

AMENDED IN SENATE JUNE 10, 2020

AMENDED IN ASSEMBLY MAY 16, 2019

AMENDED IN ASSEMBLY APRIL 25, 2019

AMENDED IN ASSEMBLY MARCH 27, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1436

**Introduced by Assembly Member ~~Mark Stone~~ Members *Chiu, Bonta, Gonzalez, Santiago, and Wicks*
(Coauthors: Assembly Members *Kalra, Nazarian, Quirk-Silva, and Luz Rivas*)
(Coauthors: Senators *Allen, Durazo, Wieckowski, and Wiener*)**

February 22, 2019

~~An act to amend Section 11451.5 of the Welfare and Institutions Code, relating to CalWORKs.~~ *An act to add Sections 1947.01, 1947.02, and 1947.03 to the Civil Code, and to add Section 1161.6 to the Code of Civil Procedure, relating to tenancy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1436, as amended, ~~Mark Stone~~ *Chiu*. ~~CalWORKs: eligibility: income exemptions.~~ *Tenancy: rental payment default: state of emergency: COVID-19.*

Existing law regulates specified terms and conditions of tenancies. Existing law authorizes a landlord to demand security at the beginning of a tenancy for residential property and specifies the purposes for which the security may be used, including, among others, compensating the landlord for the tenant's default in payment of rent.

This bill would prohibit a landlord from applying a security deposit or monthly rental payment for the satisfaction of an obligation other than the prospective month's rent if the obligation accrued during or within 90 days after the termination of a state of emergency related to COVID-19, except as specified. The bill would provide that a tenant who failed to pay rent that accrued during that period shall not be deemed to be in default and would prohibit any action for recovery of unpaid rent until 15 months after the state of emergency is terminated. The bill would prohibit certain entities, including a housing provider, from using an alleged default in rent that accrued during that period as a negative factor for the purpose of evaluating creditworthiness or for other specified purposes.

Existing law provides that a tenant is guilty of unlawful detainer if the tenant continues to possess the property without permission of the landlord after the tenant defaults on rent, among other reasons.

This bill would provide that a tenant is not guilty of unlawful detainer if the alleged default in payment of rent accrued during, or within 90 days after the termination of, a state of emergency related to COVID-19. The bill would require a landlord, in an action to recover a debt arising from an alleged default in rent accrued during that period to submit in the verified complaint or other document submitted under penalty of perjury the amount of any payments, mortgage forbearance, mortgage forgiveness, or property tax reduction obtained from the lender or local, state, or federal entities to offset, replace, or compensate the creditor for lost rental income, and would require a court to offset the amount of rental payments as specified.

~~Existing federal law provides for allocation of federal funds through the federal Temporary Assistance for Needy Families (TANF) block grant program to eligible states. Existing law provides for the California Work Opportunity and Responsibility to Kids (CalWORKs) program, under which, through a combination of state and county funds and federal funds received through the TANF program, each county provides cash assistance and other benefits to qualified low-income families. Existing law continuously appropriates money from the General Fund to pay for a share of aid grant costs under the CalWORKs program. Existing law exempts certain income from the calculation of the family's income for purposes of determining eligibility for the CalWORKs program, including disability-based unearned income, in accordance with specified provisions, depending upon whether or not that income exceeds \$225.~~

~~This bill would incrementally increase the above amounts of exempted income on an annual basis, commencing on January 1, 2020. The bill would declare that no appropriation would be made for purposes of the bill pursuant to the provision continuously appropriating funds for the CalWORKs program. Because the bill would result in an increase in CalWORKs eligibility, thus increasing the duties of counties administering the CalWORKs program, the bill would impose a state-mandated local program. The bill also would delete an obsolete provision of existing law.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes-no. State-mandated local program: yes-no.~~

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

- 1 SECTION 1. Section 1947.01 is added to the Civil Code,
- 2 immediately following Section 1947, to read:
- 3 1947.01. (a) Notwithstanding Sections 1947, 1950.5, or any
- 4 other law, a landlord shall not apply a security deposit or monthly
- 5 rental payment tendered by that tenant to a satisfaction of an
- 6 obligation other than the prospective month’s rent if the obligation
- 7 accrued during, or within 90 days after the termination of, a state
- 8 of emergency related to COVID-19, unless the payment or security
- 9 is specifically designated by the tenant in writing to be in
- 10 satisfaction of the obligation.
- 11 (b) Any stipulation, settlement agreement, or other agreement,
- 12 including a lease agreement, that conflicts with or purports to
- 13 waive the provisions of this section is prohibited and is void as
- 14 contrary to public policy.
- 15 (c) For purposes of this section, “state of emergency” means
- 16 a state of emergency officially declared by the state, including,
- 17 but not limited to, the state of emergency proclamation issued by
- 18 the Governor on March 4, 2020, or a local emergency declared
- 19 in the jurisdiction in which the property is located.

