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AB-291 Housing: immigration. (2017-2018)

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Assembly Bill No. 291

CHAPTER 489

An act to amend Section 6103.7 of the Business and Professions Code, to amend Sections 1940.2, 1940.3, and 1942.5 of, and to add Sections 1940.05, 1940.35, and 3339.10 to, the Civil Code, and to add Section 1161.4 to the Code of Civil Procedure, relating to housing.

[Approved by Governor October 05, 2017. Filed with Secretary of State October 05, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 291, Chiu. Housing: immigration.

(1) Existing law, the State Bar Act, makes it a cause for suspension, disbarment, or other discipline for any member of the State Bar to report suspected immigration status or threaten to report suspected immigration status of a witness or party to a civil or administrative action or his or her family member, as defined, to a federal, state, or local agency because the witness or party exercises or has exercised a right related to his or her employment.

This bill would expand that provision to make it a cause for suspension, disbarment, or other discipline for a member of the State Bar to report suspected immigration status or threaten to report suspected immigration status of a witness or party to a civil or administrative action or his or her family member, as defined, to a federal, state, or local agency because the witness or party exercises or has exercised a right related to the hiring of residential real property.

(2) Existing law provides that a tenant of real property, property for a term less than life, or the executor of his or her estate, is guilty of unlawful detainer if, among other things, he or she continues in possession, in person or by subtenant, of the property or any part of the property, after the expiration of the term for which it is let to him or her, except as specified. Existing law authorizes a tenant of residential real property to assert as an affirmative defense in an unlawful detainer action based upon a default in the payment of rent that the lessor failed to comply with certain requirements relating to the safety and habitability of the dwelling.

This bill would prohibit a lessor from causing a tenant or occupant to quit involuntarily or bring an action to recover possession because of the immigration or citizenship status of a tenant, occupant, or other person known to the lessor to be associated with a tenant or occupant, unless the lessor is complying with any legal obligation under any federal government program that provides for rent limitations or rental assistance to a qualified tenant. The bill would authorize a tenant or occupant to assert as an affirmative defense in an unlawful detainer action that a lessor violated this provision. The bill would also establish a rebuttable presumption that an affirmative defense is successful if the lessor approved the tenant or occupant to take possession of the unit before filing the unlawful detainer action and included in the unlawful detainer action specified claims.

(3) Existing law makes it unlawful for a lessor to engage in specified activities for the purpose of influencing a lessee to vacate a dwelling, including using, or threatening to use, force, willful threats, or menacing conduct that interferes with the tenant's quiet enjoyment of the premises and that would create an apprehension of harm in a reasonable person.

This bill would also prohibit a lessor from threatening to disclose information regarding or relating to the immigration status or citizenship status of a tenant, occupant, or other person associated with a tenant or occupant for the purpose of influencing a tenant to vacate a dwelling.

(4) Existing law prohibits a lessor, or an agent of a lessor, from making any inquiry regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant, or prospective occupant of residential real property, or from requiring a tenant, prospective tenant, occupant, or prospective occupant of the rental property make any statement, representation, or certification concerning his or her immigration or citizenship status. Existing law provides that the prohibitions described above do not prohibit a lessor from complying with any legal obligation under federal law.

This bill would also prohibit a lessor, or an agent of a lessor, from disclosing to any person or entity information regarding or relating to the immigration or citizenship status of any tenant, prospective tenant, occupant, or prospective occupant of the rental property for the purpose of, or with the intent of, harassing or intimidating a tenant, prospective tenant, occupant, or prospective occupant, retaliating against a tenant or occupant for the exercise of his or her rights, influencing a tenant or occupant to vacate a dwelling, or recovering possession of the dwelling. The bill would clarify that the term "federal law" in the provision described above includes any legal obligation of a lessor under a federal government program that provides for rent limitations or rental assistance to a qualified tenant, and would broaden that provision to include any legal obligation of a lessor under a subpoena, warrant, or other order issued by a court.

