

Date of Hearing: March 28, 2022

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
AB 2179 (Grayson and Wicks) – As Amended March 24, 2022

As Proposed to be Amended (Adding Urgency Clause)

SUBJECT: COVID-19 RELIEF: TENANCY

KEY ISSUES:

- 1) IN ORDER TO ENSURE THAT TENS OF THOUSANDS OF LOW-INCOME TENANTS ARE NOT PUT AT RISK OF HOMELESSNESS WHILE THEIR APPLICATIONS FOR COVID-19 EMERGENCY RENTAL ASSISTANCE ARE STILL PENDING, SHOULD EXISTING EVICTION PROTECTIONS BE EXTENDED BY AN ADDITIONAL THREE MONTHS FOR TENANTS WHO HAVE SUBMITTED COMPLETED RENTAL ASSISTANCE APPLICATIONS ON OR BEFORE MARCH 31, 2022?
- 2) IN ORDER TO ENSURE A DEGREE OF STATEWIDE CONSISTENCY IN COVID-19-RELATED EVICTION PROTECTIONS, SHOULD THE STATE EXTEND ITS PREEMPTION OF LOCAL LAWS THAT GIVE TENANTS ADDITIONAL OR ALTERNATE PROTECTION AGAINST EVICTION FOR AN ADDITIONAL THREE MONTHS?

SYNOPSIS

Over the last 24 months, as part of its COVID-19 emergency response, the State of California has enacted a number of policies to prevent the eviction of millions of tenants who were unable to pay rent as a result of the pandemic.

These measures generally fall into two categories: (1) changes to the unlawful detainer (eviction) process meant to limit evictions of tenants facing COVID-related financial hardship; and (2) significant financial support, in the form of over \$5.2 billion in emergency rental assistance funding to compensate landlords for unpaid rent. Nearly all of this funding was provided by the federal government, but it is administered by the state or by local government programs. Currently, a tenant must complete an application for emergency rental assistance within an allotted timeframe in order to pause unlawful detainer court proceedings during the period the tenant's application is being reviewed. However, while California has provided nearly \$2.5 billion in rental assistance funds to date to property owners and eligible low-income tenant households through the state emergency rental assistance program (ERAP), many tens of thousands of applications will still be in the review process when current protections are set to expire on April 1, 2022. It would be a manifest injustice to allow these households to be evicted, to say nothing of the risks mass eviction would pose for both the spread of the virus and increasing the state's unhoused population.

This bill proposes to extend the current protections built into the unlawful detainer process until July 1, 2022, but only for those tenants who submit a rental assistance application on or before March 31, 2022—the last day on which the state ERAP program will accept applications. This bill would also extend, by three months, statewide preemption of local measures to address nonpayment of rent and repayment of back rent enacted in response to the COVID-19 pandemic.

SUMMARY: Extends, by three months: (1) statewide eviction protections for tenants who have applied for emergency rental assistance but have not yet had their applications processed, and (2) statewide preemption of certain categories of local eviction ordinances. Specifically, **this bill:**

- 1) Extends, through June 30, 2022, procedural protections in the unlawful detainer process for residential tenants and mobilehome park residents facing eviction for nonpayment of rent that accumulated due to COVID-19 hardship, provided they applied for government rental assistance before April 1, 2022, but have not yet had a final decision issued on their applications. (Unless otherwise indicated, all further references to “rent” should be understood to include both rent and all other financial obligations of a tenant under a tenancy; all further references to “tenants” should be understood to mean both residential tenants and mobilehome park residents.)
- 2) Updates the content of notices that landlords must provide to tenants between April 1, 2022 and June 30, 2022 before seeking a court-ordered eviction for nonpayment of rent that came due (a) between March 1, 2020 and September 30, 2021, and (b) between October 1, 2021 and March 31, 2022.
- 3) Extends, through June 30, 2022, statewide preemption of local measures adopted by a city, county, or city and county after August 19, 2020 that:
 - a) Protect tenants from eviction in response to the COVID-19 pandemic;
 - b) Govern the repayment of unpaid rent that came due between March 1, 2020 and September 30, 2021; or
 - c) Enact just cause eviction protections addressing rental payments that came due between March 1, 2020 and June 30, 2022.
- 4) Includes a severability clause.
- 5) Contains an urgency clause. States that it is necessary that this act take immediate effect in order to address the hardships imposed by the COVID-19 pandemic on tenants and landlords in California as soon as possible.