1 *SEC. 2. Section 1947.02 is added to the Civil Code, immediately*
2 *following Section 1947.01, to read:*

3 *1947.02. (a) (1) A tenant who failed to perform an obligation*
4 *to pay rent that accrued during, or within 90 days after the*
5 *termination of, a state of emergency related to COVID-19 shall*
6 *not be deemed to be in default of the obligation, and no action to*
7 *recover unpaid rent may be pursued, until 15 months after the*
8 *state or local state of emergency is lifted.*

9 *(2) For purposes of this section, “state of emergency” means*
10 *a state of emergency officially declared by the state, including,*
11 *but not limited to, the state of emergency proclamation issued by*
12 *the Governor on March 4, 2020, or a local emergency declared*
13 *in the jurisdiction in which the property is located.*

14 *(b) (1) Nothing in this section shall prohibit a landlord from*
15 *recovering unpaid rent by written agreement with the tenant,*
16 *provided that the agreement does not exceed the actual amount of*
17 *the debt, does not attorney’s fees or costs, late fees, penalties, or*
18 *interest related to the unpaid rent, and the debt is offset by the*
19 *amount of any payments, mortgage forbearance, mortgage*
20 *forgiveness, or property tax reduction obtained from local, state,*
21 *or federal entities that were provided to the landlord to offset,*
22 *replace, or compensate the landlord for decreased rental income*
23 *or provided as financial assistance intended to avoid foreclosure*
24 *of the subject property.*

25 *(2) The agreement shall not require the tenant to vacate the*
26 *premises as a condition of satisfying the unpaid rent obligation.*

27 *(3) A landlord shall notify the tenant in writing of their rights*
28 *under this section before the agreement is signed.*

29 *(4) Any agreement with a tenant regarding the payment of rent*
30 *shall be in writing and shall adhere to the requirements of Section*
31 *1632.*

32 *(c) A landlord shall not charge a tenant fees assessed for late*
33 *payment of rent that accrued during the state of emergency or*
34 *within 90 days thereafter, nor may the landlord charge fees to a*
35 *tenant for services previously provided by the landlord, as*
36 *compensation for purported damages for late payment of rent that*
37 *accrued during the state of emergency or within 90 days thereafter.*
38 *A landlord shall not provide different terms or conditions of*
39 *tenancy or withhold a service or amenity based on whether a tenant*
40 *repays or agrees to repay all or any portion of unpaid rent.*

1 (d) A landlord shall not harass, threaten, or seek to intimidate
2 a tenant in order to obtain a tenant's payment or agreement to
3 pay any portion of unpaid rent or to obtain a tenant's vacation of
4 the property because of a tenant's failure to pay rent.

5 (e) Any stipulation, settlement agreement, or other agreement,
6 including a lease agreement, that conflicts with or purports to
7 waive the provisions of this section is prohibited and is void as
8 contrary to public policy.

9 SEC. 3. Section 1947.03 is added to the Civil Code, immediately
10 following Section 1947.02, to read:

11 1947.03. (a) A housing provider, credit reporting agency,
12 tenant screening company, or other entity that evaluates tenants
13 on behalf of a housing provider shall not use an alleged default
14 in rent that accrued during, or within 90 days after the termination
15 of, a state of emergency related to COVID-19 as a negative factor
16 for the purpose of evaluating creditworthiness or as the basis for
17 a negative reference to a prospective housing provider, regardless
18 of whether a report is received alleging default in the payment of
19 rent.

20 (b) For purposes of this section, "state of emergency" means
21 a state of emergency officially declared by the state, including,
22 but not limited to, the state of emergency proclamation issued by
23 the Governor on March 4, 2020, or a local emergency declared
24 in the jurisdiction in which the property is located.

25 SEC. 4. Section 1161.6 is added to the Code of Civil Procedure,
26 immediately following Section 1161.5, to read:

27 1161.6. (a) Notwithstanding paragraph (2) of Section 1161,
28 a tenant is not guilty of unlawful detainer if the alleged default in
29 payment of rent accrued during, or within 90 days after the
30 termination of, a state of emergency related to COVID-19. Nothing
31 in this section shall prohibit a landlord from seeking to recover
32 unpaid rent through other civil remedies or by written agreement
33 with the tenant. It shall be unlawful to terminate a tenancy in
34 retaliation for a default in rent that is subject to this subdivision.
35 Any stipulation, settlement agreement, or other agreement,
36 including a lease agreement, that conflicts with or purports to
37 waive the provisions of this subdivision is prohibited and is void
38 as contrary to public policy.

