S-1982.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBSTITUTE SENATE BILL 5538**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Financial Institutions & Insurance (originally sponsored by Senators Angel and Sheldon)

AN ACT Relating to deceased tenants; amending RCW 59.18.310; reenacting and amending RCW 59.18.030; and adding new sections to chapter 59.18 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 59.18.030 and 2012 c 41 s 2 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "Certificate of inspection" means an unsworn statement, declaration, verification, or certificate made in accordance with the requirements of RCW 9A.72.085 by a qualified inspector that states that the landlord has not failed to fulfill any substantial obligation imposed under RCW 59.18.060 that endangers or impairs the health or safety of a tenant, including (a) structural members that are of insufficient size or strength to carry imposed loads with safety, (b) exposure of the occupants to the weather, (c) plumbing and sanitation defects that directly expose the occupants to the risk of illness or injury, (d) not providing facilities adequate to supply heat and water and hot water as reasonably required by the tenant, (e) providing heating or ventilation systems that are not functional or are hazardous, (f) defective, hazardous, or missing electrical wiring or electrical service, (g) defective or hazardous exits that increase the risk of injury to occupants, and (h) conditions that increase the risk of fire.

(2) "Distressed home" has the same meaning as in RCW 61.34.020.

(3) "Distressed home conveyance" has the same meaning as in RCW 61.34.020.

(4) "Distressed home purchaser" has the same meaning as in RCW 61.34.020.

(5) "Dwelling unit" is a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, including but not limited to single-family residences and units of multiplexes, apartment buildings, and mobile homes.

(6) "Gang" means a group that: (a) Consists of three or more persons; (b) has identifiable leadership or an identifiable name, sign, or symbol; and (c) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

(7) "Gang-related activity" means any activity that occurs within the gang or advances a gang purpose.

(8) "In danger of foreclosure" means any of the following:

(a) The homeowner has defaulted on the mortgage and, under the terms of the mortgage, the mortgagee has the right to accelerate full payment of the mortgage and repossess, sell, or cause to be sold the property;

(b) The homeowner is at least thirty days delinquent on any loan that is secured by the property; or

(c) The homeowner has a good faith belief that he or she is likely to default on the mortgage within the upcoming four months due to a lack of funds, and the homeowner has reported this belief to:

(i) The mortgagee;

(ii) A person licensed or required to be licensed under chapter 19.134 RCW;

(iii) A person licensed or required to be licensed under chapter 19.146 RCW;

(iv) A person licensed or required to be licensed under chapter 18.85 RCW;

(v) An attorney-at-law;

(vi) A mortgage counselor or other credit counselor licensed or certified by any federal, state, or local agency; or

(vii) Any other party to a distressed property conveyance.

(9) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the owner, lessor, or sublessor including, but not limited to, an agent, a resident manager, or a designated property manager.

(10) "Mortgage" is used in the general sense and includes all instruments, including deeds of trust, that are used to secure an obligation by an interest in real property.

(11) "Owner" means one or more persons, jointly or severally, in whom is vested:

(a) All or any part of the legal title to property; or

(b) All or part of the beneficial ownership, and a right to present use and enjoyment of the property.

(12) "Person" means an individual, group of individuals, corporation, government, or governmental agency, business trust, estate, trust, partnership, or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(13) "Premises" means a dwelling unit, appurtenances thereto, grounds, and facilities held out for the use of tenants generally and any other area or facility which is held out for use by the tenant.

(14) "Property" or "rental property" means all dwelling units on a contiguous quantity of land managed by the same landlord as a single, rental complex.

(15) "Prospective landlord" means a landlord or a person who advertises, solicits, offers, or otherwise holds a dwelling unit out as available for rent.

(16) "Prospective tenant" means a tenant or a person who has applied for residential housing that is governed under this chapter.

(17) "Qualified inspector" means a United States department of housing and urban development certified inspector; a Washington state licensed home inspector; an American society of home inspectors certified inspector; a private inspector certified by the national association of housing and redevelopment officials, the American association of code enforcement, or other comparable professional association as approved by the local municipality; a municipal code enforcement officer; a Washington licensed structural engineer; or a Washington licensed architect.

