

**SENATE JUDICIARY COMMITTEE**  
**Senator Hannah-Beth Jackson, Chair**  
**2019-2020 Regular Session**

AB 3088 (Chiu)  
Version: May 12, 2020  
Hearing Date: July 30, 2020  
Fiscal: No  
Urgency: No  
TSG

**SUBJECT**

Tenancy: termination: rent caps

NOTE: This analysis reflects the bill as proposed to be amended in Committee.

**DIGEST**

This bill makes technical and clarifying modifications to the statewide just cause for eviction and anti-rent gouging laws enacted last year pursuant to AB 1482 (Chiu, Ch. 597, Stats. 2019). Specifically, the bill: (1) lays out how inflation should be calculated when determining permissible rent increases; (2) clarifies application of the law to properties containing two housing units; (3) aligns definitions; (4) corrects erroneous cross-references; and (5) clarifies the scope of laws with which a housing provider must demonstrate compliance before establishing new rental rates after the expiration of affordability covenants.

**EXECUTIVE SUMMARY**

Last year, California enacted AB 1482, a landmark piece of legislation establishing, for the next decade, statewide just cause for eviction and caps on annual rent increases for many residential tenancies. That bill was the product of intense negotiations between the various stakeholders and went through multiple iterations. In hindsight, that bill contains a few provisions that, absent clarification, could lead to confusion. There is also an erroneous cross-reference in the text. This bill cleans up those issues. It is the product of careful deliberation among those who were involved in the negotiation of AB 1482.

The bill is author sponsored. Support is from tenant advocacy groups. There is no opposition on file.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Prohibits, until January 1, 2030, an owner of residential real property from terminating a tenancy without just cause for tenants that have continuously and lawfully occupied the unit for a year or more, with specified exceptions. (Civ. Code § 1946.2.)
- 2) Prohibits, until January 1, 2030, an owner of a residential real property from increasing the rental rate on a property that has been in effect for the preceding 12 months in an amount that is greater than the Consumer Price Index (CPI) plus five percent, not to exceed 10 percent, with specified exceptions. (Civ. Code § 1947.12.)
- 3) Provides definitions, exemptions, rules, and procedures for implementing Civil Code Sections 1946.2 and 1947.12, including the following provisions that are of particular relevance to this bill:
  - a) Exempts duplexes from the provision of these sections if the owner occupied one of the units as the owner's principal place of residence at the beginning of the tenancy, so long as the owner continues in occupancy.
  - b) Defines, in Section 1947.12, dormitories as qualifying for exemption from the rent cap as those that have been constructed and maintained in connection with any higher education institution within the state for use and occupancy by students in attendance at the institution.
  - c) Requires, for an exemption to apply, a notice with specific text to be sent to all tenants in residential real property that is alienable separate from the title to any other dwelling unit whose owner is not a real estate investment trust, a corporation, or a limited liability company in which at least one member is a corporation. The required text for the notice associated with the rent cap portion of the Act includes an erroneous cross-reference.
  - d) Defines the percentage change in the cost of living to mean the percentage change from April 1 of the prior year to April 1 of the current year in the regional Consumer Price Index for the region where the residential real property is located, as published by the United States Bureau of Labor Statistics. If a regional index is not available, the California Consumer Price Index for All Urban Consumers for all items, as determined by the Department of Industrial Relations applies.
  - e) Specifies that the owner of an assisted housing development may establish the initial unassisted rental rate for units in the applicable housing development having demonstrated compliance with all applicable law or regulation intended to promote the preservation of assisted housing.

This bill:

- 1) Revises the exemption applicable to duplexes to specify that it applies to a property containing two separate dwelling units within a single structure, neither of which is an accessory dwelling unit or a junior accessory dwelling unit.
- 2) Aligns the definition of dormitories for the rent cap portion of the Act with definition in the just cause portion of the Act, such that dormitories qualifying for exemption from the rent cap are those owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school.
- 3) Corrects, in the rent cap portion of the Act, a reference in the notice required to be sent to all tenants in residential real property that is alienable separate from the title to any other dwelling unit whose owner is not a real estate investment trust, a corporation, or a limited liability company in which at least one member is a corporation.
- 4) Revises the definition of the percentage change of the cost of living to mean the percentage change in the Consumer Price Index for All Urban Consumers for All Items, as follows:
  - a) the applicable percentage change in the cost of living shall be the Consumer Price Index for All Urban Consumers for All Items for the metropolitan area where the residential real property is located, as published by the United States Bureau of Labor Statistics. If a metropolitan area index is not available, the California Consumer Price Index for All Urban Consumers for All Items, as published by the Department of Industrial Relations, shall apply; and
  - b) the percentage change in the cost of living shall be the percentage change in the amount published for the previous April and the April before that. If there is no amount published in April for the applicable geography, the percentage change in the cost of living shall be percentage change in the amount published for the previous March and the March before that.
- 5) Clarifies that the owner of assisted housing development may establish the initial unassisted rental rate for units in the applicable housing development having demonstrated compliance with all applicable federal, state, or local laws or regulations intended to promote the preservation of assisted housing.

