CITY OF OAKLAND

Agenda Memo

CITY HALL - ONE FRANK H. OGAWA PLAZA, 2ND FLOOR - OAKLAND - CALIFORNIA - 94612

FROM:

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TO: Rules and Legislation Committee

SUBJECT: Resolution in Support of AB 291 (Assemblymember Chiu) – Immigrant Tenant Protection

DATE: April 13, 2017

Dear Members of the Rules and Legislation Committee,

We respectfully ask you to adopt the following resolution:

RESOLUTION IN SUPPORT OF ASSEMBLY BILL 291 (ASSEMBLYMEMBER CHIU) THAT WILL PROVIDE PROTECTIONS TO CALIFORNIA RENTERS FROM INTIMIDATION AND RETALIATION IN THEIR HOMES AND FROM DEPORTATION THREATS.

Thank you!

Respectfully submitted,

Dan Kalb

Councilmember Kalb

Noel Gallo

Councilmember Gallo

Approved as to Form and Legality

City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBERS **KALB AND GALLO**

RESOLUTION IN SUPPORT OF ASSEMBLY BILL 291 (ASSEMBLYMEMBER CHIU) THAT WILL PROVIDE PROTECTIONS TO CALIFORNIA RENTERS FROM INTIMIDATION AND RETALIATION IN THEIR HOMES AND FROM DEPORTATION THREATS.

WHEREAS, advocates for immigrants and tenants and legal aid organizations that serve those communities contend that discrimination, retaliation, and harassment based on immigration or citizenship status (including perceived status) is a difficult and persistent problem for the immigrant community in California—most of whom rent from landlords rather than own their own homes; and

WHEREAS, in recent years, the Legislature has enacted strong protections against immigration status threats in the workplace and it is timely to provide tenants the same protections in their homes; and

WHEREAS, landlords learn a lot about tenants including their social security numbers, the languages they speak, the times they're at home, and the identities of their families and tenants have little protection against misuse of this information; and

WHEREAS, while the majority of landlords are law-abiding, some less scrupulous landlords seek to avoid their legal obligations by threatening to report tenants to immigration authorities; and

WHEREAS, in some cases those threats are made to retaliate against tenants for reporting habitability issues and safety concerns, such as exposed electrical wiring and vermin, which landlords are legally required to remedy. In other cases, it's to avoid the statutory eviction process, which ensures due process for tenants at risk of losing their homes.

WHEREAS, in rent-stabilised units long-time tenants are targeted for eviction based on their suspected immigration status; and

WHEREAS, co-sponsored by the Western Center on Law and Poverty and the California Rural Legal Assistance Foundation, AB 291 would enact the Immigrant Tenant Protection Act of 2017—a comprehensive act to establish numerous legal protections against the disclosure of tenants' immigration or citizenship status to federal immigration authorities and other parties; now, therefore, be it

RESOLVED: That the Oakland City Council supports Assembly Bill (AB) 291 (Chiu), state legislation that proposes many safeguards against potential harassment, retaliation, or discrimination against tenants based on their immigration or citizenship status, real or perceived; and, be it

FURTHER RESOLVED: That the City Administrator is directed to forward a copy of this enacted Resolution to state legislative elected officials representing Oakland, Governor Jerry Brown, and to the lobbyist for the City of Oakland to advocate for passage of AB 291.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN, AND PRESIDENT REID

NOES –

ABSENT –

ABSTENTION –

ATTEST:_____

LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California

2113442

AMENDED IN ASSEMBLY MARCH 15, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL No. 291

Introduced by Assembly Members Chiu, Bonta, Gonzalez Fletcher, and Kalra
(Principal coauthor: Senator Wiener)
(Coauthors: Assembly Members Bloom, Chu, Eduardo Garcia, ~~Ting, Mullin, and Santiago~~ *Mullin, Santiago, and Ting*)
(Coauthor: Senator Allen)

February 2, 2017

An act to amend Section 6103.7 of the Business and Professions Code, to amend Sections 1940.2, 1940.3, *and* 1942.5 of, and to add Sections 1940.35 and 3339.10 to, the Civil Code, and to add Section 1161.4 to the Code of Civil Procedure, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 291, as amended, Chiu. Housing: immigration.

(1) Existing law, the State Bar Act, makes it a cause for suspension, disbarment, or other discipline for any member of the State Bar to report suspected immigration status or threaten to report suspected immigration status of a witness or party to a civil or administrative action or his or her family member, as defined, to a federal, state, or local agency because the witness or party exercises or has exercised a right related to his or her employment.

This bill would expand that provision to make it a cause for suspension, disbarment, or other discipline for a member of the State Bar to report suspected immigration status or threaten to report suspected immigration status of a witness or party to a civil or administrative action or his or her family member, as defined, to a federal, state, or

local agency because the witness or party exercises or has exercised a right related to the hiring of residential real property.

(2) Existing law provides that a tenant of real property, property for a term less than life, or the executor of his or her estate, is guilty of unlawful detainer if, among other things, he or she continues in possession, in person or by subtenant, of the property or any part of the property, after the expiration of the term for which it is let to him or her, except as specified. Existing law authorizes a tenant of residential real property to assert as an affirmative defense in an unlawful detainer action based upon a default in the payment of rent that the lessor failed to comply with certain requirements relating to the safety and habitability of the dwelling.

This bill would prohibit a lessor from ~~serving a notice to quit the property or from initiating an unlawful detainer action on the basis~~ *causing a tenant or occupant to quit involuntarily or bring an action to recover possession because* of the immigration or citizenship status or perceived immigration or citizenship status of a tenant, occupant, or other person known to *the lessor to be associated with* a tenant or occupant. The bill would authorize a tenant to assert as an affirmative defense in an unlawful detainer action that a lessor violated this provision. The bill would also establish a rebuttable presumption that an affirmative defense is successful if the lessor filed an unlawful detainer action after taking one of 2 actions after the tenancy that is at issue commenced.

(3) Existing law makes it unlawful for a lessor to engage in specified activities for the purpose of influencing a lessee to vacate a dwelling, including using, or threatening to use, force, willful threats, or menacing conduct that interferes with the tenant's quiet enjoyment of the premises and that would create an apprehension of harm in a reasonable person.

This bill would also prohibit a lessor from threatening to disclose information regarding or relating to the *immigration status or citizenship status or* perceived immigration or citizenship status of a tenant, occupant, or other person associated with a tenant or occupant for the purpose of influencing a tenant to vacate a dwelling.

(4) Existing law prohibits a lessor, or an agent of a lessor, from making any inquiry regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant, or prospective occupant of residential real property, or from requiring a tenant, prospective tenant, occupant, or prospective occupant of the rental property make any statement, representation, or certification concerning his or her

immigration or citizenship status. *Existing law provides that the prohibitions described above do not prohibit a lessor from complying with any legal obligation under federal law.*

This bill would also prohibit a lessor, or an agent of a lessor, from disclosing to any person or entity information regarding or relating to the immigration or citizenship status of any tenant, prospective tenant, occupant, or prospective occupant of the rental property. *The bill would provide that the prohibitions described above do not prohibit a lessor from complying with any legal obligation under a subpoena, warrant, or other order issued by a court.*

This bill would make it unlawful for a lessor to *willfully, recklessly, or intentionally* disclose the immigration or citizenship status or perceived immigration or citizenship status of any tenant, occupant, or other person known to *the lessor to be associated with* a tenant or ~~occupant~~ *occupant, as provided,* to any immigration authority, law enforcement agency, or other local, state, or federal agency, unless the lessor ~~makes that disclosure or engages in conduct at the express and specific direction or request of the federal government.~~ *is complying with any legal obligation under federal law, or a subpoena, warrant, or order issued by a court.* The bill would require a court to order a lessor to pay specified civil penalties in the event of a violation of ~~this section~~ *these provisions* to the tenant, and to ~~the Equal Access Fund,~~ *issue injunctive relief to prevent the lessor from engaging in similar conduct in the future,* and would require the court to notify the district attorney of the county in which the real property for hire at issue was located of a potential violation of specified laws relating to extortion. The bill would also require a court to award attorney fees and costs to the prevailing party in an action under these provisions. *The bill would prohibit a tenant, occupant, or person known to the landlord to be associated with a tenant or occupant, from waiving his or her rights under these provisions. The bill would authorize a nonprofit organization exempt from federal income taxation to bring an action for injunctive relief under these provisions.*

(5) Existing law provides that, if a lessor retaliates against a lessee of a dwelling for exercising his or her rights or because of a complaint to an appropriate agency as to tenantability and if the lessee is not in default as to the payment of rent, the lessor may not recover possession, cause the lessee to quit involuntarily, increase the rent, or decrease any services within 180 days of the occurrence of specified events.

