

## Assembly Bill No. 2413

### CHAPTER 190

An act to add Section 1946.8 to the Civil Code, to amend Section 1161.3 of the Code of Civil Procedure, and to repeal and add Section 53165 of the Government Code, relating to tenancy.

[Approved by Governor August 24, 2018. Filed with Secretary of State August 24, 2018.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2413, Chiu. Tenancy: law enforcement and emergency assistance.

(1) Existing law authorizes a tenant to notify the landlord in writing that he or she or a household member, as defined, was a victim of domestic violence, sexual assault, stalking, human trafficking, or elder or dependent adult abuse and that the tenant intends to terminate the tenancy. If the tenant attaches to the notice a copy of a temporary restraining order or protective order, as specified, a report by a peace officer, as specified, or documentation from a qualified 3rd party, as specified, and satisfies other requirements, the tenant is released from paying rent and other obligations under the lease, subject to certain limitations.

This bill would declare void, as contrary to public policy, a provision in a rental or lease agreement that limits or prohibits, or threatens to limit or prohibit, a tenant's, resident's, or other person's right to summon law enforcement assistance or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency if the tenant, resident, or other person believes that the law enforcement assistance or emergency assistance is necessary to prevent or address the perpetration, escalation, or exacerbation of the abuse, crime, or emergency. The bill would also prohibit a landlord from imposing, or threatening to impose, penalties in this context as well. The bill would define various terms for these purposes. The bill would provide that a waiver of these provisions is contrary to public policy and is void and unenforceable. The bill would prescribe evidentiary presumptions in this connection to be applicable to unlawful detainer actions. The bill would authorize a tenant, resident, or other aggrieved person to seek an injunction for a violation of these provisions.

(2) Existing law, in connection with actions for unlawful detainer, 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 a dependent adult abuse, if certain standards are met. In this regard, the acts must be documented by a copy of a temporary restraining order or protective order, as specified, or a report by a peace officer, as specified, and the person against whom the protection order has been issued, or who

was named in the police report, is not a tenant of the same dwelling unit as the tenant or household member.

This bill, for the purposes relating to unlawful detainer, described above, would authorize a tenant to document an act of domestic violence, sexual assault, stalking, human trafficking, or elder or a dependent adult abuse, by attaching a statement from a qualified 3rd party, as defined. The bill would require that this documentation be in substantially the same form as a statement that the bill would prescribe for this purpose. The bill would prohibit the landlord from disclosing information that a tenant has submitted in this context, except as specified. The bill would prescribe definitions for these purposes. The bill would require the Judicial Council, by September 1, 2019, to develop a new form or revise an existing form for use by a party to assert an affirmative defense to an unlawful detainer action, as specified.

(3) Existing law prohibits a local agency from requiring a landlord to terminate a tenancy or fail to renew a tenancy based upon an act against a tenant or a tenant's household member that constitutes domestic violence, sexual assault, stalking, human trafficking, or elder or dependent adult abuse, if specified requirements relating to unlawful detainer actions are satisfied. Existing law prohibits a local agency from requiring a landlord to terminate a tenancy or fail to renew a tenancy based upon the number of calls made to the emergency telephone system relating to the tenant or a member of the tenant's household being a victim of these acts.

This bill would revise and recast these provisions. The bill would prohibit a local agency from promulgating, enforcing, or implementing any ordinance, rule, policy, or regulation, that authorizes, or requires the imposition or threatened imposition of, a penalty against a resident, owner, tenant, landlord, or other person as a consequence of law enforcement assistance or emergency assistance by, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency. The bill would prescribe definitions in this regard. The bill would preempt inconsistent local rules and regulations in this regard. The bill would prescribe remedies for a violation of these provisions. The bill would declare that the need to protect parties to whom these provisions of the bill apply is a matter of statewide concern, and not a municipal affair, and that charter cities and counties would be subject to the provisions of the bill.

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

SECTION 1. Section 1946.8 is added to the Civil Code, to read:

1946.8. (a) For purposes of this section:

(1) "Individual in an emergency" means a person who believes that immediate action is required to prevent or mitigate the loss or impairment of life, health, or property.

(2) "Occupant" means any person residing in a dwelling unit with the tenant. "Occupant" includes lodgers as defined in Section 1946.5.