(18) "Reasonable attorneys' fees," where authorized in this chapter, means an amount to be determined including the following factors: The time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly, the fee customarily charged in the locality for similar legal services, the amount involved and the results obtained, and the experience, reputation and ability of the lawyer or lawyers performing the services.

(19) "Rental agreement" means all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit.

(20) A "single-family residence" is a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single-family residence if it has direct access to a street and shares neither heating facilities nor hot water equipment, nor any other essential facility or service, with any other dwelling unit.

(21) A "tenant" is any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement.

(22) "Tenant screening" means using a consumer report or other information about a prospective tenant in deciding whether to make or accept an offer for residential rental property to or from a prospective tenant.

(23) "Tenant screening report" means a consumer report as defined in RCW 19.182.010 and any other information collected by a tenant screening service.

(24) "Designated person" means a person designated by the tenant under section 2 of this act.

(25) "Reasonable manner" means to dispose of a deceased tenant's personal property by donation to a not-for-profit charitable organization, by removal of the property by a trash hauler or recycler, or by any other method that is reasonable under the circumstances.

(26) "Tenant representative" means:

(a) A personal representative of a deceased tenant's estate if known to the landlord;

(b) If the landlord has no knowledge that a personal representative has been appointed for the deceased tenant's estate, a person claiming to be a successor of the deceased tenant who has provided the landlord with proof of death and an affidavit made by the person that meets the requirements of RCW 11.62.010(2);

(c) In the absence of a personal representative under (a) of this subsection or a person claiming to be a successor under (b) of this subsection, a designated person; or

(d) In the absence of a personal representative under (a) of this subsection, a person claiming to be a successor under (b) of this subsection, or a designated person under (c) of this subsection, a person reasonably known to the landlord to be a successor as defined in RCW 11.62.005.

NEW SECTION. **Sec.**  A new section is added to chapter 59.18 RCW to read as follows:

(1)(a) At a landlord's request, the tenant may designate a person to act for the tenant on the tenant's death when the tenant is the sole occupant of the property.

(b) Any designation must be in writing, be separate from the rental agreement, and include:

(i) The name of the designated person and the mailing address, any address used for the receipt of electronic communications, and the telephone number of the designated person;

(ii) A signed statement authorizing the landlord in the event of the tenant's death when the tenant is the sole occupant of the property to: Grant the designated person access to the tenant's dwelling unit, remove the tenant's property, receive refunds of amounts due to the tenant, and dispose of the tenant's property consistent with the tenant's last will and testament and any applicable intestate succession law; and

(iii) A conspicuous statement that the designation remains in effect until it is revoked in writing by the tenant or replaced with a new designation.

(2) A tenant may, without request from the landlord, designate a person to act for the tenant on the tenant's death when the tenant is the sole occupant of the property by providing the landlord with the information and signing a statement as provided in subsection (1) of this section.

(3) The tenant may change the designated person or revoke any previous designation in writing at any time prior to his or her death.

(4) Once the landlord or the designated person knows of the appointment of a personal representative for the deceased tenant's estate or of a person claiming to be a successor of the deceased tenant who has provided the landlord with proof of death and an affidavit made by the person that meets the requirements of RCW 11.62.010(2), the designated person's authority to act under this section terminates.

NEW SECTION. **Sec.**  A new section is added to chapter 59.18 RCW to read as follows:

(1) In the event of the death of a tenant who is the sole occupant of the leased premises:

(a) The landlord must mail or personally deliver written notice to any known personal representative, known designated person, emergency contact identified by the tenant on the rental application, known person reasonably believed to be a successor of the tenant as defined in RCW 11.62.005, and to the deceased tenant at the address of the leased premises. If the landlord knows of any address used for the receipt of electronic communications, the landlord must email the notice to that address as well. The notice must include:

(i) The name of the deceased tenant and address of the dwelling unit;

(ii) The approximate date of the deceased tenant's death;

(iii) The rental amount and date through which rent is paid;