~~This bill, in addition, would prohibit a lessor that has retaliated against a lessee as described above, from reporting the lessee or individuals associated with the lessee to immigration authorities, serving a notice to cure or a notice to quit based on immigration or citizenship status or perceived immigration or citizenship status, or threatening to do any of those acts within 180 days of the occurrence of specified events.~~

This bill would provide that a lessor would violate that prohibition if the lessor reported, or threatened to report, the lessee, or individuals known to the lessor to be associated with the lessee, to immigration authorities.

(6) Existing law prohibits a lessor from retaliating against a lessee because he or she has lawfully organized or participated in a lessees' association or an organization advocating lessees' rights or has lawfully and peaceably exercised any rights under the law by increasing rent, decreasing services, causing a lessee to quit involuntarily, bringing an action to recover possession, or from threatening to do any of those acts.

~~This bill, in addition, would prohibit a lessor from retaliating against a lessee for the reasons described above by reporting the lessee or individuals associated with the lessee to immigration authorities, serving a notice to cure or a notice to quit based on immigration or citizenship status or perceived immigration or citizenship status, or threatening to do any of those acts.~~

This bill would provide that a lessor would violate that prohibition if the lessor reported, or threatened to report, the lessee, or individuals known to the lessor to be associated with the lessee, to immigration authorities.

(7) Existing law declares that all protections, rights, and remedies available under state law are available to all individuals in the state who have applied for employment or are employed, regardless of immigration status, as specified. Existing law also declares, for the purposes of enforcing state labor, employment, civil rights, and employee housing laws, that a person's immigration status is irrelevant to the issue of liability and that discovery into a person's immigration status is prohibited unless the person seeking to make the inquiry has shown by clear and convincing evidence that the inquiry is necessary to comply with federal immigration law. Existing law also provides that the immigration status of a minor child seeking recovery under any applicable law is irrelevant to the issues of liability or remedy and would

prohibit discovery or other inquiry in a civil action or proceeding into a minor child's immigration status, with specified exceptions.

This bill would declare that the immigration or citizenship status of any person is irrelevant to any issue of liability or remedy under specified provisions of law relating to the rights of tenants, and would prohibit inquiry being made in a civil action initiated to enforce those laws into a person's immigration or citizenship status unless 2 exceptions to that prohibition apply.

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

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

SECTION 1. Section 6103.7 of the Business and Professions Code is amended to read:

6103.7. It is cause for suspension, disbarment, or other discipline for any member of the State Bar to report suspected immigration status or threaten to report suspected immigration status of a witness or party to a civil or administrative action or his or her family member to a federal, state, or local agency because the witness or party exercises or has exercised a right related to his or her employment or hiring of residential real property, broadly interpreted. As used in this section, "family member" means a spouse, parent, sibling, child, uncle, aunt, niece, nephew, cousin, grandparent, or grandchild related by blood, adoption, marriage, or domestic partnership.

SEC. 2. Section 1940.2 of the Civil Code is amended to read:

1940.2. (a) It is unlawful for a landlord to do any of the following for the purpose of influencing a tenant to vacate a dwelling:

(1) Engage in conduct that violates subdivision (a) of Section 484 of the Penal Code.

(2) Engage in conduct that violates Section 518 of the Penal Code.

(3) Use, or threaten to use, force, willful threats, or menacing conduct constituting a course of conduct that interferes with the tenant's quiet enjoyment of the premises in violation of Section 1927 that would create an apprehension of harm in a reasonable person. Nothing in this paragraph requires a tenant to be actually or constructively evicted in order to obtain relief.

(4) Commit a significant and intentional violation of Section 1954.

(5) Threaten to disclose information regarding or relating to the *immigration or citizenship status or* perceived immigration or citizenship status of a tenant, occupant, or other person associated with a tenant or occupant. This paragraph does not require a tenant to be actually or constructively evicted in order to obtain relief.

(b) A tenant who prevails in a civil action, including an action in small claims court, to enforce his or her rights under this section is entitled to a civil penalty in an amount not to exceed two thousand dollars ($2,000) for each violation.

(c) An oral or written warning notice, given in good faith, regarding conduct by a tenant, occupant, or guest that violates, may violate, or violated the applicable rental agreement, rules, regulations, lease, or laws, is not a violation of this section. An oral or written explanation of the rental agreement, rules, regulations, lease, or laws given in the normal course of business is not a violation of this section.

(d) This section does not enlarge or diminish a landlord's right to terminate a tenancy pursuant to existing state or local law; nor does this section enlarge or diminish any ability of local government to regulate or enforce a prohibition against a landlord's harassment of a tenant.

SEC. 3. Section 1940.3 of the Civil Code is amended to read:

1940.3. (a) A city, county, or city and county shall not, by statute, ordinance, or regulation, or by administrative action implementing any statute, ordinance, or regulation, compel a landlord or any agent of the landlord to make any inquiry, compile, disclose, report, or provide any information, prohibit offering or continuing to offer, accommodations in the property for rent or lease, or otherwise take any action regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant, or prospective occupant of residential rental property.

(b) A landlord, or any agent of the landlord, shall not do any of the following:

(1) Make any inquiry regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant, or prospective occupant of residential rental property.

(2) Require that any tenant, prospective tenant, occupant, or prospective occupant of the rental property make any statement,

representation, or certification concerning his or her immigration or citizenship status.

(3) Disclose to any person or entity information regarding or relating to the immigration or citizenship status or perceived immigration or citizenship status of any tenant, prospective tenant, occupant, or prospective occupant of the rental property.

(c) This section does not prohibit a landlord from ~~either:~~ *doing any of the following:*

(1) Complying with any legal obligation under federal ~~law.~~ *law, or a subpoena, warrant, or other order issued by a court.*

(2) Requesting information or documentation necessary to determine or verify the financial qualifications of a prospective tenant, or to determine or verify the identity of a prospective tenant or prospective occupant.

SEC. 4. Section 1940.35 is added to the Civil Code, immediately ~~to follow~~ *following Section* 1940.3, to read:

1940.35. (a) It is unlawful for a landlord to *willfully, recklessly, or intentionally* disclose the immigration or citizenship status or perceived immigration or citizenship status of any tenant, occupant, or other person known to *the landlord to be associated with* a tenant or ~~occupant~~ *occupant, irrespective of whether the tenant or occupant currently resides in the dwelling,* to any immigration authority, law enforcement agency, or local, state, or federal agency.

(b) If a court of applicable jurisdiction finds a violation of this section in a proceeding initiated by a party or upon a motion of the court, the court shall do all of the following:

(1) ~~Order~~ *For each person whose status was so disclosed, order* the landlord to pay *statutory* damages in the amount of ~~six~~ *12* times the monthly rent charged for the dwelling in which the tenant or occupant resides or resided.

~~(2) Order the landlord to pay a fine to the Equal Access Fund administered by the Judicial Council in the amount of six times the monthly rent charged for the dwelling in which the tenant or occupant resides or resided.~~

(2) Issue injunctive relief to prevent the landlord from engaging in similar conduct with respect to other tenants, occupants, and persons known to the landlord to be associated with the tenants or occupants.

(3) Notify the district attorney of the county in which the real property for hire is located of a potential violation of Section 519 of the Penal Code.

(c) A landlord is not in violation of this section if he or she ~~engages in conduct at the express and specific direction or request of the federal government.~~ *is complying with any legal obligation under federal law, or subpoena, warrant, or order issued by a court.*

(d) In making findings in a proceeding under this section, a court may take judicial notice under subdivision (d) of Section 452 of the Evidence Code of the proceedings and records of any federal removal, inadmissibility, or deportation proceeding.

(e) A court shall award to the prevailing party in an action under this section attorney's fees and costs.

(f) The remedies provided by this section shall be in addition to any other remedies provided by statutory or decisional law.

(g) Any waiver of a right under this section by a tenant, occupant, or person known to the landlord to be associated with a tenant or occupant shall be void as a matter of public policy.

(h) An action for injunctive relief pursuant to this section may be brought by a nonprofit organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, as amended. That organization shall be considered a party for purposes of this section.