EXISTING LAW:

- 1) Appropriates through the federal Department of the Treasury a combined \$46.55 billion in emergency rental assistance funds to states, territories, tribes, and local governments with at least 200,000 in population as follows:
 - a) \$25 billion through Section 501 of Subtitle A of Title V of Division N of the federal Consolidated Appropriations Act, 2021. (Public Law 116-260.)
 - b) \$21.55 billion through Section 3201 of the American Rescue Plan Act of 2021. (Public Law 117-2.)
- 2) Establishes the state Emergency Rental Assistance Program for the provision of rental assistance funds in response to the COVID-19 pandemic. (Health and Safety Code Sections 50897 - 50897.6.)

- 3) Establishes the COVID-19 Tenant Relief Act of 2020, which provides temporary eviction protections between March 1, 2020 and September 30, 2021 for qualifying tenants. These protections require tenants to (a) provide their landlords with declarations of COVID-19-related financial hardship, and (b) pay 25 percent of the rent that came due during this time period. (Code of Civil Procedure Sections 1179.01 – 1179.07. All further statutory references are to the Code of Civil Procedure, unless otherwise indicated.)
- 4) Establishes the COVID-19 Rental Housing Recovery Act, which provides temporary eviction protections between October 1, 2021 and March 31, 2022 for qualifying tenants. These protections require tenants to complete applications for government rental assistance to pay rent that came due between March 1, 2020 and March 31, 2022. (Sections 1179.08 – 1179.15.)
- 5) Defines “final decision” to mean that a government rental assistance program has made either of the following determinations regarding an application for rental assistance: the application is approved, or the application is denied for any of the following three reasons:
 - a) The tenant is not eligible for government rental assistance.
 - b) The government rental assistance program no longer has sufficient funds to approve the application.
 - c) The application remains incomplete for 15 days (excluding Saturdays, Sundays, and other judicial holidays) after the landlord properly completed the portion of the application that was the landlord’s responsibility, due to the tenant’s failure to properly complete the portion of the application that is the tenant’s responsibility. (Section 1179.09.)
- 6) Specifies that, unless covered by the COVID-19 Tenant Relief Act of 2020, a tenant is guilty of an unlawful detainer and subject to a court-ordered eviction if the tenant does not vacate the rental property or pay rent within three court days of a demand to do so. (Section 1161 (2).)
- 7) Specifies the content of notices that landlords must provide their tenants before seeking a court-ordered eviction for nonpayment of rent that came due (a) between March 1, 2020 and September 30, 2021, and (b) between October 1, 2021 and March 31, 2022. (Sections 1179.03 and 1179.10.)
- 8) Establishes procedures governing the issuance of summons and entry of judgment by courts in unlawful detainer cases based, in whole or in part, on nonpayment of rent during the period between March 1, 2020 and March 31, 2022. (Sections 1179.11.)
- 9) Establishes statewide preemption of certain local measures adopted by a city, county, or city and county after August 19, 2020 meant to protect tenants from eviction, enable tenants to repay past-due rent, or enact just cause eviction protections in response to the COVID-19 pandemic. (Section 1179.05.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: The COVID-19 pandemic presented profound economic challenges for many Californians. In order to stop the spread of SARS-CoV-2 and “flatten the curve,” both state and local governments imposed closures and reduced capacity requirements in schools, businesses, workplaces, and other establishments. As a result, California’s unemployment skyrocketed from

a record low rate of 3.9 percent in the first two months of 2020 to a peak of 16 percent in April of 2020. While the intervening two years have seen employment rates largely recover, along with significant increases in household incomes and in tax revenues, periodic spikes in the COVID-19 infection rate, difficulties in finding affordable childcare, and ongoing inflation have combined to inflict ongoing hardships on many households, particularly those living in rental housing. Fortunately, California has enacted a series of eviction protections during this period, which have acted to limit both the spread of the virus and growth in the state's already-enormous homeless population. The latest iteration, operational since October 1, 2021, permits qualifying tenant households (generally, those at or below 80 percent of area median income) to fend off eviction if they timely file applications for emergency rental assistance. These eviction protections are set to expire in less than a week, on March 31, 2022, which is also the last date on which the state-administered Emergency Rental Assistance Program will accept applications. Absent legislative action, tens of thousands of applications will remain to be processed by the state after March 31, but the tenants who filed them will have no corresponding statewide protections from eviction. That manifest injustice necessitates this bill. According to the author:

The economic fallout from the COVID-19 pandemic raised the chilling prospect of a tidal wave of evictions and a catastrophic surge in homelessness. Fortunately, no such calamity has taken place. Emergency rental assistance programs, legal protections against eviction, mortgage forbearance initiatives, and sacrifices by landlords and tenants alike have combined to keep the overwhelming majority of households in their homes. Now that our economy is in recovery and job offerings are plentiful, the time has come to wind down heightened pandemic-era eviction protections and return to the usual rules. As we do that, however, we must appropriately take care of the thousands of Californians—landlords and tenants alike—whose applications for emergency rental assistance are still pending. It would be cruel, wasteful, and unfair to subject these Californians to eviction or the loss of rental income now, when they have done everything asked of them and distribution of their emergency rental assistance is imminent. AB 2179 prevents that outcome by temporarily extending COVID-19 recovery period eviction protections to those landlords and tenants with emergency rental assistance applications pending as of the March 31, 2022 deadline. In this way, AB 2179 seeks to maximize every last emergency rental assistance dollar to keep people housed, even as the program comes to an end.

Committee staff notes that this bill includes provisions related to the operation of state and local emergency rental assistance programs, a topic within the jurisdiction of the Assembly Committee on Housing & Community Development. Therefore, consultants from that Committee provided input and content for this analysis.

California's Emergency Rental Assistance Program. The economic challenges facing the state's tenants and property owners were not unique to California. While early federal COVID-19 response efforts did not include meaningful dedicated resources for rental assistance, Congress subsequently provided over \$46.55 billion in emergency rental assistance and utility assistance funding through relief measures passed in late 2020 and early 2021. Funds went to states, territories, and eligible local governments with populations of at least 200,000, each of which received allocations directly from the U.S. Treasury Department.

Between the state and its eligible local governments, California received over \$5.2 billion in initial rent and utility assistance, and has since received an additional \$198 million from Treasury's reallocation of funds unused by other jurisdictions. Federal law dictates that rental

assistance funds can be used to pay past due rent, future rent payments, certain utility payments, and other housing expenses for low-income renter households that make no more than 80 percent of the area median income (AMI). Additionally, in order to receive assistance, a renter household must have qualified for unemployment benefits or experienced financial hardships related to the pandemic.

The Department of Housing and Community Development (HCD) operates the state Emergency Rental Assistance Program (ERAP), which reports having paid over \$2.4 billion in assistance to more than 214,000 tenant households as of March 22, 2022. However, at least an additional 275,000 complete applications have been submitted to ERAP, many of which are still being reviewed. (California Business, Consumer Services, and Housing Agency, *California COVID-19 Rent Relief Program Dashboard*, available at https://housing.ca.gov/covid_rr/dashboard.html [last visited Mar. 25, 2022].)

According to HCD, approximately 64 percent of the state's population lives in an area which uses the state's ERAP platform for assisting eligible tenants and landlords while all others are served by a local program. As of January 31, 2022, local ERAP efforts had spent approximately \$486.5 million of state-provided block grant funds to support 64,400 lower-income households with rent and utility assistance. (HCD, *California COVID-19 Rent Relief Program: Monthly Report to Joint Legislative Budget Committee* (Jan. 2019), available at <https://hcd.ca.gov/policy-research/plans-reports/docs/covid-19-rent-relief-monthly-report-january-2022.pdf>.) It is unknown how many rental assistance applications are currently pending review through these local programs, but it is likely to include tens of thousands and can be expected to increase further as the March 31, 2022 application deadline nears.

The current situation for low-income tenants, and their landlords. More than two years after the COVID-19 crisis first hit California, millions of tenants owe money to their landlords for missed rent payments. According to the Census Bureau's Household Pulse Survey from March 2 – 14 of this year, over 1.3 million renters or about 14 percent of the state's tenants reported being behind on rent payments. Californians with unpaid rent overwhelmingly belong to lower-income households: more than 7 in 10 of those who owe money to their landlords have incomes below \$50,000. While many of these tenants have applied to receive rental assistance funds from ERAP, as mentioned above, a large number of applications are still pending review and approval.