## COMMENTS

### 1. Background

AB 1482 (Chiu, Ch. 597, Stats. 2019), California's landmark legislation requiring just cause for eviction statewide and prohibiting residential rent-gouging, was the product of lengthy, complex, and shifting negotiations between stakeholders, both houses of the Legislature, and, eventually, the Governor's Office. Though the principal components

of the bill are clear, hindsight has shown a handful of provisions at the margins that require further refinement in order to eliminate possible confusion. AB 1482's author therefore reconvened the principal stakeholders to the original bill and asked them to seek consensus language that could iron out these policy wrinkles. This bill is the result of that effort. Each source of potential confusion from AB 1482 is described below, accompanied by a brief explanation of the solution proposed in this bill.

*a. Determining the applicable rate of inflation*

AB 1482 sought to cut down on rent-gouging by prohibiting annual rent increases in excess of five percent plus inflation up to a maximum cap of 10 percent. AB 1482 specified that the rate of inflation for any particular property is the percentage change in the regional Consumer Price Index for the region where the residential real property is located from April 1 of the prior year to April 1 of the current year, as published by the United States Bureau of Labor Statistics. If no regional index is available for the property in question, then inflation is to be calculated using the California Consumer Price Index for All Urban Consumers for all items, as determined by the Department of Industrial Relations.

While conceptually simple, hindsight has revealed some ambiguities in this formulation. For example, if a landlord seeks to raise the rent in February, how does the landlord know what the regional CPI for April 1 of the current year will be?

This bill revises the formula for calculating inflation, eliminating points of potential confusion in the process. The new formulation is intended to cover as many contingencies as possible while making it relatively simple to follow.

*b. Clarification of how housing structures with two units are to be treated under the bill*

AB 1482 exempted from its provisions duplexes in which the owner occupies one of the two units. In practice, however, the term duplex has no standard legal definition. As a result, there was some confusion about exactly what rental property is, and is not, exempt. To clarify the matter, this bill specifies that the exemption applies to property containing two separate dwelling units within a single structure, where neither unit is an accessory dwelling unit or a junior accessory dwelling unit, and the property owner occupies one of the units as a principal residence.

*c. Correction of erroneous cross-reference in notice of exemption to tenant*

AB 1482 requires that, in order to be exempt from the rent cap and just cause provisions, a property owner must both qualify for the exemption and provide notice of that exemption to the tenants. The bill specifies the exact language that must be contained in these notices. In the legislative swirl accompanying negotiation and passage of AB 1482, two erroneous cross-references within the text for one of the

required notices went undetected. As a result, landlords wishing to claim an exemption face a dilemma: they can use the exact text as it appears in the bill, but they will then be providing inaccurate information to their tenants; or alter the text of the notice to provide accurate information, but violate the statute – at least in a very technical sense – in the process. This bill corrects the cross-reference, thus eliminating this problem.

*d. Aligning definitions of school dormitories*

AB 1482 contained exemptions for school dormitories from both the just cause provisions and the anti-rent gouging provisions. At some point in the legislative process, however, the language describing one of the exemptions got changed, but the other did not. This mismatch was unintentional. Accordingly, this bill brings the two exemptions into alignment.

*e. Clarifying the scope of laws with which housing providers must comply before establishing initial rates after the expiration of affordability covenants*

In order to qualify for special financing, many housing providers must agree to keep the rent affordable for a specified period of time. AB 1482 provided that, upon the expiration of that period, housing providers could initially establish new rental rates without necessarily staying within the rent increase caps imposed by AB 1482. Before establishing these new initial rental rates, however, the housing provider had to demonstrate compliance with other laws designed to preserve affordable housing. As drafted, however, AB 1482 was not completely consistent about exactly what laws housing providers had to follow. This bill clarifies that the housing provider must demonstrate compliance with all applicable federal, state, and local laws. The bill further specifies that AB 1482 does not preempt any local laws that may also apply.

## 2. Arguments in support of the bill

According to the author:

The Tenant Protection Act of 2019 provided protections against unjust evictions and rent gouging to millions of Californians. AB 3088 includes technical cleanups necessary to provide all parties the clarity they need to properly uphold this landmark law.

In support of the bill, California Rural Legal Assistance Foundation, Inc., and Western Center on Law & Poverty write:

Assembly Bill 3088 [...] will clarify provisions of last year's AB 1482, the Tenant Protection Act, to ensure the important tenant protections it contains can be administered and enforced correctly and uniformly.

**SUPPORT**

California Rural Legal Assistance Foundation, Inc.  
Western Center on Law & Poverty

**OPPOSITION**

None known

**RELATED LEGISLATION**

Pending Legislation: AB 2895 (Quirk-Silva, 2020) extends the anti-rent gouging provisions of AB 1482 (annual rent increases capped at five percent plus inflation up to a maximum of 10 percent) to mobilehome homeowners and tenants. It is currently pending consideration before the Senate Judiciary Committee.

Prior Legislation: AB 1482 (Chiu, Ch. 597, Stats. 2019) limited rent-gouging in California by placing an upper limit on annual rent increases: five percent plus inflation up to a hard cap of 10 percent. To prevent landlords from engaging in rent-gouging by evicting tenants, this bill also requires that a landlord have and state a just cause, as specified, in order to evict tenants who have occupied the premises for a year. Both the rent cap and the just cause provisions are subject to exemptions including, among others: housing built in the past 15 years and single family residences unless owned by a real estate trust or a corporation. AB 1482 sunsets after ten years and does not preempt any local rent control ordinances.

**PRIOR VOTES:**

Assembly Floor (Ayes 70, Noes 0)

Assembly Housing and Community Development Committee (Ayes 7, Noes 0)

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