SEC. 5. Section 1942.5 of the Civil Code is amended to read:

1942.5. (a) If the lessor retaliates against the lessee because of the exercise by the lessee of his or her rights under this chapter or because of his complaint to an appropriate agency as to tenantability of a dwelling, and if the lessee of a dwelling is not in default as to the payment of his or her rent, the lessor may not ~~report the lessee or individuals associated with the lessee to immigration authorities, serve a notice to cure or a notice to quit based on immigration or citizenship status or perceived immigration or citizenship status, or threaten to do any of those acts,~~ recover possession of a dwelling in any action or proceeding, cause the lessee to quit involuntarily, increase the rent, or decrease any services within 180 days of any of the following:

(1) After the date upon which the lessee, in good faith, has given notice pursuant to Section 1942, has provided notice of a suspected

bed bug infestation, or has made an oral complaint to the lessor regarding tenantability.

(2) After the date upon which the lessee, in good faith, has filed a written complaint, or an oral complaint which is registered or otherwise recorded in writing, with an appropriate agency, of which the lessor has notice, for the purpose of obtaining correction of a condition relating to tenantability.

(3) After the date of an inspection or issuance of a citation, resulting from a complaint described in paragraph (2) of which the lessor did not have notice.

(4) After the filing of appropriate documents commencing a judicial or arbitration proceeding involving the issue of tenantability.

(5) After entry of judgment or the signing of an arbitration award, if any, when in the judicial proceeding or arbitration the issue of tenantability is determined adversely to the lessor.

In each instance, the 180-day period shall run from the latest applicable date referred to in paragraphs (1) to (5), inclusive.

(b) A lessee may not invoke subdivision (a) more than once in any 12-month period.

(c) To report, or to threaten to report, the lessee or individuals known to the landlord to be associated with the lessee to immigration authorities is a form of retaliatory conduct prohibited under subdivision (a). This subdivision shall in no way limit the definition of retaliatory conduct prohibited under this section.

~~(c)~~

(d) Notwithstanding subdivision (a), it is unlawful for a lessor to increase rent, decrease services, cause a lessee to quit involuntarily, bring an action to recover possession, ~~report the lessee or individuals associated with the lessee to immigration authorities, serve a notice to cure or a notice to quit based on immigration or citizenship status or perceived immigration or citizenship status,~~ or threaten to do any of those acts, for the purpose of retaliating against the lessee because he or she has lawfully organized or participated in a lessees' association or an organization advocating lessees' rights or has lawfully and peaceably exercised any rights under the law. In an action brought by or against the lessee pursuant to this subdivision, the lessee shall bear the burden of producing evidence that the lessor's conduct was, in fact, retaliatory.

(e) To report, or to threaten to report, the lessee or individuals known to the landlord to be associated with the lessee to immigration authorities is a form of retaliatory conduct prohibited under subdivision (d). This subdivision shall in no way limit the definition of retaliatory conduct prohibited under this section.

~~(d)~~

(f) This section does not limit in any way the exercise by the lessor of his or her rights under any lease or agreement or any law pertaining to the hiring of property or his or her right to do any of the acts described in subdivision (a) or ~~(c)~~ *(d)* for any lawful cause. Any waiver by a lessee of his or her rights under this section is void as contrary to public policy.

~~(e)~~

(g) Notwithstanding subdivisions (a) to ~~(d),~~ *(f),* inclusive, a lessor may recover possession of a dwelling and do any of the other acts described in subdivision (a) within the period or periods prescribed therein, or within subdivision ~~(c),~~ *(d),* if the notice of termination, rent increase, or other act, and any pleading or statement of issues in an arbitration, if any, states the ground upon which the lessor, in good faith, seeks to recover possession, increase rent, or do any of the other acts described in subdivision (a) or ~~(c).~~ *(d).* If the statement is controverted, the lessor shall establish its truth at the trial or other hearing.

~~(f)~~

(h) Any lessor or agent of a lessor who violates this section shall be liable to the lessee in a civil action for all of the following:

(1) The actual damages sustained by the lessee.

(2) Punitive damages in an amount of not less than one hundred dollars ($100) nor more than two thousand dollars ($2,000) for each retaliatory act where the lessor or agent has been guilty of fraud, oppression, or malice with respect to that act.

~~(g)~~

(i) In any action brought for damages for retaliatory eviction, the court shall award reasonable attorney's fees to the prevailing party if either party requests attorney's fees upon the initiation of the action.

~~(h)~~

(j) The remedies provided by this section shall be in addition to any other remedies provided by statutory or decisional law.

SEC. 6. Section 3339.10 is added to the Civil Code, to read:

3339.10. (a) The immigration or citizenship status of any person is irrelevant to any issue of liability or remedy under Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3, Chapter 2 (commencing with Section 789) of Title 2 of Part 2 of Division 2 of this code, or under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, or in any civil action involving a tenant's housing rights.

(b) (1) In proceedings or discovery undertaken in a civil action to enforce Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3, Chapter 2 (commencing with Section 789) of Title 2 of Part 2 of Division 2 of this code, or under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, or in any civil action involving a tenant's housing rights, no inquiry shall be permitted into a person's immigration or citizenship status, except as follows:

(A) The tenant's claims or defenses raised place the person's immigration or citizenship status directly in contention.

(B) The person seeking to make this inquiry demonstrates by clear and convincing evidence that this inquiry is necessary in order to comply with federal immigration law.

(2) The assertion of an affirmative defense to an unlawful detainer action under Section 1161.4 of the Code of Civil Procedure does not constitute cause under this subdivision for discovery or other inquiry into that person's immigration or citizenship status.

SEC. 7. Section 1161.4 is added to the Code of Civil Procedure, to read:

1161.4. (a) A landlord shall not ~~serve notice to quit the property or initiate an unlawful detainer action on the basis of~~ *cause a tenant or occupant to quit involuntarily or bring an action to recover possession because of* the immigration or citizenship status or perceived immigration or citizenship status of a tenant, occupant, or other person known to *the landlord to be associated with* a tenant or occupant.

(b) In an unlawful detainer action, a tenant may raise, as an affirmative defense, that the landlord violated subdivision (a).

(c) It is a rebuttable presumption that a tenant has established an affirmative defense under this section in an unlawful detainer action if the landlord did ~~either~~ *one* of the following after the tenancy had commenced:

(1) Used a social security number or other information or documentation to request a consumer credit report under Section 1785.11 of the Civil Code regarding a tenant or occupant ~~that~~ *who* is the subject of the unlawful detainer action.

(2) Used information or documentation to verify the identity of a tenant or occupant *who* is the subject of the unlawful detainer action.

O

Date of Hearing: March 21, 2017

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
AB 291 (Chiu) – As Amended March 15, 2017

As Proposed to be Amended

SUBJECT: HOUSING: IMMIGRATION

KEY ISSUE: SHOULD STRONGER LEGAL PROTECTIONS BE ENACTED TO PROTECT TENANTS FROM THE ACTIONS OF UNSCRUPULOUS LANDLORDS WHO MAY DISCLOSE, OR THREATEN TO DISCLOSE, TENANTS' IMMIGRATION OR CITIZENSHIP STATUS TO FEDERAL AUTHORITIES OR OTHER PARTIES AS PART OF A PATTERN OF POTENTIAL HARASSMENT, RETALIATION, OR DISCRIMINATION BASED ON IMMIGRATION OR CITIZENSHIP STATUS, WHETHER REAL OR PERCEIVED?

SYNOPSIS

Advocates for immigrants and tenants and legal aid organizations that serve those communities contend that discrimination, retaliation, and harassment based on immigration or citizenship status (including perceived status) is a difficult and persistent problem for the immigrant community in California—most of whom rent from landlords rather than own their own homes. Reports of unscrupulous landlords threatening to "call ICE" (i.e. notify federal immigration authorities) on tenants who they know or suspect to be undocumented are commonplace, and these advocates observe that such threats are often used as part of a pattern of potential harassment that is designed to discourage tenants from making complaints about habitability or safety concerns of a property, or coerce tenants to vacate a property in the hopes of bypassing the statutory eviction process that affords due process rights to tenants. These advocates report that the problem appears to be growing after the election of President Trump, who has signaled his support for mass deportation of undocumented immigrants and harsh, anti-immigrant federal policies.

