended
13 to read:

14 1161. A tenant of real property, for a term less than life, or the
15 executor or administrator of his or her estate heretofore qualified
16 and now acting or hereafter to be qualified and act, is guilty of
17 unlawful detainer:

18 1. When he or she continues in possession, in person or by
19 subtenant, of the property, or any part thereof, after the expiration
20 of the term for which it is let to him or her; provided the expiration
21 is of a nondefault nature however brought about without the
22 permission of his or her landlord, or the successor in estate of his
23 or her landlord, if applicable; including the case where the person
24 to be removed became the occupant of the premises as a servant,
25 employee, agent, or licensee and the relation of master and servant,
26 or employer and employee, or principal and agent, or licensor and
27 licensee, has been lawfully terminated or the time fixed for
28 occupancy by the agreement between the parties has expired; but
29 nothing in this subdivision shall be construed as preventing the
30 removal of the occupant in any other lawful manner; but in case
31 of a tenancy at will, it must first be terminated by notice, as
32 prescribed in the Civil Code.

33 2. When he or she continues in possession, in person or by
34 subtenant, without the permission of his or her landlord, or the
35 successor in estate of his or her landlord, if applicable, after default
36 in the payment of rent, pursuant to the lease or agreement under
37 which the property is held, and three days' notice, in writing,
38 requiring its payment, stating the amount which is due, the name,
39 telephone number, and address of the person to whom the rent
40 payment shall be made, and, if payment may be made personally,

1 the usual days and hours that person will be available to receive
 2 the payment (provided that, if the address does not allow for
 3 personal delivery, then it shall be conclusively presumed that upon
 4 the mailing of any rent or notice to the owner by the tenant to the
 5 name and address provided, the notice or rent is deemed received
 6 by the owner on the date posted, if the tenant can show proof of
 7 mailing to the name and address provided by the owner), or the
 8 number of an account in a financial institution into which the rental
 9 payment may be made, and the name and street address of the
 10 institution (provided that the institution is located within five miles
 11 of the rental property), or if an electronic funds transfer procedure
 12 has been previously established, that payment may be made
 13 pursuant to that procedure, or possession of the property, shall
 14 have been served upon him or her and if there is a subtenant in
 15 actual occupation of the premises, also upon the subtenant.

16 The notice may be served at any time within one year after the
 17 rent becomes due. In all cases of tenancy upon agricultural lands,
 18 where the tenant has held over and retained possession for more
 19 than 60 days after the expiration of the term without any demand
 20 of possession or notice to quit by the landlord or the successor in
 21 estate of his or her landlord, if applicable, he or she shall be deemed
 22 to be holding by permission of the landlord or successor in estate
 23 of his or her landlord, if applicable, and shall be entitled to hold
 24 under the terms of the lease for another full year, and shall not be
 25 guilty of an unlawful detainer during that year, and the holding
 26 over for that period shall be taken and construed as a consent on
 27 the part of a tenant to hold for another year.

28 3. When he or she continues in possession, in person or by
 29 subtenant, after a neglect or failure to perform other conditions or
 30 covenants of the lease or agreement under which the property is
 31 held, including any covenant not to assign or sublet, than the one
 32 for the payment of rent, and three days' notice, in writing, requiring
 33 the performance of such conditions or covenants, or the possession
 34 of the property, shall have been served upon him or her, and if
 35 there is a subtenant in actual occupation of the premises, also, upon
 36 the subtenant. Within three days after the service of the notice, the
 37 tenant, or any subtenant in actual occupation of the premises, or
 38 any mortgagee of the term, or other person interested in its
 39 continuance, may perform the conditions or covenants of the lease
 40 or pay the stipulated rent, as the case may be, and thereby save the

1 lease from forfeiture; provided, if the conditions and covenants of
2 the lease, violated by the lessee, cannot afterward be performed,
3 then no notice, as last prescribed herein, need be given to the lessee
4 or his or her subtenant, demanding the performance of the violated
5 conditions or covenants of the lease.

6 A tenant may take proceedings, similar to those prescribed in
7 this chapter, to obtain possession of the premises let to a subtenant
8 or held by a servant, employee, agent, or licensee, in case of his
9 or her unlawful detention of the premises underlet to him or her
10 or held by him or her.

11 4. Any tenant, subtenant, or executor or administrator of his or
12 her estate heretofore qualified and now acting, or hereafter to be
13 qualified and act, assigning or subletting or committing waste upon
14 the demised premises, contrary to the conditions or covenants of
15 his or her lease, or maintaining, committing, or permitting the
16 maintenance or commission of a nuisance upon the demised
17 premises or using the premises for an unlawful purpose, thereby
18 terminates the lease, and the landlord, or his or her successor in
19 estate, shall upon service of three days' notice to quit upon the
20 person or persons in possession, be entitled to restitution of
21 possession of the demised premises under this chapter. For
22 purposes of this subdivision, a person who commits an offense
23 included in subdivision (c) of Section 11571.1 of the Health and
24 Safety Code, subdivision (c) of Section 3485 of the Civil Code,
25 or subdivision (c) of Section 17802 of the Business and Professions
26 Code, or uses the premises to further the purpose of that offense
27 shall be deemed to have committed a nuisance upon the premises.

28 5. When he or she gives written notice as provided in Section
29 1946 of the Civil Code of his or her intention to terminate the
30 hiring of the real property, or makes a written offer to surrender
31 which is accepted in writing by the landlord, but fails to deliver
32 possession at the time specified in that written notice, without the
33 permission of his or her landlord, or the successor in estate of the
34 landlord, if applicable.

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

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

39 SEC. 4. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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