If this bill is not enacted into law, tenants with ERAP applications still in process could be evicted on the basis of a three-day notice to pay rent that came due between March 1, 2020 and March 31, 2022—even if their landlords are later made whole when these tenants are later approved for rental assistance. However, preemption of local measures to enact COVID-19-related eviction protections will also expire on March 31. Cities and counties will be largely free to enact their own eviction protections, schedules for repayment of back rent, and so forth. These protections may be much stronger than those offered tenants under this bill, if for no other reason that they may cover a much broader group of tenants than those with pending ERAP applications. Many landlords may prefer to keep in place existing statewide landlord-tenant policies for an additional three months rather than deal with the uncertainties of what local tenant protections may offer.

Under the bill, how would eviction cases for nonpayment of rent function between April 1, 2022 – June 30, 2022? Under this bill, landlords may evict tenants who fail to pay rent due on April 1, 2022 or any date thereafter under pre-COVID unlawful detainer procedures—so long as their case is not based, in whole or in part, on unpaid rent due before that date.

However, if the unlawful detainer action *does* seek to collect rent that came due, in whole or in part, between March 1, 2020 and March 31, 2022, the following procedures will apply until July 1, 2022.

1. First, the landlord serves the tenant with a three-day notice demanding that the tenant pay rent or vacate.
 - a. If the landlord seeks to evict the tenant because of unpaid rent (or another financial obligation under the rental agreement) that came due between March 1, 2020 and September 30, 2021, the notice must include the following language required under the COVID-19 Tenant Relief Act, as amended by this bill:

NOTICE FROM THE STATE OF CALIFORNIA:

If: (1) Before October 1, 2021, you paid your landlord at least 25 percent of any rent you missed between September 1, 2020, and September 30, 2021, and you signed and returned on time any and all declarations of COVID-19 related financial distress that your landlord gave to you,

or

(2) You completed an application for government rental assistance on or before March 31, 2022,

You may have protections against eviction.

For information about legal resources that may be available to you, visit lawhelpca.org

- b. If the landlord seeks to collect unpaid rent (or another financial obligation under the rental agreement) that came due between October 1, 2021 and March 31, 2022, the notice must include the following language required under the COVID-19 Rental Housing Recovery Act, as amended by this bill:

NOTICE FROM THE STATE OF CALIFORNIA:

If you completed an application for government rental assistance on or before March 31, 2022, you may have protections against eviction.

For information about legal resources that may be available to you, visit lawhelpca.org.

If the tenant pays the demanded amount or vacates within three days, then the landlord need take no further action. If the tenant neither pays nor vacates, then the landlord proceeds to the next step.

2. Second, the landlord files a complaint for unlawful detainer (eviction) against the tenant in court. The court must determine whether to issue a summons, which will allow the case to proceed.

The court will issue a summons once **one** of the following conditions is met:

- a. The landlord has obtained a final decision from the pertinent government rental assistance program denying rental assistance for one of the following reasons: i. the tenant is not eligible for rental assistance, ii. the rental assistance program no longer has sufficient funds to approve the application, or iii. 15 days have passed since the landlord submitted a properly-completed application for rental assistance, and the tenant has not completed the portion of the application that is the tenant's responsibility.
 - b. The landlord files a statement under penalty of perjury that all of the following are true:
 - i. Before filing, the landlord completed an application for government rental assistance to cover the unpaid amounts.
 - ii. 20 days have passed since the later of the date the landlord submitted the application or the date on which the landlord served the tenant with a notice to pay rent or vacate.
 - iii. The landlord has not received any information that the tenant has completed an application for rental assistance.
 - c. The landlord files a statement under penalty of perjury that the tenancy began on or after October 1, 2021 (meaning the tenant was never eligible for eviction protections under AB 832).
 - d. The landlord files a statement under penalty of perjury that there is no determination pending on an application for government rental assistance, filed prior to April 1, 2022, that would cover any of the rental debt being sought.
3. Third, the landlord then serves the tenant with the summons, complaint, and the documents the landlord filed with the court to obtain the summons. Once served, the tenant has five court days to file an answer. If the tenant fails to answer, the landlord can ask the court to presume the tenant has no response (termed a "default.").
 4. Fourth, the landlord applies for a judgment for eviction, whether on default, at summary judgment, or after trial. Before it enters judgment, the court must first determine, after reviewing the pleadings and any evidence, that **one** of the following is true:
 - a. Before April 1, 2022, the landlord properly applied for rental assistance and the application was denied for one of the following reasons: i. the tenant was not eligible for rental assistance; ii. the rental assistance program no longer had sufficient funds to approve the application; or iii. 15 court days had passed since the landlord submitted a properly-completed application for rental assistance, and the tenant did not complete the portion of the application that was the tenant's responsibility.