This bill, co-sponsored by the Western Center on Law and Poverty and the California Rural Legal Assistance Foundation, would enact the Immigrant Tenant Protection Act of 2017—a comprehensive act to establish numerous legal protections against the disclosure of tenants' immigration or citizenship status to federal immigration authorities and other parties. The bill proposes many safeguards against potential harassment, retaliation, or discrimination against tenants based on their immigration or citizenship status, real or perceived. Among other things, the bill prohibits landlords from threatening to report tenants to immigration authorities, whether in retaliation for engaging in legally protected activities, or to influence them to vacate their homes. The bill prohibits landlords from disclosing information relating to tenants' immigration status, and enables tenants to sue landlords for reporting them to immigration officials. In addition, the bill prohibits attorneys from reporting, or threatening to report, the immigration status of persons involved in housing cases, and prohibits inquiry about tenants' immigration status in discovery or at trial in certain types of civil cases, with limited exceptions. Finally, the bill codifies an affirmative defense to unlawful evictions based on immigration status—unlawful because such evictions violate the Unruh Civil Rights Act's ban on discrimination by all public accommodations. Proposed amendments to the bill clarify the

author's intent to prohibit disclosure of immigration status and related information in order to regulate conduct that may be harassing, intimidating, retaliatory, and/or prohibited by law. Additional author's amendments are technical and conforming in nature, including amendments to reflect the approach taken in the Unruh Act to equate discrimination based on immigration status with discrimination based on perceived immigration status.

Some apartment associations, including the California Apartment Association and the San Diego County Apartment Association, have taken a Support if Amended position on the bill. They express concern about provisions that create a rebuttable presumption that the affirmative defense to eviction has been established if, after the tenancy has commenced, the landlord either runs a credit check or requests to verify identification of the tenant. Proponents of the bill contend that evidence shows that landlords often do these things as a pretense for subsequent eviction of tenants based upon immigration status, while apartment associations and the Realtors contend that there are several legitimate reasons why a landlord would do this in the normal course of business without regard to the tenant's immigration status. Other apartment associations, as well as the California Realtors Association, oppose the bill outright or oppose it unless it is amended. They express additional concerns that the stiff penalties proposed by the bill that are intended to deter landlords from disclosing immigration status to immigration authorities are unreasonable and represent an unfair target against landlords and property owners. Should this bill be approved by this Committee, it will next be referred to the Assembly Privacy Committee.

SUMMARY: Enacts the Immigrant Tenant Protection Act of 2017, to establish various protections and safeguards against the unauthorized disclosure of tenants' immigration or citizenship status to federal immigration authorities or other parties, as well as potential harassment, retaliation, or discrimination against tenants based on their immigration or citizenship status, or perceived immigration or citizenship status. Specifically, **this bill**:

1) Prohibits a landlord from threatening to disclose information regarding or relating to the immigration or citizenship status of a tenant, occupant, or other person known to the landlord to be associated with a tenant or occupant, for the purpose of influencing a tenant to vacate a dwelling.

2) Prohibits a landlord from disclosing to any person or entity information regarding or relating to the immigration or citizenship status of any tenant, prospective tenant, occupant, or prospective occupant of the rental property, for the purpose of, or with the intent of: (a) harassing or intimidating a tenant, prospective tenant, occupant, or prospective occupant; (b) retaliating against a tenant or occupant for the exercise of his or her rights; (c) influencing a tenant or occupant to vacate a dwelling; or (d) recovering possession of the dwelling.

3) Prohibits a landlord from disclosing to any immigration authority, law enforcement agency, or local, state, or federal agency information regarding or relating to the immigration or citizenship status of any tenant, occupant, or other person known to the landlord to be associated with a tenant or occupant, irrespective of whether the tenant or occupant currently resides in the dwelling, if the disclosure is for the purpose of, or with the intent of: (a) harassing or intimidating a tenant or occupant; (b) retaliating against a tenant or occupant for the exercise of his or her rights; (c) influencing a tenant or occupant to vacate a dwelling, or (d) recovering possession of the dwelling.

4) Enables any person to file suit to enforce violations of 3) above, and requires the court, if it finds such a violation, to do all of the following:

   a) Order the landlord to pay statutory damages in the amount of 12 times the monthly rent charged for the dwelling in which the tenant or occupant resides or resided, for each person whose status was so disclosed.

   b) Issue injunctive relief to prevent the landlord from engaging in similar conduct with respect to other tenants, occupants, and persons known to the landlord to be associated with the tenants or occupants.

   c) Notify the district attorney of the county in which the real property for hire is located of a potential violation of Section 519 of the Penal Code (prohibiting extortion.)

5) Provides that a landlord is not in violation of either 2) or 3) above, if he or she is complying with any legal obligation under federal law, or a subpoena, warrant, or other order issued by a court.

6) Allows a 501(c)(3) exempt nonprofit organization to have standing to bring an action for injunctive relief to enforce violations of 3) above, and requires an award of attorney's fees and costs to the prevailing party in any such action.

7) Provides that if a tenant makes a complaint about the tenantability of the rental property, then it is a prohibited form of retaliatory conduct for the landlord to report, or to threaten to report, the tenant or individuals known to the landlord to be associated with the tenant to immigration authorities.

8) Provides that if a tenant has lawfully organized or participated in a lessees' association or an organization advocating lessees' rights, or has lawfully and peaceably exercised any rights under the law, then it is a prohibited form of retaliatory conduct for the landlord to report, or to threaten to report, the tenant or individuals known to the landlord to be associated with the tenant to immigration authorities.

9) Codifies an existing defense to eviction by allowing a tenant to raise the affirmative defense that the unlawful detainer (UD) action is impermissibly based upon the immigration or citizenship status or perceived immigration or citizenship status of a tenant, occupant, or other person known to the landlord to be associated with a tenant or occupant.

10) Provides that it is a rebuttable presumption that a tenant has established the affirmative defense in 9) above, if the landlord did either one of the following after the tenancy had commenced: (a) used a social security number or other information or documentation to request a consumer credit report under Section 1785.11 of the Civil Code regarding a tenant or occupant who is the subject of the UD action; or (b) used information or documentation to verify the identity of a tenant or occupant who is the subject of the UD action.

11) Provides that in specified types of civil actions relating to unlawful detainer and housing rights, the immigration or citizenship status of any person is irrelevant to any issue of liability or remedy, and no inquiry into a person's immigration or citizenship status shall be permitted, except as specified.

12) Prohibits attorneys from reporting suspected immigration status or threatening to report suspected immigration status of a witness or party to a civil or administrative action or his or her family member to a federal, state, or local agency because that person exercised a right related to renting residential property. Subjects the attorney to suspension, disbarment, or other professional discipline for violations of this rule.

13) Provides that, as used in this bill, the term "immigration or citizenship status" includes a perception that the person has a particular immigration status or citizenship status, or that the person is associated with a person who has, or is perceived to have, a particular immigration status or citizenship status (i.e. also includes "perceived immigration or citizenship status.")

EXISTING LAW:

1) Provides under the Unruh Civil Rights Act that all persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever and prohibits other arbitrary discrimination. Further clarifies the protection against discrimination extends to a perception that the person has any particular characteristic or characteristics within the listed categories. (Civil Code Section 51, subd. (b) and (g). All further references are to this code unless otherwise stated.)

2) Provides under the Fair Employment and Housing Act that it is unlawful to discriminate or harass any person with respect to housing because of the race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability of that person. (Government Code Section 12955 (a).)

3) Prohibits a landlord from various forms of conduct for the purpose of influencing a tenant to vacate a dwelling, including but not limited to:

   a) Extortion, pursuant to Section 518 of the Penal Code.

   b) Using, or threatening to use, force, willful threats, or menacing conduct constituting a course of conduct that interferes with the tenant's quiet enjoyment of the premises that would create an apprehension of harm in a reasonable person. (Section 1940.2 (a).)

4) Prohibits a landlord or the landlord's agent from doing any of the following:

   a) Making any inquiry regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant, or prospective occupant of residential rental property.

   b) Requiring that any tenant, prospective tenant, occupant, or prospective occupant of the rental property make any statement, representation, or certification concerning his or her immigration or citizenship status. (Section 1940.3 (b).)

5) Provides that nothing in 4) above, shall prohibit a landlord from either complying with any legal obligation under federal law, or from requesting information or documentation necessary to determine or verify the financial qualifications of a prospective tenant, or to

determine or verify the identity of a prospective tenant or prospective occupant. (Section 1940.3 (c).)

6) Provides that a landlord may not increase rent, decrease services, or terminate a tenancy within 180 days of the tenant making a complaint about habitability if the landlord is retaliating against a tenant and if the tenant is not in default of the rent. (Section 1942.5 (a).)

