

Senate Bill No. 328

CHAPTER 278

An act to add Section 1940.8.5 to the Civil Code, relating to rental property.

[Approved by Governor September 8, 2015. Filed with
Secretary of State September 8, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 328, Hueso. Landlords: notice of pesticide use.

Existing law regulates the hiring of dwelling units, as defined. Existing law requires a landlord of a residential dwelling unit to provide a new tenant with certain disclosures, including, but not limited to, specified notice from a registered structural pest control company regarding the use of pesticides at the dwelling unit if a contract for periodic pest control service has been executed.

This bill, with certain exceptions, would require the landlord or the landlord's authorized agent, as defined, to provide a tenant, and, if certain conditions are met, any tenant of adjacent units, with specified notice of the use of pesticides at the dwelling unit if the landlord or authorized agent applies any pesticide without a licensed pest control operator.

The bill, with certain exceptions, would require the posting of a similar notice at least 24 hours prior to application of any pesticide to a common area without a licensed pest control operator, unless the pest poses an immediate threat to health and safety, in which case the notice would be required to be posted as soon as practicable, but not later than one hour after the pesticide is applied. For routine application pursuant to a schedule in common areas, the bill would require a notification to existing tenants prior to the initial routine application and to new tenants at the time that the lease agreement is entered into.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Existing law requires licensed pest control operators to provide to tenants written notification that includes the pest to be targeted, the pesticide to be used, the frequency of its use, and a health and safety statement prior to a pesticide application.

(b) Landlords or authorized agents may apply pesticides without using the services of a licensed pest control operator. There is no requirement for landlords or authorized agents to notify tenants when pesticides are applied to their units or common areas.

(c) It is therefore the intent of this bill to ensure that when pesticides are about to be applied to rental property by the landlord or an authorized agent, rather than by a licensed pest control operator, potentially affected tenants are provided with substantially the same written notification that they would have received under existing law had the pesticides been applied by a pest control operator.

SEC. 2. Section 1940.8.5 is added to the Civil Code, to read:

1940.8.5. (a) For purposes of this section, the following terms have the following meanings:

(1) “Adjacent dwelling unit” means a dwelling unit that is directly beside, above, or below a particular dwelling unit.

(2) “Authorized agent” means an individual, organization, or other entity that has entered into an agreement with a landlord to act on the landlord’s behalf in relation to the management of a residential rental property.

(3) “Broadcast application” means spreading pesticide over an area greater than two square feet.

(4) “Electronic delivery” means delivery of a document by electronic means to the electronic address at or through which a tenant, landlord, or authorized agent has authorized electronic delivery.

(5) “Landlord” means an owner of residential rental property.

(6) “Pest” means a living organism that causes damage to property or economic loss, or transmits or produces diseases.

(7) “Pesticide” means any substance, or mixture of substances, that is intended to be used for controlling, destroying, repelling, or mitigating any pest or organism, excluding antimicrobial pesticides as defined by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136(mm)).

(8) “Licensed pest control operator” means anyone licensed by the state to apply pesticides.

(b) (1) A landlord or authorized agent that applies any pesticide to a dwelling unit without a licensed pest control operator shall provide a tenant of that dwelling unit and, if making broadcast applications, or using total release foggers or aerosol sprays, any tenant in an adjacent dwelling unit that could reasonably be impacted by the pesticide use with written notice that contains the following statements and information using words with common and everyday meaning:

(A) The pest or pests to be controlled.

(B) The name and brand of the pesticide product proposed to be used.

(C) “State law requires that you be given the following information:

CAUTION – PESTICIDES ARE TOXIC CHEMICALS. The California Department of Pesticide Regulation and the United States Environmental Protection Agency allow the unlicensed use of certain pesticides based on existing scientific evidence that there are no appreciable risks if proper use conditions are followed or that the risks are outweighed by the benefits. The degree of risk depends upon the degree of exposure, so exposure should be minimized.

If within 24 hours following application of a pesticide, a person experiences symptoms similar to common seasonal illness comparable to influenza, the person should contact a physician, appropriate licensed health care provider, or the California Poison Control System (1-800-222-1222).

For further information, contact any of the following: for Health Questions – the County Health Department (telephone number) and for Regulatory Information – the Department of Pesticide Regulation (916-324-4100).”

(D) The approximate date, time, and frequency with which the pesticide will be applied.

(E) The following notification:

“The approximate date, time, and frequency of this pesticide application is subject to change.”

(2) At least 24 hours prior to application of the pesticide to the dwelling unit, the landlord or authorized agent shall provide the notice to the tenant of the dwelling unit, as well as any tenants in adjacent units that are required to be notified pursuant to paragraph (1), in at least one of the following ways:

(A) First-class mail.

(B) Personal delivery to the tenant, someone of suitable age and discretion at the premises, or under the usual entry door of the premises.

(C) Electronic delivery, if an electronic mailing address has been provided by the tenant.

(D) Posting a written notice in a conspicuous place at the unit entry in a manner in which a reasonable person would discover the notice.

(3) (A) Upon receipt of written notification, the tenant may agree in writing, or if notification was electronically delivered, the tenant may agree through electronic delivery, to allow the landlord or authorized agent to apply a pesticide immediately or at an agreed upon time.

(B) (i) Prior to receipt of written notification, the tenant and the landlord or authorized agent may agree orally to an immediate pesticide application if a tenant requests that the pesticide be applied before 24-hour advance notice can be given. The oral agreement shall include the name and brand of the pesticide product proposed to be used.

(ii) With respect to a tenant entering into an oral agreement for immediate pesticide application, the landlord or authorized agent, no later than the time of pesticide application, shall leave the written notice specified in paragraph (1) in a conspicuous place in the dwelling unit, or at the entrance of the unit in a manner in which a reasonable person would discover the notice.