(iv) A statement that the tenancy will terminate fifteen days from the date the notice is mailed or personally delivered or the date through which rent is paid, whichever comes later, and that the tenant representative must remove the tenant's property from the leased premises during that time period or make written arrangements acceptable to the landlord for removal of the tenant's property at a later date. Acceptable arrangements include the payment of rent in advance for no more than sixty days from the date of the tenant's death to allow a tenant representative to arrange for orderly removal of the tenant's property. At the end of the period for which the rent has been paid pursuant to this subsection, the tenancy ends and the landlord may sell or dispose of any property that may remain in the leased premises;

(v) A statement that failure to remove the tenant's property or to make acceptable arrangements within the specified time period will allow the landlord to remove the tenant's property from the leased premises, store it in a reasonably secure place, and charge the actual or reasonable costs, whichever is less, of drayage and storage of the property; and

(vi) A copy of any designation executed by the tenant pursuant to section 2 of this act;

(b) The landlord must turn over possession of the tenant's property to a tenant representative if a request is made in writing within the specified time period or any subsequent date agreed to by the parties;

(c) The landlord must refund any unearned rent and the tenant's deposits, less lawful deductions, including the actual or reasonable costs, whichever is less, of removing and storing the property, to the tenant representative; and

(d) Any tenant representative who removes property from the tenant's leased premises must, at the time of removal, provide to the landlord an inventory of the removed property and signed acknowledgment that he or she has only been given possession and not ownership of the property.

(2) If the landlord places the property in storage pursuant to subsection (1)(a) of this section, the landlord must mail a second written notice to any known personal representative, known designated person, emergency contact identified by the tenant on the rental application, known person reasonably believed to be a successor of the tenant as defined in RCW 11.62.005, and to the deceased tenant at the leased premises. The second notice must state that the landlord may sell or dispose of the property on or after a specified date that is at least forty-five days after the second notice is mailed if a tenant representative does not claim and remove the property in accordance with this subsection.

(a) If the landlord has no knowledge that a personal representative has been appointed for the deceased tenant's estate and no person claiming to be a successor of the deceased tenant has provided the landlord with proof of death and an affidavit made by the person that meets the requirements of RCW 11.62.010(2), the landlord may turn over possession of the tenant's property to the designated person or to any person the landlord reasonably believes to be a successor of the deceased tenant under RCW 11.62.005. The landlord has no obligation to identify all of the deceased tenant's devisees or heirs and may give possession to any individual who provides the landlord with reasonable evidence that they are a successor of the deceased tenant under RCW 11.62.005.

(i) Upon removal of the property, the landlord must refund any unearned rent and the tenant's deposits, less lawful deductions, including the actual or reasonable costs, whichever is less, of drayage and storage of the deceased tenant's property, to the tenant's representative.

(ii) Any person who removes property from the tenant's leased premises must, at the time of removal, provide to the landlord an inventory of the removed property and signed acknowledgment that he or she has only been given possession and not ownership of the property.

(b) If the landlord is not contacted within the forty-five day notice period by a tenant representative entitled to remove the property under this section, the landlord may sell or dispose of the deceased tenant's personal property, except for personal papers and personal photographs, as provided in this section.

(i) If the landlord reasonably estimates the fair market value of the stored property to be more than one thousand dollars and a commercially reasonable method of sale is available through a third party, the landlord must arrange to sell the property in a commercially reasonable manner and dispose of any property that remains unsold.

(ii) If the value of the stored property does not meet the threshold provided in (b)(i) of this subsection, the landlord may dispose of the property in a reasonable manner.

(iii) The landlord may apply any income derived from the sale of the property pursuant to this section against any costs of sale and moneys due the landlord, including actual or reasonable costs, whichever is less, of drayage and storage of the deceased tenant's property. Any excess income derived from the sale of such property under this section must be held by the landlord for a period of one year from the date of sale, and if no claim is made for recovery of the property before the expiration of that one-year period, the balance must be treated as abandoned property and deposited by the landlord with the department of revenue pursuant to chapter 63.29 RCW.

(c) Personal papers and personal photographs that are not claimed by a tenant representative within sixty days of a sale or other disposition of the deceased tenant's other personal property may be disposed of.

