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SB-1017 Leases: termination of tenancy: abuse or violence. (2021-2022)

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Senate Bill No. 1017

CHAPTER 558

An act to amend Section 1946.7 of the Civil Code, and to amend Section 1161.3 of, and to add Section 1174.27 to, the Code of Civil Procedure, relating to housing.

[Approved by Governor September 27, 2022. Filed with Secretary of State September 27, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1017, Eggman. Leases: termination of tenancy: abuse or violence.

Existing law authorizes a tenant to provide a landlord with 180-day written notice, as specified, that the tenant, household member, or immediate family member, as defined, was a victim of an act of domestic violence, sexual assault, stalking, human trafficking, abuse of an elder or a dependent adult, or of other specified crimes, and that the tenant intends to terminate the tenancy. Existing law limits the amount of rent for which the tenant is responsible to not more than 14 calendar days after the notice is given and requires the tenant to be released from responsibility for making other rent payments under the lease, as specified.

This bill would make a landlord or agent liable to the tenant for actual damages and, except as specified, statutory damages of not less than \$100 and not more than \$5,000 in a civil action for violation of these provisions.

Existing law prohibits a landlord from terminating or failing to renew a tenancy based upon an act or acts against a tenant or a tenant's household member that constitute domestic violence, sexual assault, stalking, human trafficking, or elder or dependent adult abuse if certain standards are met. Existing law requires the act to be documented in one of several ways, including by a court order, police report, or tenant statement and qualified third party statement, as specified, and existing law requires that the person against whom the order was issued, or who was named in the police report or tenant statement and qualified third party statement, not be a tenant of the same dwelling unit as the tenant or household member.

Existing law allows a landlord to terminate or decline to renew a tenancy if the tenant allows the person against whom the court order was issued or who was named in the police report or tenant statement and qualified third party statement to visit the property or if the landlord reasonably believes that the presence of the person poses a physical threat to other tenants, guests, invitees, or licensees, or to a tenant's right to quiet possession, and the landlord previously gave at least 3 days' notice to the tenant to correct the violation, as specified.

This bill would recast these provisions to prohibit a landlord, except as specified, from terminating or failing to renew a tenancy based on an act of abuse or violence, as defined, against a tenant, a tenant's immediate family member, as defined, or a tenant's household member, as specified. The bill would make a landlord's violation of those provisions an affirmative defense to a cause of action for unlawful detainer that is based upon an act of abuse or violence against a tenant, a tenant's immediate family member, or a tenant's household member, as specified. The bill would make conforming changes to the required notice form and would require the Judicial Council to update its form, as specified.

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

SECTION 1. Section 1946.7 of the Civil Code is amended to read:

1946.7. (a) A tenant may notify the landlord that the tenant intends to terminate the tenancy if the tenant, a household member, or an immediate family member was the victim of an act that constitutes any of the following:

- (1) Domestic violence as defined in Section 6211 of the Family Code.
- (2) Sexual assault as defined in Section 261, 261.5, 286, 287, or 289 of the Penal Code.
- (3) Stalking as defined in Section 1708.7.
- (4) Human trafficking as defined in Section 236.1 of the Penal Code.
- (5) Abuse of an elder or a dependent adult as defined in Section 15610.07 of the Welfare and Institutions Code.
- (6) A crime that caused bodily injury or death.
- (7) A crime that included the exhibition, drawing, brandishing, or use of a firearm or other deadly weapon or instrument.
- (8) A crime that included the use of force against the victim or a threat of force against the victim.

(b) A notice to terminate a tenancy under this section shall be in writing, with one of the following attached to the notice:

- (1) A copy of a temporary restraining order, emergency protective order, or protective order lawfully issued pursuant to Part 3 (commencing with Section 6240) or Part 4 (commencing with Section 6300) of Division 10 of the Family Code, Section 136.2 of the Penal Code, Section 527.6 of the Code of Civil Procedure, or Section 213.5 or 15657.03 of the Welfare and Institutions Code that protects the tenant, household member, or immediate family member from further domestic violence, sexual assault, stalking, human trafficking, abuse of an elder or a dependent adult, or any act or crime listed in subdivision (a).
- (2) A copy of a written report by a peace officer employed by a state or local law enforcement agency acting in the peace officer's official capacity stating that the tenant, household member, or immediate family member has filed a report alleging that the tenant, the household member, or the immediate family member is a victim of an act or crime listed in subdivision (a).
- (3) (A) Documentation from a qualified third party based on information received by that third party while acting in the third party's professional capacity to indicate that the tenant, household member, or immediate family member is seeking assistance for physical or mental injuries or abuse resulting from an act or crime listed in subdivision (a).