7) Prohibits a landlord from increasing rent, decreasing services, causing a tenant to quit involuntarily, bringing an action to recover possession, or threatening to do any of those acts, for the purpose of retaliating against the tenant because he or she has lawfully organized or participated in a tenants' association or an organization advocating tenants' rights, or has lawfully and peaceably exercised any rights under the law. (Section 1942.5 (c).)

8) Prohibits an employer or any other person or entity to engage in, or to direct another person or entity to engage in, unfair immigration-related practices against any person for the purpose of, or with the intent of, retaliating against any person for exercising any right protected under the Labor Code or by any local ordinance applicable to employees. Further provides that "unfair immigration-related practice" in this context includes threatening to contact or contacting immigration authorities, or filing or threatening to file a false report or complaint with any state or federal agency. (Labor Code Section 1019.)

9) Provides that in a civil action for personal injury or wrongful death, evidence of a person's immigration status shall not be admitted into evidence, nor shall discovery into a person's immigration status be permitted. (Evidence Code Section 351.2.)

10) Subjects licensed attorneys in California to potential suspension, disbarment, or other professional discipline for reporting suspected immigration status, or threatening to report suspected immigration status, of a witness or party to a civil or administrative action, or his or her family member, to a federal, state, or local agency because the witness or party exercises or has exercised a right related to his or her employment. (Business and Professions Code Section 6103.7.)

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

COMMENTS: This bill would enact the Immigrant Tenant Protection Act of 2017—a comprehensive act to establish numerous legal protections against the disclosure of tenants' immigration or citizenship status to federal immigration authorities or other parties. The bill proposes many safeguards against potential harassment, retaliation, or discrimination against tenants based on their immigration or citizenship status, whether real or perceived. According to the author:

> While the majority of landlords are law-abiding, some unscrupulous landlords seek to avoid their legal obligations by threatening to report tenants to immigration authorities. . . Advocates in Los Angeles, Orange County, the San Francisco Bay Area, the Central Coast, and the Central Valley share stories of landlords threatening to report tenants to immigration authorities unless they immediately move out. In many cases, these threats are made to retaliate against tenants for reporting habitability issues, such as exposed electrical wiring and vermin, which landlords are legally required to fix. In other cases, it's to avoid the statutory eviction process, which ensures due process for tenants at risk of losing

> their homes. Threats are even made in connection with gentrification, when, in order to raise rents, long-time tenants are suddenly targeted for eviction based on their suspected immigration status. Undocumented tenants know their landlords have the power to destroy their lives with a single phone call. California renters should not have to fear intimidation and retaliation in their homes.

Case studies and reported incidents of retaliation or discrimination establishing a need for stronger tenant protections based on immigration status. The bill is supported by over three dozen legal aid organizations, tenant groups, and immigrant rights organizations that strongly believe legislation is needed to establish common-sense legal protections for tenants in response to the pervasive abuse and discrimination against some tenants that advocates have observed. These supporters provide anecdotal evidence of harassment, retaliation, and discrimination against undocumented people—the vast majority of whom are tenants, not homeowners—which they contend are unfortunately quite commonplace in California, and they contend that the frequency of such misconduct is likely to increase because of the election of President Trump and his embrace of anti-immigrant federal policies.

The Committee has received many letters from legal aid providers recounting dozens of reported instances and experiences that support the author's contention that the bill is a necessary response to increasingly common housing practices that discriminate against tenants on the basis of their real or perceived immigration status. For example, Community Legal Services in East Palo Alto (CLSEPA) writes:

> Our immigration team is flooded with calls from residents with fears of removal and family separation. Just last week our staff assisted an immigrant tenant in Redwood City whose landlord repeatedly threatened to report her to immigration authorities to intimidate her into leaving her home. The landlord had served an invalid eviction notice on the tenant,. and when the tenant asserted her rights and refused to vacate on the specified date, the landlord sent a text threatening that "if you still haven't moved everything out by that time, I will report to police and homeland security department (for illegal immigration)." When one of our attorneys discussed the matter with the landlord via phone, the landlord asserted it was her "duty" to call immigration authorities to report anyone who is undocumented, including her tenants [and] then attempted to undermine our attorney's representation of the tenant by threatening our staff member himself. In another text message to the tenant, the landlord threatened to file a complaint with the State Bar against our attorney . . . and concluded her text message by stating that "I believe the state bar of California will be interested into [sic] my complain, under the new leadership of our new president." This is merely one recent and salient example of the broader need for the protections proposed in AB 291, to curb landlord abuse of immigrant tenant that has already become more overt and insidious under the new administration.

The Inner City Law Center (ICLC), headquartered on Los Angeles' Skid Row, reports:

> Since the November election, some unscrupulous landlords have been threatening to call ICE on immigrant tenants who complain. Even without direct landlord threats, since the November election many tenants are too afraid to complain

about slum conditions or assert their rights because they think they will be deported. Here are some examples of what we are seeing:

For two years, a young immigrant couple and their ten-month old daughter rented and lived in an illegally-converted garage. It has vermin but no heat, hot water, smoke detectors or other basic necessities, but it's all they can afford. In December 2016, after many unanswered requests to the landlord, the family complained to the building department about the conditions. The building department cited the landlord for unpermitted electrical and plumbing and ordered the garage vacated as an illegal unit. In retaliation, the landlord tried to evict the family without the legally-required relocation assistance payment. ICLC successfully defended the eviction and the City Housing Department warned the landlord that the family was entitled to relocation assistance.

Angered, the landlord threatened the family that unless they left immediately and without receiving a relocation payment, she would call ICE. The family stayed despite this threat. In March of this year, the landlord filed another eviction action. She is still trying to force the family to leave without receiving the legally required relocation assistance. Even though the law is on their side, the family is afraid of asserting their rights in court for fear that the landlord will have them deported.

How immigration status and personal information regarding immigration status is handled within the landlord-tenant relationship: a brief overview of legal and practical concerns. As a general matter, a person's immigration status or citizenship status (both legal statuses determined by the federal government) are irrelevant to a person's ability to rent an apartment in California. A person who is not authorized to be in the country may be a model tenant who pays rent when it is due and keeps the rental premises in excellent condition. Likewise, a person who is a U.S. citizen may be regularly delinquent in paying rent and habitually responsible for creating a nuisance or causing damage to rental property. In support of related legislation approved by this Committee earlier this year, landlord groups explained: "It's not a landlord's job to be an immigration agent. A person's immigration status is of no significance to a landlord. . . [A] renter's immigration status cannot be used to prevent them from being able to find housing that they would otherwise be qualified to obtain. . . Tenant leasing decisions would be based upon proper financial and personal qualifications and other health and safety standards."

At least in theory, discrimination against tenants and prospective tenants based on their immigration or citizenship status should me minimal because current law, Civil Code Section 1940.3 (b), forbids landlords from making any inquiry regarding or based on the immigration or citizenship status. However, subdivision (c) of Section 1940.3 specifically allows landlords to "request information or documentation necessary to determine or verify the financial qualifications of a prospective tenant, or to determine or verify the identity of a prospective tenant or prospective occupant." Consequently, landlords often obtain and place documents in a tenant's file that may be used to impute, with reasonable certainty, whether a tenant is undocumented or has a certain immigration status. For example, a landlord verifying a prospective tenant's creditworthiness may have financial or employment records of a tenant that shows he or she may have used a duplicate social security number or an individual taxpayer identification number—both of which strongly suggest the tenant's undocumented status. The tenant's file may also contain records, such as a copy of a work visa or California driver's license (especially one issued to noncitizens pursuant to AB 60), that reveal immigration or citizenship

status. Thus, when combined with stereotypical attitudes or assumptions based on a person's appearance or language proficiency, an unethical and non-law-abiding landlord could easily harass, retaliate, or discriminate against a tenant or prospective tenant based on immigration or citizenship status if inclined to do so. Thus, legally-obtained information in a landlord's file on a tenant—obtained only through the landlord-tenant relationship—may be used against the tenant if the information were disclosed to another person, or in the worst case scenario, to federal immigration authorities.

Proponents of the bill contend that market pressures may create strong financial incentives for landlords to uproot tenants from housing in order to re-rent the property at higher amounts, or, alternatively, to minimize repair and maintenance costs in low-revenue properties. Unscrupulous landlords, armed with even a little information regarding a tenant's immigration or citizenship status, could threaten to report that information to immigration authorities in order to influence the tenant to vacate the property (i.e. to circumvent the eviction process), or perhaps to retaliate against a tenant who raises habitability or repair issues.