(d) No landlord or employee of a landlord, or his or her family members, may acquire, directly or indirectly, the property sold pursuant to (b)(i) of this subsection or disposed of pursuant to (b)(ii) of this subsection, or personal papers and personal photographs disposed of under (c) of this subsection.

(3) Upon learning of the death of the tenant, the landlord may enter the deceased tenant's dwelling unit and immediately dispose of any perishable food, hazardous materials, and garbage and turn over animals to a tenant representative or to an animal control officer, humane society, or other individual or organization willing to care for the animals.

(4) Any notices sent by the landlord under this section must include a mailing address, any address used for the receipt of electronic communications, and a telephone number of the landlord.

(5) If a landlord knowingly violates this section, the landlord is liable to the deceased tenant's estate for actual damages. The prevailing party in any action pursuant to this subsection may recover costs and reasonable attorneys' fees.

(6) A landlord who complies with this section is relieved from any liability relating to the deceased tenant's property.

**Sec.**  RCW 59.18.310 and 2011 c 132 s 16 are each amended to read as follows:

(1) If the tenant defaults in the payment of rent and reasonably indicates by words or actions the intention not to resume tenancy, the tenant shall be liable for the following for such abandonment: PROVIDED, That upon learning of such abandonment of the premises the landlord shall make a reasonable effort to mitigate the damages resulting from such abandonment:

((~~(1)~~)) (a) When the tenancy is month-to-month, the tenant shall be liable for the rent for the thirty days following either the date the landlord learns of the abandonment, or the date the next regular rental payment would have become due, whichever first occurs.

((~~(2)~~)) (b) When the tenancy is for a term greater than month-to-month, the tenant shall be liable for the lesser of the following:

((~~(a)~~)) (i) The entire rent due for the remainder of the term; or

((~~(b)~~)) (ii) All rent accrued during the period reasonably necessary to rerent the premises at a fair rental, plus the difference between such fair rental and the rent agreed to in the prior agreement, plus actual costs incurred by the landlord in rerenting the premises together with statutory court costs and reasonable attorneys' fees.

(2) In the event of such abandonment of tenancy and an accompanying default in the payment of rent by the tenant, the landlord may immediately enter and take possession of any property of the tenant found on the premises and may store the same in any reasonably secure place. A landlord shall make reasonable efforts to provide the tenant with a notice containing the name and address of the landlord and the place where the property is stored and informing the tenant that a sale or disposition of the property shall take place pursuant to this section, and the date of the sale or disposal, and further informing the tenant of the right under RCW 59.18.230 to have the property returned prior to its sale or disposal. The landlord's efforts at notice under this subsection shall be satisfied by the mailing by first-class mail, postage prepaid, of such notice to the tenant's last known address and to any other address provided in writing by the tenant or actually known to the landlord where the tenant might receive the notice. The landlord shall return the property to the tenant after the tenant has paid the actual or reasonable drayage and storage costs whichever is less if the tenant makes a written request for the return of the property before the landlord has sold or disposed of the property. After forty-five days from the date the notice of such sale or disposal is mailed or personally delivered to the tenant, the landlord may sell or dispose of such property, including personal papers, family pictures, and keepsakes. The landlord may apply any income derived therefrom against moneys due the landlord, including actual or reasonable costs whichever is less of drayage and storage of the property. If the property has a cumulative value of two hundred fifty dollars or less, the landlord may sell or dispose of the property in the manner provided in this section, except for personal papers, family pictures, and keepsakes, after seven days from the date the notice of sale or disposal is mailed or personally delivered to the tenant: PROVIDED, That the landlord shall make reasonable efforts, as defined in this section, to notify the tenant. Any excess income derived from the sale of such property under this section shall be held by the landlord for the benefit of the tenant for a period of one year from the date of sale, and if no claim is made or action commenced by the tenant for the recovery thereof prior to the expiration of that period of time, the balance shall be the property of the landlord, including any interest paid on the income.

(3) This section does not apply to the disposition of property of a deceased tenant. The disposition of property on the death of a tenant when the tenant is the sole occupant of the property must be as provided in section 3 of this act.

**--- END ---**