(B) The documentation shall contain, in substantially the same form, the following:

Tenant Statement and Qualified Third Party Statement
under Civil Code Section 1946.7

Part I. Statement By Tenant

I, [insert name of tenant], state as follows:

I, or a member of my household or immediate family, have been a victim of:

[insert one or more of the following: domestic violence, sexual assault, stalking, human trafficking, elder abuse, dependent adult abuse, or a crime that caused bodily injury or death, a crime that included the exhibition, drawing, brandishing, or use of a firearm or other deadly weapon or instrument, or a crime that included the use of force against the victim or a threat of force against the victim.]

The most recent incident(s) happened on or about:

[insert date or dates.]

The incident(s) was/were committed by the following person(s), with these physical description(s), if known and safe to provide:

[if known and safe to provide, insert name(s) and physical description(s).]

(signature of tenant)(date)

Part II. Qualified Third Party Statement

I, [insert name of qualified third party], state as follows:

My business address and phone number are:

[insert business address and phone number.]

Check and complete one of the following:

____ I meet the requirements for a sexual assault counselor provided in Section 1035.2 of the Evidence Code and I am either engaged in an office, hospital, institution, or center commonly known as a rape crisis center described in that section or employed by an organization providing the programs specified in Section 13835.2 of the Penal Code.

____ I meet the requirements for a domestic violence counselor provided in Section 1037.1 of the Evidence Code and I am employed, whether financially compensated or not, by a domestic violence victim service organization, as defined in that section.

____ I meet the requirements for a human trafficking caseworker provided in Section 1038.2 of the Evidence Code and I am employed, whether financially compensated or not, by an organization that provides programs specified in Section 18294 of the Welfare and Institutions Code or in Section 13835.2 of the Penal Code.

____ I meet the definition of "victim of violent crime advocate" provided in Section 1947.6 of the Civil Code and I am employed, whether financially compensated or not, by an agency or organization that has a documented record of providing services to victims of violent crime or provides those services under the auspices or supervision of a court or a law enforcement or prosecution agency.

____ I am licensed by the State of California as a:

[insert one of the following: physician and surgeon, osteopathic physician and surgeon, registered nurse, psychiatrist, psychologist, licensed clinical social worker, licensed marriage and family therapist, or licensed professional clinical counselor.] and I am licensed by, and my license number is:

[insert name of state licensing entity and license number.]

The person who signed the Statement By Tenant above stated to me that the person, or a member of the person's household or immediate family, is a victim of:

[insert one or more of the following: domestic violence, sexual assault, stalking, human trafficking, elder abuse, dependent adult abuse, or a crime that caused physical injury, emotional injury and the threat of physical injury, or death.]

The person further stated to me the incident(s) occurred on or about the date(s) stated above.

I understand that the person who made the Statement By Tenant may use this document as a basis for terminating a lease with the person's landlord.

(signature of qualified third party)(date)

(C) The documentation may be signed by a person who meets the requirements for a sexual assault counselor, domestic violence counselor, a human trafficking caseworker, or a victim of violent crime advocate only if the documentation displays the letterhead of the office, hospital, institution, center, or organization, as appropriate, that engages or employs, whether financially compensated or not, this counselor, caseworker, or advocate.

(4) Any other form of documentation that reasonably verifies that the crime or act listed in subdivision (a) occurred.

(c) If the tenant is terminating tenancy pursuant to subdivision (a) because an immediate family member is a victim of an eligible act or crime listed in subdivision (a) and that tenant did not live in the same household as the immediate family member at the time of the act or crime, and no part of the act or crime occurred within the dwelling unit or within 1,000 feet of the dwelling unit of the tenant, the tenant shall attach to the notice and other documentation required by subdivision (b) a written statement stating all of the following:

(1) The tenant's immediate family member was a victim of an act or crime listed in subdivision (a).