This bill would make it unlawful for a lessor to disclose to any immigration authority, law enforcement agency, or local, state, or federal agency information regarding or relating to the immigration or citizenship status of any tenant, occupant, or other person known to the lessor to be associated with a tenant or occupant, as provided, for the purpose of, or with the intent of, harassing or intimidating a tenant or occupant, retaliating against a tenant or occupant for the exercise of his or her rights, influencing a tenant or occupant to vacate a dwelling, or recovering possession of the dwelling, unless the lessor is complying with any legal obligation under federal law, or a subpoena, warrant, or order issued by a court. The bill would require a court to order a lessor to pay specified civil penalties in the event of a violation of these provisions to the tenant, and to issue injunctive relief to prevent the lessor from engaging in similar conduct in the future, and would require the court to notify the district attorney of the county in which the real property for hire at issue was located of a potential violation of specified laws relating to extortion. The bill would also require a court to award attorney fees and costs to the prevailing party in an action under these provisions. The bill would prohibit a tenant, occupant, or person known to the landlord to be associated with a tenant or occupant, from waiving his or her rights under these provisions. The bill would authorize a nonprofit organization exempt from federal income taxation to bring an action for injunctive relief under these provisions.

(5) Existing law provides that, if a lessor retaliates against a lessee of a dwelling for exercising his or her rights or because of a complaint to an appropriate agency as to tenantability and if the lessee is not in default as to the payment of rent, the lessor may not recover possession, cause the lessee to quit involuntarily, increase the rent, or decrease any services within 180 days of the occurrence of specified events.

This bill would provide that a lessor would violate that prohibition if the lessor reported, or threatened to report, the lessee, or individuals known to the lessor to be associated with the lessee, to immigration authorities, but would provide that a lessor would not violate that prohibition if the lessor was complying with any legal obligation under any federal government program that provides for rent limitations or rental assistance to a qualified tenant.

(6) Existing law prohibits a lessor from retaliating against a lessee because he or she has lawfully organized or participated in a lessees' association or an organization advocating lessees' rights or has lawfully and peaceably exercised any rights under the law by increasing rent, decreasing services, causing a lessee to quit involuntarily, bringing an action to recover possession, or from threatening to do any of those acts.

This bill would provide that a lessor would violate that prohibition if the lessor reported, or threatened to report, the lessee, or individuals known to the lessor to be associated with the lessee, to immigration authorities, but would provide that a lessor would not violate that prohibition if the lessor was complying with any legal obligation under any federal government program that provides for rent limitations or rental assistance to a qualified tenant.

(7) Existing law declares that all protections, rights, and remedies available under state law are available to all individuals in the state who have applied for employment or are employed, regardless of immigration status, as specified. Existing law also declares, for the purposes of enforcing state labor, employment, civil rights, and employee housing laws, that a person's immigration status is irrelevant to the issue of liability and that discovery into a person's immigration status is prohibited unless the person seeking to make the inquiry has shown by clear and convincing evidence that the inquiry is necessary to comply with federal immigration law. Existing law also provides that the immigration status of a minor child seeking recovery under any applicable law is irrelevant to the issues of liability or remedy and would prohibit discovery or other inquiry in a civil action or proceeding into a minor child's immigration status, with specified exceptions.

This bill would declare that the immigration or citizenship status of any person is irrelevant to any issue of liability or remedy under specified provisions of law relating to the rights of tenants, and would prohibit inquiry being made in a civil action initiated to enforce those laws into a person's immigration or citizenship status unless 2 exceptions to that prohibition apply.

