

Legislative Analysis



LANDLORD/TENANT REVISIONS RE: UNLAWFUL INTERFERENCE

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House Bill 4613

Sponsor: Rep. Margaret E. O'Brien

Committee: Judiciary

Complete to 5-1-13

A SUMMARY OF HOUSE BILL 4613 AS INTRODUCED 4-24-13

House Bill 4613 would eliminate a provision that allows a tenant to sue a landlord up to one year after the discovery of damages relating to the forcible eviction or unlawful interference of the premises by the landlord. The bill would also establish certain conditions under which a landlord would not be liable in a civil action for damages if the landlord reentered and took possession of a rental unit after the tenant died.

Specifically, House Bill 4613 would amend Section 2918 of the Revised Judicature Act to revise a provision to shorten the statute of limitations for actions by a tenant to recover damages for forceful eviction or unlawful interference. Currently, an action to recover damages (for example, loss of property) under Section 2918 must be begun within one year from the time the cause of action arises (the date the landlord committed the forcible eviction or unlawful interference) or becomes known to the plaintiff. The underlined portion would be eliminated.

(Section 2918 also provides for a 90-day period for a tenant to file an action to regain possession of the premises if forcibly and unlawfully evicted or if the tenant's possessory interest was unlawfully interfered with; the 90-day period begins from the time the cause of action arises or becomes known to the plaintiff. That provision would not be amended.)

House Bill 4613 would also add to the circumstances under which a landlord could reenter and take possession of rental property without being subject to a lawsuit to address the issue of when and under which circumstances a landlord could regain possession of the rented premises and dispose of a tenant's property after the tenant died.

Under current law, a tenant whose possession of a rental unit has been unlawfully interfered with by the owner, lessor, licensor, or their agents (landlord) is entitled to recover the amount of actual damages or \$200, whichever is greater, in addition to regaining possession of the premises if they had been evicted or locked out. Actions by the landlord that constitute "unlawful interference" are contained in statute and include such things as removing or destroying the tenant's personal property; changing the locks on the doors; using force or threats of force; and introducing noise, odors, or other nuisances to drive out the tenant.

However, it is not unlawful interference if the landlord regained entry under a court order; interfered temporarily with possession in order to make needed repairs or inspections (if conducted according to law); or believed in good faith that the tenant had abandoned the premises, and, after diligent inquiry, had reason to believe the tenant did not intend to return and the current rent had not been paid.

The bill would amend these provisions to: (1) clarify that an owner's actions would not unlawfully interfere with a possessory interest of the tenant if any of the exceptions discussed above applied; and (2) add another exception. "Owner" would be defined under the bill to mean the owner, lessor, or licensor or his or her agent.

The new exception would apply to an owner who met all of the following requirements:

- The owner had informed the tenant in writing of the tenant's option to provide contact information for an authorized person the owner could contact in the event of the tenant's death. The owner would not be responsible for incorrect contact information provided by the tenant or for the tenant's failure to provide contact information.
- Current rent has not been paid.
- The owner believed in good faith that the tenant had been deceased for at least 18 days and that there was no surviving tenant.
- After the 18 days described above have been met, and not less than 10 days before the owner reenters to take possession of the premises and dispose of the property, each of the following occurs:
 - If the tenant had provided contact information, the owner makes a reasonable attempt to contact the authorized person using the contact information provided and to request the authorized person to open a probate estate for the tenant within 28 days after the tenant's death. The owner would not be responsible for the authorized person's failure to respond to the notification before the owner's reentry into the premises.
 - The owner places a notice on the door of the premises indicating the intent to reenter, take possession of the premises, and dispose of its contents after 10 days have elapsed.
 - The owner notifies the county public administrator (or the state public administrator if the county does not have one) that the owner believes that the tenant is deceased and he or she intends to reenter to take possession of the premises and dispose of the contents if a probate estate is not opened. Upon request by the public administrator before the 10-day period described above has elapsed and presentation to the owner of proper credentials and identification, the owner must give access to the premises

to the public administrator. The opening of a probate estate by a public administrator under this provision would be at the sole discretion and sole expense of the public administrator.

- A probate estate has not been opened for the deceased tenant by a public administrator, authorized contact person, or any other person in the county in which the premises are located and the owner has not been notified in writing of the existence of a probate estate opened in another county and of the name and address of the personal representative.

BACKGROUND INFORMATION:

The bill is similar to House Bills 5034 (2009-2010) and 4263 (2011-2012). House Bill 5034 was passed by the House of Representatives but failed to see Senate action and House Bill 4263 was ordered enrolled but subsequently pocket vetoed (meaning the governor did not sign the bill before the allotted time to do so expired).

FISCAL IMPACT:

A fiscal analysis is in process.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.