(2) The tenant intends to relocate as a result of the tenant's immediate family member being a victim of an act or crime listed in subdivision (a).

(3) The tenant is relocating to increase the safety, physical well-being, emotional well-being, psychological well-being, or financial security of the tenant or of the tenant's immediate family member as a result of the act or crime.

- (d) The notice to terminate the tenancy shall be given within 180 days of the date that any order described in paragraph (1) of subdivision (b) was issued, within 180 days of the date that any written report described in paragraph (2) of subdivision (b) was made, within 180 days of the date that an act or a crime described in subdivision (a) occurred, or within the time period described in Section 1946.
- (e) If notice to terminate the tenancy is provided to the landlord under this section, the tenant shall be responsible for payment of rent for no more than 14 calendar days following the giving of the notice, or for any shorter appropriate period as described in Section 1946 or the lease or rental agreement. The tenant shall be released without penalty from any further rent or other payment obligation to the landlord under the lease or rental agreement. If the premises are relet to another party prior to the end of the obligation to pay rent, the rent owed under this subdivision shall be prorated.
- (f) Notwithstanding any law, a landlord shall not, due to the termination, require a tenant who terminates a lease or rental agreement pursuant to this section to forfeit any security deposit money or advance rent paid. A tenant who terminates a rental agreement pursuant to this section shall not be considered for any purpose, by reason of the termination, to have breached the lease or rental agreement. In all other respects, the law governing the security deposit shall apply.
- (g) This section does not relieve a tenant, other than the tenant who is, or who has a household member or immediate family member who is, a victim of an act or crime listed in subdivision (a) and members of that tenant's household, from their obligations under the lease or rental agreement.
- (h) For purposes of this section, the following definitions apply:
- (1) "Household member" means a member of the tenant's family who lives in the same residential unit as the tenant.
 - (2) "Health practitioner" means a physician and surgeon, osteopathic physician and surgeon, psychiatrist, psychologist, registered nurse, licensed clinical social worker, licensed marriage and family therapist, licensed professional clinical counselor, or a victim of violent crime advocate.
 - (3) "Immediate family member" means the parent, stepparent, spouse, child, child-in-law, stepchild, or sibling of the tenant, or any person living in the tenant's household at the time the crime or act listed in subdivision (a) occurred who has a relationship with the tenant that is substantially similar to that of a family member.
 - (4) "Qualified third party" means a health practitioner, domestic violence counselor, as defined in Section 1037.1 of the Evidence Code, a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, or a human trafficking caseworker, as defined in Section 1038.2 of the Evidence Code.
 - (5) "Victim of violent crime advocate" means a person who is employed, whether financially compensated or not, for the purpose of rendering advice or assistance to victims of violent crimes for an agency or organization that has a documented record of providing services to victims of violent crime or provides those services under the auspices or supervision of a court or a law enforcement or prosecution agency.
- (i) (1) A landlord shall not disclose any information provided by a tenant under this section to a third party unless the disclosure satisfies one or more of the following:
- (A) The tenant consents in writing to the disclosure.
 - (B) The disclosure is required by law or order of the court.
- (2) A landlord's communication to a qualified third party who provides documentation under paragraph (3) of subdivision (b) to verify the contents of that documentation is not disclosure for purposes of this subdivision.
- (j) An owner or an owner's agent shall not refuse to rent a dwelling unit to an otherwise qualified prospective tenant or refuse to continue to rent to an existing tenant solely on the basis that the tenant has previously exercised the tenant's rights under this section or has previously terminated a tenancy because of the circumstances described in subdivision (a).
- (k) A landlord or agent of a landlord who violates this section shall be liable to the tenant in a civil action for both of the following:
- (1) The actual damages sustained by the tenant.
 - (2) (A) Statutory damages of not less than one hundred dollars (\$100) and not more than five thousand dollars (\$5,000).
(B) Notwithstanding subparagraph (A), a landlord or agent of a landlord who violates this section shall not be liable for statutory damages if the tenant provided documentation of the crime or act to the landlord or the agent of the landlord pursuant to paragraph (4) of subdivision (b) only.