(8) This bill would incorporate additional changes to Section 1940.3 of the Civil Code proposed by AB 299 to be operative only if this bill and AB 299 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6103.7 of the Business and Professions Code is amended to read:

6103.7. It is cause for suspension, disbarment, or other discipline for any member of the State Bar to report suspected immigration status or threaten to report suspected immigration status of a witness or party to a civil or administrative action or his or her family member to a federal, state, or local agency because the witness or party exercises or has exercised a right related to his or her employment or hiring of residential real property, broadly interpreted. As used in this section, "family member" means a spouse, parent, sibling, child, uncle, aunt, niece, nephew, cousin, grandparent, or grandchild related by blood, adoption, marriage, or domestic partnership.

SEC. 2. Section 1940.05 is added to the Civil Code, immediately following Section 1940, to read:

1940.05. For purposes of this chapter, "immigration or citizenship status" includes a perception that the person has a particular immigration status or citizenship status, or that the person is associated with a person who has, or is perceived to have, a particular immigration status or citizenship status.

SEC. 3. Section 1940.2 of the Civil Code is amended to read:

1940.2. (a) It is unlawful for a landlord to do any of the following for the purpose of influencing a tenant to vacate a dwelling:

(1) Engage in conduct that violates subdivision (a) of Section 484 of the Penal Code.

(2) Engage in conduct that violates Section 518 of the Penal Code.

(3) Use, or threaten to use, force, willful threats, or menacing conduct constituting a course of conduct that interferes with the tenant's quiet enjoyment of the premises in violation of Section 1927 that would create an apprehension of harm in a reasonable person. Nothing in this paragraph requires a tenant to be actually or constructively evicted in order to obtain relief.

(4) Commit a significant and intentional violation of Section 1954.

(5) Threaten to disclose information regarding or relating to the immigration or citizenship status of a tenant, occupant, or other person known to the landlord to be associated with a tenant or occupant. This paragraph does not require a tenant to be actually or constructively evicted in order to obtain relief.

(b) A tenant who prevails in a civil action, including an action in small claims court, to enforce his or her rights under this section is entitled to a civil penalty in an amount not to exceed two thousand dollars (\$2,000) for each violation.

(c) An oral or written warning notice, given in good faith, regarding conduct by a tenant, occupant, or guest that violates, may violate, or violated the applicable rental agreement, rules, regulations, lease, or laws, is not a violation of this section. An oral or written explanation of the rental agreement, rules, regulations, lease, or laws given in the normal course of business is not a violation of this section.

(d) This section does not enlarge or diminish a landlord's right to terminate a tenancy pursuant to existing state or local law; nor does this section enlarge or diminish any ability of local government to regulate or enforce a prohibition against a landlord's harassment of a tenant.

SEC. 4. Section 1940.3 of the Civil Code is amended to read:

1940.3. (a) A city, county, or city and county shall not, by statute, ordinance, or regulation, or by administrative action implementing any statute, ordinance, or regulation, compel a landlord or any agent of the landlord to make any inquiry, compile, disclose, report, or provide any information, prohibit offering or continuing to offer, accommodations in the property for rent or lease, or otherwise take any action regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant, or prospective occupant of residential rental property.

(b) A landlord, or any agent of the landlord, shall not do any of the following:

- (1) Make any inquiry regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant, or prospective occupant of residential rental property.
- (2) Require that any tenant, prospective tenant, occupant, or prospective occupant of the rental property make any statement, representation, or certification concerning his or her immigration or citizenship status.
- (3) Disclose to any person or entity information regarding or relating to the immigration or citizenship status of any tenant, prospective tenant, occupant, or prospective occupant of the rental property for the purpose of, or with the intent of, harassing or intimidating a tenant, prospective tenant, occupant, or prospective occupant, retaliating against a tenant or occupant for the exercise of his or her rights, influencing a tenant or occupant to vacate a dwelling, or recovering possession of the dwelling.

(c) This section does not prohibit a landlord from doing any of the following:

- (1) Complying with any legal obligation under federal law, including, but not limited to, any legal obligation under any federal government program that provides for rent limitations or rental assistance to a qualified tenant, or a subpoena, warrant, or other order issued by a court.
- (2) Requesting information or documentation necessary to determine or verify the financial qualifications of a prospective tenant, or to determine or verify the identity of a prospective tenant or prospective occupant.