While existing law in some cases provides immigrant tenants with modest protections from harassment and discrimination, proponents contend these protections are inadequate. Accordingly, this bill proposes a number of new measures to address these limitations, taking into account the many different ways in which discrimination, retaliation, and harassment based on immigration or citizenship status is still an issue for the immigrant community in California.

Measures to prohibit landlord issuing threats, especially threats to disclose information regarding immigration or citizenship status. Existing law prohibits a landlord from engaging in specified conduct for the purpose of influencing a tenant to vacate a dwelling, including "using, or threatening to use, force, willful threats, or menacing conduct constituting a course of conduct that interferes with the tenant's quiet enjoyment of the premises . . . that would create an apprehension of harm in a reasonable person." (Section 1940.2.) It is not clear whether this language would prohibit a threat to disclose information related to immigration status, so the bill seeks to add specific language that does so.

As proposed to be amended, this bill revises the prohibited conduct added by this bill to clarify that a landlord may not "[t]hreaten to disclose information relating to the immigration or citizenship status of a tenant, occupant or other person known to the landlord to be associated with a tenant or occupant." This proposed amendment also fixes two separate drafting inconsistencies.

It should be noted that because Section 1940.2 only applies to conduct "for the purpose of influencing a tenant to vacate a dwelling," it does not apply to threats to prospective tenants, only tenants, occupants and known associates. In addition, Section 1940.2 has a relatively weak enforcement mechanism; a tenant must bring a civil action to enforce his or her rights under the law, and is entitled to a civil penalty not to exceed $2000 per violation.

Measures to establish that reporting or threatening to report a tenant to immigration authorities is prohibited retaliatory conduct. Section 1942.5 codifies the common law defense of retaliatory eviction established by the California Supreme Court in *Schweiger v. Superior Court* (1970) 3 Cal. 3d 507. Subdivision (a) provides that a landlord may not increase rent, decrease services, or terminate a tenancy within 180 days of the tenant making a complaint about habitability if the landlord is retaliating against a tenant and if the tenant is not in default of the rent. Subdivision (c) prohibits landlords from increasing rent, decreasing services, or evicting a

tenant for the purpose of retaliating against the tenant for participating in a tenants' association or because the tenant has lawfully and peaceably exercised any rights under the law.

This bill seeks to expand the list of what constitutes retaliatory conduct prohibited under Section 1942.5. In short, if the tenant makes a complaint about tenantability (aka "habitability"), then the landlord cannot report or threaten to report the lessee to immigration authorities. If the landlord does so, it would be considered to be prohibited retaliation under Section 1942.5 (a). Similarly, the bill provides that if the tenant participates in a tenants' association or lawfully and peaceably exercises any rights, then it would be prohibited retaliation under Section 1942.5 (c) if the landlord were to report or threaten to report the tenant to immigration authorities. This bill does not increase current remedies available under Section 1942.5 for the new type of prohibited retaliation associated with reporting a person's immigration status. Existing violations of this section make the landlord liable for actual damages, moderate punitive damages from $100 to $2000 for each retaliatory act (if committed by fraud, oppression or malice), and reasonable attorney's fees.

Landlords who oppose the bill, led by the Apartment Association, CA Southern Cities, argue that "California already has laws addressing the conduct at issue" and that much of this bill is unnecessary to punish or deter landlords who disclose tenants' immigration information with intent to discriminate, harass, or retaliate. They note that retaliation is already barred under Section 1942.5, and that under the Fair Employment and Housing Act, it is already illegal to discriminate against or harass a tenant because of race, ancestry, or national origin, among other characteristics. (Gov. Code Section 12955 (a).) With respect to whether FEHA is sufficient or not, Committee staff notes that neither immigration status nor citizenship status are specifically included as protected classes under Section 12955. Furthermore, fair housing laws, such as FEHA "invariably place the onus on the tenant to file an affirmative fair housing claim and allocate the burden of proving discrimination onto the tenant." (Bay Area Legal Aid; March 10, 2017 letter.) Because such claims routinely take months or years to adjudicate, tenant advocates note the remedy offered by FEHA is usually not fast enough to help an immigrant tenant avoid the more immediate problem of displacement from the family home and possible homelessness.

Measures intended to deter landlords from reporting tenants to immigration authorities or disclosing tenant information regarding immigration status, as specified. This bill would enact strong measures intended to prevent and deter landlords from reporting tenants to immigration authorities or disclosing tenant information regarding immigration status, as specified. After working with Committee staff to better reflect the stated intent of the bill and to achieve internal drafting consistency with the bill, the author proposes several amendments to Sections 1940.3 and 1940.35, as shown below.

As proposed to be amended, subdivision (b) of proposed Civil Code Section 1940.3 is rewritten as follows:

> **1940.3** (b) A landlord, or any agent of the landlord, shall not do any of the following:
>
> (1) & (2) . . . [omitted]
>
> (3) Disclose to any person or entity information regarding or relating to the immigration or citizenship status ~~or perceived immigration or citizenship status~~ of any tenant, prospective tenant, occupant, or prospective occupant of the rental

property ***for the purpose of, or with the intent of, harassing or intimidating a tenant, prospective tenant, occupant, or prospective occupant, retaliating against a tenant or occupant for the exercise of his or her rights, influencing a tenant or occupant to vacate a dwelling, or recovering possession of the dwelling***.

As proposed to be amended, subdivision (a) of proposed Civil Code Section 1940.35 is rewritten as follows:

> **1940.35.** (a) It is unlawful for a landlord to ~~*willfully, recklessly, or intentionally*~~ disclose ***to any immigration authority, law enforcement agency, or local, state, or federal agency information regarding or relating to*** the immigration or citizenship status ~~or perceived immigration or citizenship status~~ of any tenant, occupant, or other person known to *the landlord to be associated with* a tenant or ~~occupant~~ *occupant,* ***for the purpose of, or with the intent of, harassing or intimidating a tenant or occupant, retaliating against a tenant or occupant for the exercise of his or her rights, influencing a tenant or occupant to vacate a dwelling, or recovering possession of the dwelling,*** *irrespective of whether the tenant or occupant currently resides in the dwelling,* ~~to any immigration authority, law enforcement agency, or local, state, or federal agency~~.

The proposed author's amendments accomplish several things. First, and most importantly, they represent the author's effort to better reflect the stated intent of the bill, namely to "protect immigrant tenants from intimidation and retaliation by landlords." Although both sections above prohibit the disclosure of "information regarding or relating to the immigration or citizenship status," the proposed author's amendments clarify that such disclosure is prohibited only "for the purpose of, or with the intent of," four specific things, namely: (1) harassing or intimidating a tenant or occupant; (2) retaliating against a tenant or occupant for the exercise of his or her rights; (3) influencing a tenant or occupant to vacate a dwelling; or (4) recovering possession of the dwelling. In each of these examples, disclosure is prohibited in order to deter conduct that may be harassing, intimidating, retaliatory, and likely unlawful or prohibited by law. Although there is likely no free speech right implicated when a landlord discloses a tenant's private information regarding immigration status to a third party, the author's proposed amendments appear to resolve that question.

Although they appear to be similar, a careful comparison of Sections 1940.3 and 1940.35 reveal that the two paragraphs serve overlapping but different purposes. First, Section 1940.3 prohibits disclosure to any person, whereas Section 1940.35 prohibits disclosure to law enforcement, public entities, and immigration authorities. Second, Section 1940.3 applies to prospective tenants and prospective occupants (in addition to tenants and occupants) whereas Section 1940.35 does not include prospective tenants or prospective occupants, just current ones, as well as other persons who the landlord knows to be associated with the tenant or occupant. Most noticeably, Section 1940.35 specifies a broad range of remedies against landlords for a violation of its terms, while Section 1940.3 by contrast does not appear to have any specific remedies, other than perhaps actual damages. In short, Section 1940.35 carries much stronger remedies and penalties because its main purpose is to discourage and deter landlords from disclosure of immigration information to ICE and other immigration authorities—a much narrower but more immediately problematic type of disclosure. The remedies portion of Section 1940.35 does not

conflict with other sections because 1940.35 (f) provides, "The remedies provided by this section shall be in addition to any other remedies provided by statutory or decisional law."

Controversial damages provisions. The bill is opposed by several regional apartment associations, including the Apartment Association, CA Southern Cities, who state:

> We also object to the penalties portion of the bill which requires owners to pay 12 times the rent in damage with little proof and no verification by a third party who must be present at the time the alleged statement or demand is made. The absurdity of proposing the penalty of 12 times the rent is unprecedented in state and in U.S. law. This 'piling on' of penalties specifically targeted at rental property owners is therefore abusive and unfair."