(l) The remedies provided by this section shall be in addition to any other remedy provided by law.

SEC. 2. Section 1161.3 of the Code of Civil Procedure is amended to read:

1161.3. (a) For purposes of this section:

(1) "Abuse or violence" means domestic violence as defined in Section 6211 of the Family Code, sexual assault as defined in Section 1219, stalking as defined in Section 1708.7 of the Civil Code or Section 646.9 of the Penal Code, human trafficking as defined in Section 236.1 of the Penal Code, abuse of an elder or a dependent adult as defined in Section 15610.07 of the Welfare and Institutions Code, or any act described in paragraphs (6) to (8), inclusive, of subdivision (a) of Section 1946.7 of the Civil Code.

(2) "Documentation evidencing abuse or violence against the tenant, the tenant's immediate family member, or the tenant's household member" means any of the following:

(A) A temporary restraining order, emergency protective order, or protective order lawfully issued within the last 180 days pursuant to Section 527.6, Part 3 (commencing with Section 6240), Part 4 (commencing with Section 6300), or Part 5 (commencing with Section 6400) of Division 10 of the Family Code, Section 136.2 of the Penal Code, or Section 213.5 or 15657.03 of the Welfare and Institutions Code that protects the tenant, the tenant's immediate family member, or the tenant's household member from abuse or violence.

(B) A copy of a written report, written within the last 180 days, by a peace officer employed by a state or local law enforcement agency acting in the officer's official capacity, stating that the tenant, the tenant's immediate family member, or the tenant's household member has filed a report alleging that they are a victim of abuse or violence.

(C) (i) Documentation from a qualified third party based on information received by that third party while acting in their professional capacity to indicate that the tenant, the tenant's immediate family member, or the tenant's household member is seeking assistance for physical or mental injuries or abuse resulting from an act of abuse or violence, which shall contain, in substantially the same form, the following:

Tenant Statement and Qualified Third Party Statement
under Code of Civil Procedure Section 1161.3

Part I.Statement By Tenant

I, [insert name of tenant], state as follows:

I, my immediate family member, or a member of my household, have been a victim of:

[insert one or more of the following: domestic violence, sexual assault, stalking, human trafficking, elder abuse, dependent adult abuse, a crime that caused bodily injury or death, a crime that included the exhibition, drawing, brandishing, or use of a firearm or other deadly weapon or instrument, or a crime that included the use or threat of force against the victim.]

The most recent incident(s) happened on or about:

[insert date or dates.]

The incident(s) was/were committed by the following person(s), with these physical description(s), if known and safe to provide:

[if known and safe to provide, insert name(s) and physical description(s).]

(signature of tenant)(date)

Part II.Qualified Third Party Statement

I, [insert name of qualified third party], state as follows:

My business address and phone number are:

[insert business address and phone number.]

Check and complete one of the following:

____ I meet the requirements for a sexual assault counselor provided in Section 1035.2 of the Evidence Code and I am either engaged in an office, hospital, institution, or center commonly known as a rape crisis center described in that section or employed by an organization

providing the programs specified in Section 13835.2 of the Penal Code.

____ I meet the requirements for a domestic violence counselor provided in Section 1037.1 of the Evidence Code and I am employed, whether financially compensated or not, by a domestic violence victim service organization, as defined in that section.

____ I meet the requirements for a human trafficking caseworker provided in Section 1038.2 of the Evidence Code and I am employed, whether financially compensated or not, by an organization that provides programs specified in Section 18294 of the Welfare and Institutions Code or in Section 13835.2 of the Penal Code.

____ I meet the definition of "victim of violent crime advocate" provided in Section 1946.7 of the Civil Code and I am employed, whether financially compensated or not, by an agency or organization that has a documented record of providing services to victims of violent crime or provides those services under the auspices or supervision of a court or a law enforcement or prosecution agency.

____ I am licensed by the State of California as a:

[insert one of the following: physician and surgeon, osteopathic physician and surgeon, registered nurse, psychiatrist, psychologist, licensed clinical social worker, licensed marriage and family therapist, or licensed professional clinical counselor.] and I am licensed by, and my license number is:

[insert name of state licensing entity and license number.]