SEC. 4.5. Section 1940.3 of the Civil Code is amended to read:

1940.3. (a) A public entity shall not, by ordinance, regulation, policy, or administrative action implementing any ordinance, regulation, policy, or administrative action, compel a landlord or any agent of the landlord to make any inquiry, compile, disclose, report, or provide any information, prohibit offering or continuing to offer, accommodations in the property for rent or lease, or otherwise take any action regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant, or prospective occupant of residential rental property.

(b) A landlord, or any agent of the landlord, shall not do any of the following:

- (1) Make any inquiry regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant, or prospective occupant of residential rental property.
- (2) Require that any tenant, prospective tenant, occupant, or prospective occupant of the rental property disclose or make any statement, representation, or certification concerning his or her immigration or citizenship status.
- (3) Disclose to any person or entity information regarding or relating to the immigration or citizenship status of any tenant, prospective tenant, occupant, or prospective occupant of the rental property for the purpose of, or with the intent of, harassing or intimidating a tenant, prospective tenant, occupant, or prospective occupant, retaliating against a tenant or occupant for the exercise of his or her rights, influencing a tenant or occupant to vacate a dwelling, or recovering possession of the dwelling.

(c) This section does not prohibit a landlord from doing any of the following:

- (1) Complying with any legal obligation under federal law, including, but not limited to, any legal obligation under any federal government program that provides for rent limitations or rental assistance to a qualified tenant, or a subpoena, warrant, or other order issued by a court.
- (2) Requesting information or documentation necessary to determine or verify the financial qualifications of a prospective tenant, or to determine or verify the identity of a prospective tenant or prospective occupant.

(d) For purposes of this section, both of the following shall apply:

- (1) "Public entity" includes the state, a city, county, city and county, district, public authority, public agency, and any other political subdivision or public corporation in the state.
- (2) "State" includes any state office, department, division, bureau, board, or commission and the Trustees of the California State University and the California State University.

SEC. 5. Section 1940.35 is added to the Civil Code, immediately following Section 1940.3, to read:

1940.35. (a) It is unlawful for a landlord to disclose to any immigration authority, law enforcement agency, or local, state, or federal agency information regarding or relating to the immigration or citizenship status of any tenant, occupant, or other person known to the landlord to be associated with a tenant or occupant, for the purpose of, or with the intent of, harassing or intimidating

a tenant or occupant, retaliating against a tenant or occupant for the exercise of his or her rights, influencing a tenant or occupant to vacate a dwelling, or recovering possession of the dwelling, irrespective of whether the tenant or occupant currently resides in the dwelling.

(b) If a court of applicable jurisdiction finds a violation of this section in a proceeding initiated by a party or upon a motion of the court, the court shall do all of the following:

(1) For each person whose status was so disclosed, order the landlord to pay statutory damages in an amount to be determined in the court's discretion that is between 6 and 12 times the monthly rent charged for the dwelling in which the tenant or occupant resides or resided.

(2) Issue injunctive relief to prevent the landlord from engaging in similar conduct with respect to other tenants, occupants, and persons known to the landlord to be associated with the tenants or occupants.

(3) Notify the district attorney of the county in which the real property for hire is located of a potential violation of Section 519 of the Penal Code.

(c) A landlord is not in violation of this section if he or she is complying with any legal obligation under federal law, or subpoena, warrant, or order issued by a court.

(d) In making findings in a proceeding under this section, a court may take judicial notice under subdivision (d) of Section 452 of the Evidence Code of the proceedings and records of any federal removal, inadmissibility, or deportation proceeding.

(e) A court shall award to the prevailing party in an action under this section attorney's fees and costs.

(f) The remedies provided by this section shall be in addition to any other remedies provided by statutory or decisional law.