In response, the bill's co-sponsors explain the need for a set of such strong remedies as follows:

> In [our] view, the only way to effectively deter landlords from reporting tenants to immigration authorities (and revealing the private and extremely personal information gleaned in the course of the tenancy) is to set clear, well-defined penalties for such disclosure. To that end, AB 291 would . . . mandate that damages of twelve times the monthly rent be assessed against a landlord found by a court to have reported a tenant or occupant to immigration authorities, for each tenant or occupant so reported. This provision is intended to provide landlords with a clear cost-benefit analysis of the minimum cost of reporting an individual's status, and to provide a sizable penalty to deter such reports. We write "minimum" because remedies under the statute would be cumulative, and allow, for example, civil actions under the Unruh Act.

The San Diego County Apartment Association (SDCAA) has a Support If Amended position on the bill, expressing concern with how the penalties under the bill are potentially calculated. They write:

> While SDCAA agrees that there should be a remedy for blatant and willful violations of [section 1940.35], the proposed damages are excessive when compared to the damages provided by current law for violations of the retaliatory eviction statute. We would suggest that the same penalty apply to this section: "A tenant who prevails in a civil action, including an action in small claims court, to enforce his or her rights under this section is entitled to a civil penalty in an amount not to exceed two thousand dollars ($2,000) for each violation."

Injunctive and other relief. In addition to the damages provisions discussed above, the bill requires the court to issue injunctive relief to protect other individuals from being similarly reported to immigration authorities. AB 291 would also grant nonprofit organizations standing to obtain such injunctive relief. According to co-sponsor WCLP, the latter provision is intended to cover the situation, reported by their partner nonprofits, where a tenant is picked up by ICE and none of the remaining tenants or occupants in the unit, fearing that the landlord might report them as well, are willing to step forward and bring a lawsuit to enforce their rights under the law.

In addition, the bill requires that the court refer any landlord found to have violated these provisions to the local district attorney for potential criminal prosecution under Penal Code Section 519, which criminalizes extortion based on threats to report a person's immigration status

or suspected immigration status. Finally, the bill would award attorney fees to the prevailing party— reducing the chances of frivolous claims since a prevailing landlord would also be entitled to attorney's fees.

This bill strengthens protections for immigrant tenants in court who are defending against eviction or seeking to enforce other housing rights. In addition to creating strong penalties to deter landlords from improperly disclosing tenant immigration status and other information to immigration authorities or other parties, this bill establishes a number of other protections for immigrant tenants in eviction proceedings or other housing-related proceedings.

A. Affirmative defense to eviction based on immigration status, with rebuttable presumption.

Many of the letters from legal aid providers received by the Committee described firsthand accounts of cases in which a landlord apparently targeted an immigrant tenant or family member for eviction based on a suspicion or perception that the tenant or family member was undocumented. According to Western Center on Law and Poverty, in rent-controlled jurisdictions, these targeted evictions appear to be motivated by a desire to raise rents, while in non-rent controlled jurisdictions, these evictions may be motivated by a desire to market apartments to new renters who might perceive a building with immigrant tenants as undesirable.

To counter this reported problem, this bill seeks to codify an affirmative defense to unlawful detainer based on actual or perceived immigration or citizenship status. According to the author, this existing defense is based on the Unruh Civil Rights Act (Civil Code Sec. 51), which bars discrimination on the basis of immigration status, whether actual or perceived, in all business establishments of every kind. This bill simply articulates that defense more specifically and codifies it in a proposed new section of the Code of Civil Procedure.

According to Western Center, tenant advocates report regular instances of landlords re-running credit checks on existing tenants and then serving a notice to quit based on the tenant's alleged provision of false information (typically, a duplicate or nonexistent social security number) on the rental application—even though the landlord knew, or had the pertinent information, at the time the unit was originally rented. They also report regular instances of landlords attempting to intimidate tenants into moving out by suddenly demanding proof of identity, such as a passport or California driver's license, after the tenancy has already been established.

Based on this information about the ways that landlords reportedly justify evictions based on immigration status, the bill seeks to create a rebuttable presumption that the affirmative defense has been established if, after the tenancy has commenced, the landlord does either of the following: (1) uses a social security number or other information or documentation to request a consumer credit report under Section 1785.11 of the Civil Code regarding a tenant or occupant who is the subject of the unlawful detainer action; or (2) uses information or documentation to verify the identity of a tenant or occupant who is the subject of the unlawful detainer action. In other words, if a tenant can establish that the landlord took either of these two actions after the tenancy began, then the tenant would have a valid defense to the eviction and the burden would then shift to the landlord to rebut the presumption that the landlord's actions were lawful and that the eviction was not impermissibly based on the tenant's immigration status or perceived immigration status.

The California Apartment Association (CAA) has taken a Support if Amended position on the bill, but expresses some concern about the rebuttable presumption provisions. They contend

there are a number of legitimate reasons why a landlord would request qualifying information of a tenant and/or run a credit report after the tenancy has commenced that do not justify a presumption that shifts the burden of proof to landlords. CAA states:

> (1) A landlord may ask for identifying information in order to comply with affordable housing tenant-recertification regulations and regulatory agreement requirements, typically done annually and when there has been a change in household income or composition;
> (2) Upon request of an existing tenant or a new occupant/roommate who asks for a larger unit or wants to move to another property owned by the landlord, a landlord will collect updated information or documentation to verify the income and identity of a tenant or occupant/roommate;
> (3) A landlord typically runs a credit report or asks for verifying information on a new roommate and/or the existing tenant to verify credit or the ability to meet the income standards when the tenant/occupant wants to move to a new property owned by the same landlord or wants to move to a larger unit.
> (4) The landlord may ask for identifying information from a new occupant/roommate in order to ensure proper service of future documents provided to the named tenants.
>
> If the landlord is unable to request this information – especially of a new roommate – the language of the bill may lead to landlords simply rejecting the new roommate, evicting the existing tenant for having unauthorized occupants, or refusing to offer new accommodations due to an inability to verify tenant information.

The California Association of Realtors opposes the bill unless amended to remove the rebuttable presumption and to require tenants to be current on rent when asserting the affirmative defense. They state: "Confirming a tenant's identity or running a credit check during tenancy is routine for landlords updating or renewing a lease. Furthermore, potential buyers of rental property seek information relating to existing tenants. These common business practices are conducted without regard to immigration status."

B. Shielding immigration status from disclosure at trial or through discovery where not relevant.

According to proponents, tenant attorneys report that tenants fear inquiry into, and disclosure of, their immigration status during litigation. They cite, for example, reported cases in which landlord attorneys have sought to undermine witness credibility by asking a witness why he had two social security numbers, even though this information was irrelevant to the case.

To respond to these concerns, the bill would generally forbid any inquiry into a person's immigration or citizenship status in civil actions involving that person's housing rights, unless either the tenant's claims or defenses raised place his or her immigration status at issue, or the inquiry is proven by clear and convincing evidence to be necessary to comply with federal immigration law.

The Committee notes that these provisions are modelled after recently enacted law (AB 560, Ch. 151 Stats. 2015) which established that the immigration status of a child under any applicable law is irrelevant, and that inquiry into the immigration status of a child in discovery is prohibited,

unless certain exceptions apply. The exceptions in this bill are virtually identical to the exceptions enacted by AB 560.

C. Prohibiting threats by attorneys to report immigration status of tenants.

According to the sponsor, tenant attorneys who work in unlawful detainer court in Los Angeles describe witnessing landlord attorneys threatening to report unrepresented tenants to federal immigration authorities if the tenants do not enter into settlement agreements offered by those attorneys. Accordingly this bill would prohibit attorneys from reporting, or threatening to report, a person's immigration status to any federal, state, or local agency in landlord-tenant cases, and would subject the attorney to suspension or other discipline by the State Bar for violating this prohibition.