The person who signed the Statement By Tenant above stated to me that they, a member of their immediate family, or a member of their household is a victim of:

[insert one or more of the following: domestic violence, sexual assault, stalking, human trafficking, elder abuse, dependent adult abuse, a crime that caused bodily injury or death, a crime that included the exhibition, drawing, brandishing, or use of a firearm or other deadly weapon or instrument, or a crime that included the use or threat of force against the victim.]

The person further stated to me the incident(s) occurred on or about the date(s) stated above.

(signature of qualified third party)(date)

(ii) The documentation may be signed by a person who meets the requirements for a sexual assault counselor, domestic violence counselor, a human trafficking caseworker, or a victim of violent crime advocate only if the documentation displays the letterhead of the office, hospital, institution, center, or organization, as appropriate, that engages or employs, whether financially compensated or not, this counselor, caseworker, or advocate.

(D) Any other form of documentation or evidence that reasonably verifies that the abuse or violence occurred.

(3) "Health practitioner" means a physician and surgeon, osteopathic physician and surgeon, psychiatrist, psychologist, registered nurse, licensed clinical social worker, licensed marriage and family therapist, or licensed professional clinical counselor.

(4) "Immediate family member" has the same meaning as defined in Section 1946.7 of the Civil Code.

(5) "Perpetrator of abuse or violence" means any of the following:

(A) The person against whom an order described in subparagraph (A) of paragraph (1) of subdivision (a) has been issued.

(B) The person who was named or referred to as causing the abuse or violence in the report described in subparagraph (B) of paragraph (1) of subdivision (a).

(C) The person who was named or referred to as causing the abuse or violence in the documentation described in subparagraph (C) of paragraph (1) of subdivision (a).

(D) The person who was named or referred to as causing the abuse or violence in the documentation described in subparagraph (D) of paragraph (1) of subdivision (a).

(6) "Qualified third party" means a health practitioner, domestic violence counselor, as defined in Section 1037.1 of the Evidence Code, a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, a human trafficking caseworker, as defined in Section 1038.2 of the Evidence Code, or a victim of violent crime advocate.

(7) "Tenant" means tenant, subtenant, lessee, or sublessee.

(8) "Tenant in residence" means a tenant who is currently residing in the unit and has full physical and legal access to the unit.

(9) "Victim of violent crime advocate" has the same meaning as defined in Section 1946.7 of the Civil Code.

(b) (1) A landlord shall not terminate a tenancy or fail to renew a tenancy based on an act of abuse or violence against a tenant, a tenant's immediate family member, or a tenant's household member if the landlord has received documentation evidencing abuse

or violence against the tenant, the tenant's immediate family member, or the tenant's household member.

(2) Notwithstanding paragraph (1), a landlord may terminate a tenancy or fail to renew a tenancy based on an act of abuse or violence against a tenant, a tenant's immediate family member, or a tenant's household member even after receiving documentation of abuse or violence against the tenant, the tenant's immediate family member, or the tenant's household member if either of the following apply:

(A) The perpetrator of abuse or violence is a tenant in residence of the same dwelling unit as the tenant, the tenant's immediate family member, or household member.

(B) Both of the following apply:

(i) The perpetrator of abuse or violence's words or actions have threatened the physical safety of other tenants, guests, invitees, or licensees.

(ii) After expiration of a three-day notice requiring the tenant not to voluntarily permit or consent to the presence of the perpetrator of abuse or violence on the premises, the tenant continues to do so.

(c) Notwithstanding any provision in a lease to the contrary, a landlord shall not be liable to any other tenants for any action that arises due to the landlord's compliance with this section.

(d) A violation of subdivision (b) by the landlord shall be an affirmative defense to a cause of action for unlawful detainer that is based on an act of abuse or violence against a tenant, a tenant's immediate family member, or a tenant's household member as follows:

(1) If the perpetrator of the abuse or violence is not a tenant in residence of the same dwelling unit as the tenant, the tenant's immediate family member, or household member, then the defendant shall have a complete defense as to that cause of action, unless each clause of subparagraph (B) of paragraph (2) of subdivision (b) applies.