(g) Any waiver of a right under this section by a tenant, occupant, or person known to the landlord to be associated with a tenant or occupant shall be void as a matter of public policy.

(h) An action for injunctive relief pursuant to this section may be brought by a nonprofit organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, as amended. That organization shall be considered a party for purposes of this section.

SEC. 6. Section 1942.5 of the Civil Code is amended to read:

1942.5. (a) If the lessor retaliates against the lessee because of the exercise by the lessee of his or her rights under this chapter or because of his complaint to an appropriate agency as to tenantability of a dwelling, and if the lessee of a dwelling is not in default as to the payment of his or her rent, the lessor may not recover possession of a dwelling in any action or proceeding, cause the lessee to quit involuntarily, increase the rent, or decrease any services within 180 days of any of the following:

(1) After the date upon which the lessee, in good faith, has given notice pursuant to Section 1942, has provided notice of a suspected bed bug infestation, or has made an oral complaint to the lessor regarding tenantability.

(2) After the date upon which the lessee, in good faith, has filed a written complaint, or an oral complaint which is registered or otherwise recorded in writing, with an appropriate agency, of which the lessor has notice, for the purpose of obtaining correction of a condition relating to tenantability.

(3) After the date of an inspection or issuance of a citation, resulting from a complaint described in paragraph (2) of which the lessor did not have notice.

(4) After the filing of appropriate documents commencing a judicial or arbitration proceeding involving the issue of tenantability.

(5) After entry of judgment or the signing of an arbitration award, if any, when in the judicial proceeding or arbitration the issue of tenantability is determined adversely to the lessor.

In each instance, the 180-day period shall run from the latest applicable date referred to in paragraphs (1) to (5), inclusive.

(b) A lessee may not invoke subdivision (a) more than once in any 12-month period.

(c) To report, or to threaten to report, the lessee or individuals known to the landlord to be associated with the lessee to immigration authorities is a form of retaliatory conduct prohibited under subdivision (a). This subdivision shall in no way limit the definition of retaliatory conduct prohibited under this section.

(d) Notwithstanding subdivision (a), it is unlawful for a lessor to increase rent, decrease services, cause a lessee to quit involuntarily, bring an action to recover possession, or threaten to do any of those acts, for the purpose of retaliating against the

lessee because he or she has lawfully organized or participated in a lessees' association or an organization advocating lessees' rights or has lawfully and peaceably exercised any rights under the law. In an action brought by or against the lessee pursuant to this subdivision, the lessee shall bear the burden of producing evidence that the lessor's conduct was, in fact, retaliatory.

(e) To report, or to threaten to report, the lessee or individuals known to the landlord to be associated with the lessee to immigration authorities is a form of retaliatory conduct prohibited under subdivision (d). This subdivision shall in no way limit the definition of retaliatory conduct prohibited under this section.

(f) This section does not limit in any way the exercise by the lessor of his or her rights under any lease or agreement or any law pertaining to the hiring of property or his or her right to do any of the acts described in subdivision (a) or (d) for any lawful cause. Any waiver by a lessee of his or her rights under this section is void as contrary to public policy.

(g) Notwithstanding subdivisions (a) to (f), inclusive, a lessor may recover possession of a dwelling and do any of the other acts described in subdivision (a) within the period or periods prescribed therein, or within subdivision (d), if the notice of termination, rent increase, or other act, and any pleading or statement of issues in an arbitration, if any, states the ground upon which the lessor, in good faith, seeks to recover possession, increase rent, or do any of the other acts described in subdivision (a) or (d). If the statement is controverted, the lessor shall establish its truth at the trial or other hearing.

(h) Any lessor or agent of a lessor who violates this section shall be liable to the lessee in a civil action for all of the following:

(1) The actual damages sustained by the lessee.

(2) Punitive damages in an amount of not less than one hundred dollars (\$100) nor more than two thousand dollars (\$2,000) for each retaliatory act where the lessor or agent has been guilty of fraud, oppression, or malice with respect to that act.