(3) "Penalties" means the following:

- (A) The actual or threatened assessment of fees, fines, or penalties.
- (B) The actual or threatened termination of a tenancy or the actual or threatened failure to renew a tenancy.
- (C) Subjecting a tenant to inferior terms, privileges, and conditions of tenancy in comparison to tenants who have not sought law enforcement assistance or emergency assistance.
- (4) “Resident” means a member of the tenant’s household or any other occupant living in the dwelling unit with the consent of the tenant.
- (5) “Victim of abuse” includes:
  - (A) A victim of domestic violence as defined in Section 6211 of the Family Code.
  - (B) A victim of elder or dependent adult abuse as defined in Section 15610.07 of the Welfare and Institutions Code.
  - (C) A victim of human trafficking as described in Section 236.1 of the Penal Code.
  - (D) A victim of sexual assault means a victim of any act made punishable by Section 261, 262, 264.1, 285, 286, 288, 288a, or 289 of the Penal Code.
  - (E) A victim of stalking as described in Section 1708.7 of this code or Section 646.9 of the Penal Code.
- (6) “Victim of crime” means any victim of a misdemeanor or felony.
  - (b) Any provision in a rental or lease agreement for a dwelling unit that prohibits or limits, or threatens to prohibit or limit, a tenant’s, resident’s, or other person’s right to summon law enforcement assistance or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency, if the tenant, resident, or other person believes that the law enforcement assistance or emergency assistance is necessary to prevent or address the perpetration, escalation, or exacerbation of the abuse, crime, or emergency, shall be void as contrary to public policy.
  - (c) A landlord shall not impose, or threaten to impose, penalties on a tenant or resident who exercises the tenant’s or resident’s right to summon law enforcement assistance or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency, based on the person’s belief that the assistance is necessary, as described in subdivision (b). A landlord shall not impose, or threaten to impose, penalties on a tenant or resident as a consequence of a person who is not a resident or tenant summoning law enforcement assistance or emergency assistance on the tenant’s, resident’s, or other person’s behalf, based on the person’s belief that the assistance is necessary.
  - (d) Documentation is not required to establish belief for purposes of subdivision (b) or (c), but belief may be established by documents such as those described in Section 1161.3 of the Code of Civil Procedure.
  - (e) Any waiver of the provisions of this section is contrary to public policy and is void and unenforceable.
  - (f) (1) In an action for unlawful detainer, a tenant, resident, or occupant may raise, as an affirmative defense, that the landlord or owner violated this section.

(2) There is a rebuttable presumption that a tenant, resident, or occupant has established an affirmative defense under this subdivision if the landlord or owner files a complaint for unlawful detainer within 30 days of a resident, tenant, or other person summoning law enforcement assistance or emergency assistance and the complaint is based upon a notice that alleges that the act of summoning law enforcement assistance or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency constitutes a rental agreement violation, lease violation, or a nuisance. A reference to a person summoning law enforcement in a notice that is the basis for a complaint for unlawful detainer that is necessary to describe conduct that is alleged to constitute a violation of a rental agreement or lease is not, in itself, an allegation for purposes of this paragraph.

(3) A landlord or owner may rebut the presumption described in paragraph (2) by demonstrating that a reason other than the summoning of law enforcement or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency was a substantial motivating factor for filing the complaint.

(g) In addition to other remedies provided by law, a violation of this section entitles a tenant, a resident, or other aggrieved person to seek injunctive relief prohibiting the landlord from creating or enforcing policies in violation of this section, or from imposing or threatening to impose penalties against the tenant, resident, or other aggrieved person based on summoning law enforcement or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency.

(h) Nothing in this section shall be construed as permitting an injunction to be entered that would prohibit the filing of an unlawful detainer action.

(i) This section does not limit a landlord's exercise of the landlord's other rights under a lease or rental agreement, or under other law pertaining to the hiring of property, with regard to matters that are not addressed by this section.

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

1161.3. (a) Except as provided in subdivision (b), a landlord shall not terminate a tenancy or fail to renew a tenancy based upon an act or acts against a tenant or a tenant's household member that constitute 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, or abuse of an elder or a dependent adult as defined in Section 15610.07 of the Welfare and Institutions Code, if both of the following apply:

(1) The act or acts of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult have been documented by one 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 or household member from domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult.

(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 his or her official capacity, stating that the tenant or household member has filed a report alleging that he or she or the household member is a victim of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult.

(C) Documentation from a qualified third party based on information received by that third party while acting in his or her professional capacity to indicate that the tenant or household member is seeking assistance for physical or mental injuries or abuse resulting from an act of domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult abuse.

(D) The documentation 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, 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, or dependent adult abuse.]

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 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 he or she, or a member of his or her household, is a victim of:

[insert one or more of the following: domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult abuse.]