- b. There is no determination pending on an application for government rental assistance, filed prior to April 1, 2022, that would cover any of the rental debt being sought.
5. Finally, once the court issues a judgment for eviction (and assuming it is not stayed under step 6, below), the sheriff will carry out the eviction by locking out the tenant and returning possession of the property to the landlord.
6. There is one final backstop against eviction for nonpayment in situations where rental assistance money is available to ensure the landlord receives full payment. At any time before lockout, a tenant can ask the court to halt the eviction if the tenant obtains approval of an application for assistance with some or all of the rental debt owed.

The tenant makes the request to halt the eviction by filing with the court either a copy of the final decision approving the application, or a property address and unique application number that enables the court to verify that the tenant has been approved. If the tenant makes such a filing, the court must set a hearing on the matter within five to ten days, stay (pause) the action if no judgment has yet been entered, and stay any writ of possession issued in the case, along with notifying the sheriff of the stay.

If, at the subsequent hearing, the tenant is able to pay the landlord the money owed, the court must set aside any judgment and dismiss the case. Alternatively, if, at the subsequent hearing, the court determines that the government rental assistance program had not yet issued its part of the payment, the court must set a follow-up hearing to be held in 15 court days. If the conditions for relief from forfeiture are not fulfilled, the court must dismiss the tenant's application.

Please note that these procedures are almost identical to those introduced by last year's AB 832 (Chiu, Chap. 27, Stats. 2021), which applies from October 1, 2021 until March 31, 2022.

On July 1, 2022, the procedures in this bill will no longer be in effect; instead, all pre-COVID unlawful detainer procedures in state law will be in full effect for all nonpayment of rent cases.

Author's amendments—urgency measure. The following amendments are necessary in order to ensure that this bill takes immediate effect upon enactment:

- In the title, in line 3, strike out “tenancy.” and insert “tenancy, and declaring the urgency thereof, to take effect immediately.”
- On page 18, below line 28, insert:

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address the hardships imposed by the COVID-19 pandemic on tenants and landlords in California as soon as possible, it is necessary that this act take immediate effect.

Pending and Prior Related Legislation: AB 3088 (Chiu, et al., Chap. 37, Stats. 2020) established protections for non-payment of rent due to COVID-19-related financial hardship, subject to numerous conditions, until January 31, 2021.

SB 91 (Budget, Chap. 2, Stats. 2021) extended and modified protections initially established under AB 3088, and established a government rental assistance program to help landlords and tenants address COVID-19 financial hardship.

AB 81 (Budget, Chap. 5, Stats. 2021) made technical and conforming changes to SB 91.

AB 832 (Chiu, Chap. 27, Stats. 2021) extended and modified residential eviction protections for tenants facing COVID-19-related financial hardship, revised certain aspects of the state's Emergency Rental Assistance Program, and established a process for connecting tenants with rental assistance funds and forestalling their eviction between October 1, 2021 and March 31, 2022.

SB 115 (Skinner, Chap. 2, Stats. 2022) authorized cash flow loans to the state Emergency Rental Assistance Program and to locally-administered rental assistance programs, with these loans to be paid back with federal funds for rental assistance reallocated to California from other jurisdictions. Requires the Department of Finance to forgive any amounts lent that are not covered by the federal reallocation.

SB 847 (Hurtado, 2022) would establish a framework, without appropriation, to provide grants to landlords who were unable to secure compensation through the ERAP, either because their tenants did not apply or did not qualify for emergency rental assistance.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

Analysis Prepared by: Jith Meganathan / JUD. / (916) 319-2334