(2) If the perpetrator of the abuse or violence is a tenant in residence of the same dwelling unit as the tenant, the tenant's immediate family member, or household member, the court shall proceed in accordance with Section 1174.27.

(e) (1) A landlord shall not disclose any information provided by a tenant under this section to a third party unless either of the following is true:

(A) The tenant has consented in writing to the disclosure.

(B) The disclosure is required by law or court order.

(2) A landlord's communication with the qualified third party who provides documentation in order to verify the contents of that documentation is not a disclosure for purposes of this subdivision.

(f) The Judicial Council shall review its forms that may be used by a party to assert in the responsive pleading the grounds set forth in this section as an affirmative defense to an unlawful detainer action and, by January 1, 2024, make any changes to those forms that the Judicial Council deems necessary to conform them to this section.

SEC. 3. Section 1174.27 is added to the Code of Civil Procedure, to read:

1174.27. (a) This section shall apply to an unlawful detainer proceeding in which all of the following are true:

(1) The proceeding involves a residential premises.

(2) The complaint includes a cause of action based on an act of abuse or violence against a tenant, a tenant's immediate family member, or a tenant's household member.

(3) A defendant has invoked paragraph (2) of subdivision (d) of Section 1161.3 as an affirmative defense to the cause of action described in paragraph (2).

(b) For the purposes of this section, the definitions in subdivision (a) of Section 1161.3 apply.

(c) The court shall determine whether there is documentation evidencing abuse or violence against the tenant, the tenant's immediate family member, or the tenant's household member.

(d) If the court determines there is not documentation evidencing abuse or violence against the tenant, the court shall deny the affirmative defense.

(e) If the court determines that there is documentation evidencing abuse or violence against the tenant, the tenant's immediate family member, or the tenant's household member, and the court does not find the defendant raising the affirmative defense guilty of an unlawful detainer on any other grounds, then both of the following:

(1) The defendant raising the affirmative defense and any other occupant not found guilty of an unlawful detainer shall not be guilty of an unlawful detainer and shall not be named in any judgment in favor of the landlord.

(2) The defendant raising the affirmative defense and any other occupant not found guilty of an unlawful detainer shall not be held liable to the landlord for any amount related to the unlawful detainer, including, but not limited to, holdover damages, court costs, lease termination fees, or attorney's fees.

(f) (1) If the court makes the determination described in subdivision (e), upon a showing that any other defendant was the perpetrator of the abuse or violence on which the affirmative defense was based and is guilty of an unlawful detainer, the court shall do both of the following:

(A) Issue a partial eviction ordering the removal of the perpetrator of abuse or violence and ordering that person be immediately removed and barred from the dwelling unit, but the court shall not order the tenancy terminated.

(B) Order the landlord to change the locks and to provide the remaining occupants with the new key.

(2) If a court issues a partial eviction order as described in subparagraph (A) of paragraph (1), then only a defendant found guilty of an unlawful detainer may be liable for holdover damages, court costs, lease termination fees, or attorney's fees, as applicable.

(3) If the court makes the determination described in subdivision (e), the court may, upon a showing that any other defendant was the perpetrator of the abuse or violence on which the affirmative defense was based and is guilty of an unlawful detainer, do any of the following:

(A) Permanently bar the perpetrator of abuse or violence from entering any portion of the residential premises.

(B) Order as an express condition of the tenancy that the remaining occupants shall not give permission to or invite the perpetrator of abuse or violence to live in the dwelling unit.

(4) In exercising its discretion under this subdivision, the court shall take into account custody or visitation orders or arrangements and any other factor that may necessitate the temporary reentry of the perpetrator of abuse or violence.

(g) The Judicial Council shall develop a judgment form for use in a ruling pursuant to subdivision (e) or (f).

(h) Notwithstanding any other law, a determination that a person is a perpetrator of abuse or violence under subdivision (e) or (f) shall not constitute a finding that the person is a perpetrator of abuse or violence for any other purposes and shall not be admissible as evidence that the person committed a crime or is a perpetrator of abuse or violence in any other proceeding, including, but not limited to, a civil action or proceeding, a criminal action or proceeding, and a proceeding involving a juvenile for a criminal offense.