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

\_\_\_\_\_  
(signature of qualified third party)      \_\_\_\_\_  
(date)

(E) The documentation may be signed by a person who meets the requirements for a sexual assault counselor, domestic violence counselor, or a human trafficking caseworker 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 or caseworker.

(2) The person against whom the protection order has been issued or who was named in the police report or Tenant Statement and Qualified Third Party Statement regarding the act or acts of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or dependent adult is not a tenant of the same dwelling unit as the tenant or household member.

(b) A landlord may terminate or decline to renew a tenancy after the tenant has availed himself or herself of the protections afforded by subdivision (a) if both of the following apply:

(1) Either of the following:

(A) The tenant allows the person against whom the protection order has been issued or who was named in the police report or Tenant Statement and Qualified Third Party Statement regarding the act or acts of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult to visit the property.

(B) The landlord reasonably believes that the presence of the person against whom the protection order has been issued or who was named in the police report or Tenant Statement and Qualified Third Party Statement regarding the act or acts of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or dependent adult poses a physical threat to other tenants, guests, invitees, or licensees, or to a tenant's right to quiet possession pursuant to Section 1927 of the Civil Code.

(2) The landlord previously gave at least three days' notice to the tenant to correct a violation of paragraph (1).

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

(d) (1) A landlord shall not disclose any information provided by a tenant under this section to a third party unless either of the following are 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.

(e) For the purposes of this section:

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

(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, or licensed professional clinical counselor.

(3) "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.

(f) The Judicial Council shall, on or before September 1, 2019, develop a new form or revise an existing form 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.

SEC. 3. Section 53165 of the Government Code is repealed.

SEC. 4. Section 53165 is added to the Government Code, to read:

53165. (a) For purposes of this section:

(1) “Individual in an emergency” means a person who believes that immediate action is required to prevent or mitigate the loss or impairment of life, health, or property.

(2) “Local agency” means a county, city, whether general law or chartered, city and county, town, housing authority, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency.

(3) “Occupant” means any person residing in a dwelling unit with the tenant. “Occupant” includes a lodger as defined in Section 1946.5 of the Civil Code.

(4) “Penalty” means the following:

(A) The actual or threatened assessment of fees, fines, or penalties.

(B) The actual or threatened termination of a tenancy or the actual or threatened failure to renew a tenancy.

(C) The actual or threatened revocation, suspension, or nonrenewal of a rental certificate, license, or permit.

(D) The designation or threatened designation as a nuisance property or as a perpetrator of criminal activity under local law, or imposition or threatened imposition of a similar designation.

(E) Subjecting a tenant to inferior terms, privileges, and conditions of tenancy in comparison to tenants who have not sought law enforcement assistance or emergency assistance.

(5) “Resident” means a member of the tenant’s household or any other occupant living in the dwelling unit with the consent of the tenant.

(6) “Tenant” means tenant, subtenant, lessee, or sublessee.

(7) “Victim of abuse” includes:

(A) A victim of domestic violence as defined in Section 6211 of the Family Code.

(B) A victim of elder or dependent adult abuse as defined in Section 15610.07 of the Welfare and Institutions Code.

(C) A victim of human trafficking as described in Section 236.1 of the Penal Code.

(D) A victim of sexual assault means a victim of any act made punishable by Section 261, 262, 264.1, 285, 286, 288, 288a, or 289 of the Penal Code.

(E) A victim of stalking as described in Section 1708.7 of the Civil Code or Section 646.9 of the Penal Code.

(8) “Victim of crime” means any victim of a misdemeanor or felony.

(b) A local agency shall not promulgate, enforce, or implement any ordinance, rule, policy, or regulation, that authorizes, or requires the imposition, or threatened imposition, of a penalty against a resident, owner, tenant, landlord, or other person as a consequence of law enforcement assistance or emergency assistance being summoned by, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency.

(c) If a local agency violates this section, a resident, tenant, owner, landlord, or other person may obtain the following:

(1) A court order requiring the local agency to cease and desist the unlawful practice.



(2) A court order rendering null and void any ordinance, rule, policy, or regulation that violates this section.

(3) Other equitable relief as the court may deem appropriate.

(d) This section preempts any local ordinance, rule, policy, or regulation insofar as it is inconsistent with this section, irrespective of the effective date of the ordinance, rule, policy, or regulation.

SEC. 5. The Legislature finds and declares that the need to protect the parties referenced in Section 4 of this bill is a matter of statewide concern, and not merely a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this act shall apply to charter cities and counties.