39 (b) (1) In any action to recover a debt arising from an alleged
40 default in rent that accrued during, or within 90 days after the

1 termination of, a state of emergency related to COVID-19, the
2 creditor shall set forth in the verified complaint or other document
3 submitted under penalty of perjury the amount of any payments,
4 mortgage forbearance, mortgage forgiveness, or property tax
5 reduction during the relevant time period obtained from any local,
6 state, or federal entity that were provided to the landlord to offset,
7 replace, or compensate the landlord for decreased rental income
8 or provided as financial assistance intended to avoid foreclosure
9 of the subject property. In any judgment on the debt, the court
10 shall offset the amount of these payments by the portion of the
11 financial assistance fairly attributable to the rental unit in question.
12 The defendant may present evidence that the creditor received
13 relief designed to offset debt related to the rental unit in question,
14 and any agreement in satisfaction of such a debt shall be void if
15 it fails to account for receipt of payments described in this section.

16 (2) In any action described in subdivision (a), the creditor shall
17 not be entitled to recover fees assessed against a tenant for late
18 payment of rent.

19 (c) For purposes of this section, “state of emergency” means
20 a state of emergency officially declared by the state, including,
21 but not limited to, the state of emergency proclamation issued by
22 the Governor on March 4, 2020, or a local emergency declared
23 in the jurisdiction in which the property is located.

24 SEC. 5. The provisions of this bill are severable. If any
25 provision of this bill or its application is held invalid, that invalidity
26 shall not affect other provisions or applications that can be given
27 effect without the invalid provision or application.

28 SECTION 1. ~~Section 11451.5 of the Welfare and Institutions~~
29 ~~Code is amended to read:~~

30 ~~11451.5. (a) Except as provided in subdivision (c), the~~
31 ~~following income shall be exempt from the calculation of the~~
32 ~~income of the family for purposes of subdivision (a) of Section~~
33 ~~11450:~~

34 ~~(1) If disability-based unearned income does not exceed two~~
35 ~~hundred twenty-five dollars (\$225), both of the following amounts:~~

36 ~~(A) All disability-based unearned income, plus any amount of~~
37 ~~not otherwise exempt earned income equal to the amount of the~~
38 ~~difference between the amount of disability-based unearned income~~
39 ~~and two hundred twenty-five dollars (\$225).~~

1 ~~(B) Fifty percent of all not otherwise exempt earned income in~~
2 ~~excess of the amount applied to meet the differential applied in~~
3 ~~subparagraph (A).~~
4 ~~(2) If disability-based unearned income exceeds two hundred~~
5 ~~twenty-five dollars (\$225), both of the following amounts:~~
6 ~~(A) All of the first two hundred twenty-five dollars (\$225) in~~
7 ~~disability-based unearned income.~~
8 ~~(B) Fifty percent of all earned income.~~
9 ~~(b) For purposes of this section:~~
10 ~~(1) Earned income means gross income received as wages,~~
11 ~~salary, employer-provided sick leave benefits, commissions, or~~
12 ~~profits from activities such as a business enterprise or farming in~~
13 ~~which the recipient is engaged as a self-employed individual or as~~
14 ~~an employee.~~
15 ~~(2) Disability-based unearned income means state disability~~
16 ~~insurance benefits, private disability insurance benefits, temporary~~
17 ~~workers' compensation benefits, social security disability benefits,~~
18 ~~and any veteran's disability compensation.~~
19 ~~(3) Unearned income means any income not described in~~
20 ~~paragraph (1) or (2).~~
21 ~~(c) Each two-hundred-twenty-five-dollar (\$225) amount~~
22 ~~specified in paragraphs (1) and (2) of, and subparagraphs (A) of~~
23 ~~paragraphs (1) and (2) of, subdivision (a), shall be increased as~~
24 ~~follows:~~
25 ~~(1) Effective January 1, 2020, to five hundred dollars (\$500).~~
26 ~~(2) Effective January 1, 2021, to five hundred fifty dollars~~
27 ~~(\$550).~~
28 ~~(3) Effective January 1, 2022, and annually thereafter, to six~~
29 ~~hundred dollars (\$600). The amount of exempted income shall be~~
30 ~~increased on January 1 of each subsequent year by an amount equal~~
31 ~~to the increase in the California Necessities Index for the most~~
32 ~~recent fiscal year.~~
33 ~~SEC. 2. No appropriation pursuant to Section 15200 of the~~
34 ~~Welfare and Institutions Code shall be made for the purposes of~~
35 ~~this act.~~
36 ~~SEC. 3. If the Commission on State Mandates determines that~~
37 ~~this act contains costs mandated by the state, reimbursement to~~
38 ~~local agencies and school districts for those costs shall be made~~

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

O