(iii) If any tenants in adjacent dwelling units are also required to be notified pursuant to this subdivision, the landlord or authorized agent shall provide those tenants with this notice as soon as practicable after the oral agreement is made authorizing immediate pesticide application, but in no case later than commencement of application of the pesticide.

(4) (A) This subdivision shall not be construed to require an association, as defined in Section 4080, to provide notice of pesticide use in a separate

interest, as defined in Section 4185, within a common interest development, as defined in Section 4100.

(B) Notwithstanding subparagraph (A), an association, as defined in Section 4080, that has taken title to a separate interest, as defined in Section 4185, shall provide notification to tenants as specified in this subdivision.

(c) (1) A landlord or authorized agent that applies any pesticide to a common area without a licensed pest control operator, excluding routine pesticide applications described in subdivision (d), shall post written notice in a conspicuous place in the common area in which a pesticide is to be applied that contains the following statements and information using words with common and everyday meaning:

(A) The pest or pests to be controlled.

(B) The name and brand of the pesticide product proposed to be used.

(C) "State law requires that you be given the following information:

CAUTION – PESTICIDES ARE TOXIC CHEMICALS. The California Department of Pesticide Regulation and the United States Environmental Protection Agency allow the unlicensed use of certain pesticides based on existing scientific evidence that there are no appreciable risks if proper use conditions are followed or that the risks are outweighed by the benefits. The degree of risk depends upon the degree of exposure, so exposure should be minimized.

If within 24 hours following application of a pesticide, a person experiences symptoms similar to common seasonal illness comparable to influenza, the person should contact a physician, appropriate licensed health care provider, or the California Poison Control System (1-800-222-1222).

For further information, contact any of the following: for Health Questions – the County Health Department (telephone number) and for Regulatory Information – the Department of Pesticide Regulation (916-324-4100)."

(D) The approximate date, time, and frequency with which the pesticide will be applied.

(2) (A) The notice shall be posted before a pesticide application in a common area and shall remain posted for at least 24 hours after the pesticide is applied.

(B) Landlords and their authorized agents are not liable for any notice removed from a common area without the knowledge or consent of the landlord or authorized agent.

(C) If the pest poses an immediate threat to health and safety, thereby making compliance with notification prior to the pesticide application required in subparagraph (A) unreasonable, a landlord or authorized agent shall post the notification as soon as practicable, but not later than one hour after the pesticide is applied.

(3) If a common area lacks a suitable place to post a notice, then the landlord shall provide the notice to each dwelling unit in at least one of the following ways:

(A) First-class mail.

(B) Personal delivery to the tenant, someone of suitable age and discretion at the premises, or under the usual entry door of the premises.

(C) Electronic delivery, if an electronic mailing address has been provided by the tenant.

(D) Posting a written notice in a conspicuous place at the unit entry in a manner in which a reasonable person would discover the notice.

(4) This subdivision shall not be construed to require any landlord or authorized agent, or an association, as defined in Section 4080, to provide notice of pesticide use in common areas within a common interest development, as defined in Section 4100.

(d) (1) A landlord or authorized agent that routinely applies pesticide in a common area on a set schedule without a licensed pest control operator shall provide a tenant in each dwelling unit with written notice that contains the following statements and information using words with common and everyday meaning:

(A) The pest or pests to be controlled.

(B) The name and brand of the pesticide product proposed to be used.

(C) “State law requires that you be given the following information:

CAUTION – PESTICIDES ARE TOXIC CHEMICALS. The California Department of Pesticide Regulation and the United States Environmental Protection Agency allow the unlicensed use of certain pesticides based on existing scientific evidence that there are no appreciable risks if proper use conditions are followed or that the risks are outweighed by the benefits. The degree of risk depends upon the degree of exposure, so exposure should be minimized.

If within 24 hours following application of a pesticide, a person experiences symptoms similar to common seasonal illness comparable to influenza, the person should contact a physician, appropriate licensed health care provider, or the California Poison Control System (1-800-222-1222).

For further information, contact any of the following: for Health Questions – the County Health Department (telephone number) and for Regulatory Information – the Department of Pesticide Regulation (916-324-4100).”

(D) The schedule pursuant to which the pesticide will be routinely applied.

(2) (A) The landlord or authorized agent shall provide the notice to both of the following:

(i) Existing tenants prior to the initial pesticide application.

(ii) Each new tenant prior to entering into a lease agreement.

(B) The landlord or authorized agent shall provide the notice to the tenant in at least one of the following ways:

(i) First-class mail.

(ii) Personal delivery to the tenant, someone of suitable age and discretion at the premises, or under the usual entry door of the premises.

(iii) Electronic delivery, if an electronic mailing address has been provided by the tenant.

(iv) Posting a written notice in a conspicuous place at the unit entry in a manner in which a reasonable person would discover the notice.

(C) If the pesticide to be used is changed, a landlord or authorized agent shall provide a new notice pursuant to paragraph (1).

(D) This subdivision shall not be construed to require any landlord or authorized agent, or an association, as defined in Section 4080, to provide notice of pesticide use in common areas within a common interest development, as defined in Section 4100.

(e) Nothing in this section abrogates the responsibility of a registered structural pest control company to abide by the notification requirements of Section 8538 of the Business and Professions Code.

(f) Nothing in this section authorizes a landlord or authorized agent to enter a tenant's dwelling unit in violation of Section 1954.

(g) If a tenant is provided notice in compliance with this section, a landlord or authorized agent is not required to provide additional information, and the information shall be deemed adequate to inform the tenant regarding the application of pesticides.