(i) In any action brought for damages for retaliatory eviction, the court shall award reasonable attorney's fees to the prevailing party if either party requests attorney's fees upon the initiation of the action.

(j) The remedies provided by this section shall be in addition to any other remedies provided by statutory or decisional law.

(k) A lessor does not violate subdivision (c) or (e) by complying with any legal obligation under any federal government program that provides for rent limitations or rental assistance to a qualified tenant.

SEC. 7. Section 3339.10 is added to the Civil Code, to read:

3339.10. (a) The immigration or citizenship status of any person is irrelevant to any issue of liability or remedy under Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3, Chapter 2 (commencing with Section 789) of Title 2 of Part 2 of Division 2 of this code, or under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, or in any civil action involving a tenant's housing rights.

(b) (1) In proceedings or discovery undertaken in a civil action to enforce Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3, Chapter 2 (commencing with Section 789) of Title 2 of Part 2 of Division 2 of this code, or under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, or in any civil action involving a tenant's housing rights, no inquiry shall be permitted into a person's immigration or citizenship status, except as follows:

(A) The tenant's claims or defenses raised place the person's immigration or citizenship status directly in contention.

(B) The person seeking to make this inquiry demonstrates by clear and convincing evidence that this inquiry is necessary in order to comply with federal immigration law.

(2) The assertion of an affirmative defense to an unlawful detainer action under Section 1161.4 of the Code of Civil Procedure does not constitute cause under this subdivision for discovery or other inquiry into that person's immigration or citizenship status.

SEC. 8. Section 1161.4 is added to the Code of Civil Procedure, to read:

1161.4. (a) A landlord shall not cause a tenant or occupant to quit involuntarily or bring an action to recover possession because of the immigration or citizenship status of a tenant, occupant, or other person known to the landlord to be associated with a tenant or occupant, unless the landlord is complying with any legal obligation under any federal government program that provides for rent limitations or rental assistance to a qualified tenant.

(b) In an unlawful detainer action, a tenant or occupant may raise, as an affirmative defense, that the landlord violated subdivision (a).

(c) It is a rebuttable presumption that a tenant or occupant has established an affirmative defense under this section in an unlawful detainer action if the landlord did both of the following:

(1) Approved the tenant or occupant to take possession of the unit before filing the unlawful detainer action.

(2) Included in the unlawful detainer action a claim based on one of the following:

(A) The failure at any time of a previously approved tenant or occupant to provide a valid social security number.

(B) The failure at any time of a previously approved tenant or occupant to provide information required to obtain a consumer credit report under Section 1785.11 of the Civil Code.

(C) The failure at any time of a previously approved tenant or occupant to provide a form of identification deemed acceptable by the landlord.

(d) This section does not create a rebuttable presumption that a tenant or occupant has established an affirmative defense under this section if a landlord has requested the information described in paragraph (2) of subdivision (c) for the purpose of complying with any legal obligation under any federal government program that provides for rent limitations or rental assistance to a qualified tenant, or any other federal law, or a subpoena, warrant, or other order issued by a court.

(e) The rebuttable presumption in this section does not limit paragraph (2) of subdivision (c) of Section 1940.3 of the Civil Code.

(f) No affirmative defense is established under subdivision (b) if a landlord files an unlawful detainer action for the purpose of complying with any legal obligation under any federal government program that provides for rent limitations or rental assistance to a qualified tenant.

(g) For purposes of this section, "immigration or citizenship status" includes a perception that the person has a particular immigration status or citizenship status, or that the person is associated with a person who has, or is perceived to have, a particular immigration status or citizenship status.

SEC. 9. Section 4.5 of this bill incorporates amendments to Section 1940.3 of the Civil Code proposed by both this bill and Assembly Bill 299. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 1940.3 of the Civil Code, and (3) this bill is enacted after Assembly Bill 299, in which case Section 4 of this bill shall not become operative.