Proposed technical amendments to clarify discrimination based on "perceived immigration or citizenship status." Like religion or sexual orientation, immigration status and citizenship status are often considered to be protected classes under various antidiscrimination laws, even though the person acting with discriminatory intent may not be certain that the target of discrimination has the specific protected status. For example, an employer may act with homophobic, discriminatory intent towards a job applicant because he or she "perceives" the applicant to be homosexual, even if the applicant is heterosexual. Under our state's landmark antidiscrimination law, the Unruh Act, if the applicant suffers discrimination because the employer perceives him to be gay, it is no defense for the employer if it turns out he was mistaken, and in fact the applicant is not gay (or Muslim, undocumented, and so on.) That is because the Unruh Act specifically establishes that discrimination based on "perceived" membership in a protected class is functionally equivalent to discrimination based upon membership in the protected class. In this manner, the Unruh Act bars discrimination based on immigration status and perceived immigration status.

According to the author, the use of the unwieldy phrase "immigration or citizenship status or perceived immigration or citizenship status" throughout the bill has no other purpose than to reflect the same principle contained in the Unruh Act, as described above. Therefore, in order to more closely track the Unruh approach and simplify the wording of the bill without changing any of its meaning, ***the author proposes technical and conforming amendments.***

> (1) Replace the phrase "immigration or citizenship status or perceived immigration or citizenship status" with the truncated phrase "immigration or citizenship status" at applicable locations throughout the bill
>
> (2) Amend both Civil Code Section 1940 and Section 1161.4 of the Code of Civil Procedure to add the following language modeled after the Unruh Act (Section 51(g)):
>
> *For purposes of this [*chapter/section*], "immigration or citizenship status" includes a perception that the person has a particular immigration status or citizenship status, or that the person is associated with a person who has, or is perceived to have, a particular immigration status or citizenship status.*

REGISTERED SUPPORT / OPPOSITION:

Support

Western Center on Law and Poverty (co-sponsor)
California Rural Legal Assistance Foundation (co-sponsor)
AIDS Legal Referral Panel
Alliance of Californians for Community Empowerment (ACCE)
Bay Area Legal Aid
Bet Tzedek
California Immigrant Policy Center (CIPC)
California State Council, Service Employees International Union
Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)
Community Legal Services in East Palo Alto
Council on America-Islamic Relations, California (CAIR-CA)
Courage Campaign
Equal Justice Society
Fair Housing Advocates of Northern California
Fair Housing Council of Orange County
Fresno Interdenominational Refugee Ministries (FIRM)
Healthy Homes Collaborative
Housing and Economic Rights Advocates (HERA)
Inner City Law Center
Law Foundation of Silicon Valley
Legal Aid Association of California
Legal Aid Foundation of Los Angeles (LAFLA)
Legal Aid Society of San Mateo County
Legal Services of Northern California
Mutual Housing California
National Housing Law Project
Neighborhood Legal Services of Los Angeles County
Non-Profit Housing Association of Northern California
PolicyLink
Progressive Asian Network for Action (PANA)
Project Sentinel
Public Advocates
Public Counsel
Public Law Center
Strategic Actions for a Just Economy (SAJE)
San Diego Volunteer Lawyer Program, Inc.
Tenants Together
The Public Interest Law Project
Urban Habitat

Support If Amended

California Apartment Association
San Diego County Apartment Association

Oppose Unless Amended

California Association of Realtors

Oppose

Apartment Association, California Southern Cities
Apartment Association of Orange County
East Bay Rental Housing Association
North Valley Property Owners Association

Analysis Prepared by: Anthony Lew / JUD. / (916) 319-2334

ASSEMBLY BILL 291 (CHIU)

IMMIGRANT TENANT PROTECTION ACT OF 2019

SUMMARY

This bill protects tenants from deportation threats. California renters should not have to fear intimidation and retaliation in their homes.

BACKGROUND

Landlords learn a lot about tenants: their social security numbers, the languages they speak, the times they're at home, and the identities of their families. Tenants have virtually no protection against misuse of this information.

Advocates in Los Angeles, Orange County, the San Francisco Bay Area, the Central Coast, and the Central Valley share stories of landlords threatening to report tenants to immigration authorities unless they immediately move out. In many cases, these threats are made to retaliate against tenants for reporting habitability issues, such as exposed electrical wiring and vermin, which landlords are legally required to fix. In other cases, it's to avoid the statutory eviction process, which ensures due process for tenants at risk of losing their homes. Threats are even made in connection with gentrification, when, in order to raise rents, long-time tenants are suddenly targeted for eviction based on their suspected immigration status.

THE PROBLEM

While the majority of landlords are law-abiding, some unscrupulous landlords seek to avoid their legal obligations by threatening to report tenants to immigration authorities. In recent years, the Legislature has enacted strong protections against such threats in the workplace. It is time to provide tenants the same protections in their homes.

Advocates statewide have reported many such instances, including the following:

"It is very common that landlords threaten to call ICE if a tenant refuses to vacate (whether a valid eviction notice has been served or not), and also if tenants complain about habitability or other maintenance and repair issues. We are worried that these sorts of threats in a post-Trump era will make it even less likely that undocumented tenants will stand up for themselves against abusive and illegal landlord behavior."

"The main thing I see is intimidation - landlords threatening to call immigration on tenants in order to get them to leave."

"When a new landlord takes over a building and wants to gentrify, he or she will run a credit check on undocumented tenants and then seek to evict on the grounds that the tenants provided false or duplicate social security numbers in their rental applications—even if the rental commenced years earlier."

THE SOLUTION

AB 291 would do as follows:

- Prohibit landlords from threatening to report tenants to immigration authorities, whether in retaliation for engaging in legally-protected activities or to influence them to vacate.
- Bar landlords from disclosing information related to tenants' immigration status for the purpose of retaliation, intimidation, harassment, or in order to evict a tenant without using proper procedures.
- Provide tenants the right to sue landlords who disclose information about their citizenship status to law enforcement for the purpose of retaliation, intimidation, harassment, or in order to evict a tenant without using proper procedures.
- Codify an existing defense to unlawful evictions based on immigration status.
- Prohibit questions about tenants' immigration status in discovery or at trial.
- Prohibit attorneys from reporting, or threatening to report, the immigration status of persons involved in housing cases.

As versions of most of these protections already exist in employment law, it only makes sense to extend them to landlord-tenant law.

Undocumented tenants know their landlords have the power to destroy their lives with a single phone call. Should they have to live in fear simply because they rent their homes?

SUPPORT

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California Rural Legal Assistance Foundation (co-sponsor)

AIDS Legal Referral Panel
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OPPOSITION

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Apartment Association, California Southern Cities
Apartment Association of Orange County
East Bay Rental Housing Association
North Valley Property Owners Association

FOR MORE INFORMATION

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WESTERN CENTER ON LAW & POVERTY

California Rural Legal Assistance Foundation

AB 291 (Chiu): Protecting Immigrant Tenants

California renters shouldn't have to fear intimidation and retaliation in their homes

The Problem While the majority of landlords are law-abiding, some unscrupulous landlords seek to avoid their legal obligations by threatening to report tenants to immigration authorities. In recent years, the Legislature has enacted strong protections against such threats in the workplace. It's time to provide tenants the same protections in their homes.

Background Landlords learn a lot about tenants: their social security numbers, the languages they speak, the times they're at home, and the identities of their families. Tenants have virtually no protection against misuse of this information.

Advocates in Los Angeles, Orange County, the San Francisco Bay Area, the Central Coast, and the Central Valley share stories of landlords threatening to report tenants to immigration authorities unless they immediately move out. In many cases, these threats are made to retaliate against tenants for reporting habitability issues, such as exposed electrical wiring and vermin, which landlords are legally required to remedy. In other cases, it's to avoid the statutory eviction process, which ensures due process for tenants at risk of losing their homes. Threats are even made in connection with gentrification, when, in order to raise rents, long-time tenants are suddenly targeted for eviction based on their suspected immigration status.

The Solution AB 291 would do as follows:

- Prohibit landlords from threatening to report tenants to immigration authorities, whether in retaliation for engaging in legally-protected activities or to influence them to vacate.
- Bar landlords from disclosing information related to tenants' immigration status.
- Provide tenants the right to sue landlords who report them to immigration authorities.
- Codify an existing defense to unlawful evictions based on immigration status.
- Prohibit questions about tenants' immigration status in discovery or at trial.
- Prohibit attorneys from reporting, or threatening to report, the immigration status of persons involved in housing cases.

Necessary exceptions are made throughout to safeguard landlords who act to comply with federal law. As versions of most of these protections already exist in employment law, it only makes sense to extend them to landlord-tenant law.

Most undocumented Californians are tenants. They know their landlords have the power to destroy their lives with a single phone call. Should they have to live in fear simply because they rent their homes?

This bill is co-sponsored by Western Center on Law & Poverty and the California Rural Legal Assistance Foundation

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