

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1223

55th Legislature
1998 Regular Session

Passed by the House March 10, 1998
Yeas 97 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate March 6, 1998
Yeas 46 Nays 3

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1223** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1223

AS AMENDED BY THE SENATE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1997 Regular Session

By House Committee on Law & Justice (originally sponsored by Representatives Carrell, Zellinsky, Talcott, Hickel, Thompson and Conway)

Read first time 03/04/97.

1 AN ACT Relating to landlord-tenant relations; amending RCW
2 59.18.030, 59.18.130, 59.18.180, and 59.12.030; and adding new sections
3 to chapter 59.18 RCW.

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

5 **Sec. 1.** RCW 59.18.030 and 1973 1st ex.s. c 207 s 3 are each
6 amended to read as follows:

7 As used in this chapter:

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

13 (2) "Landlord" means the owner, lessor, or sublessor of the
14 dwelling unit or the property of which it is a part, and in addition
15 means any person designated as representative of the landlord.

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

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

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

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

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

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

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

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

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

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

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

35 **Sec. 2.** RCW 59.18.130 and 1992 c 38 s 2 are each amended to read
36 as follows:

37 Each tenant shall pay the rental amount at such times and in such
38 amounts as provided for in the rental agreement or as otherwise

1 provided by law and comply with all obligations imposed upon tenants by
2 applicable provisions of all municipal, county, and state codes,
3 statutes, ordinances, and regulations, and in addition shall:

4 (1) Keep that part of the premises which he or she occupies and
5 uses as clean and sanitary as the conditions of the premises permit;

6 (2) Properly dispose from his or her dwelling unit all rubbish,
7 garbage, and other organic or flammable waste, in a clean and sanitary
8 manner at reasonable and regular intervals, and assume all costs of
9 extermination and fumigation for infestation caused by the tenant;

10 (3) Properly use and operate all electrical, gas, heating, plumbing
11 and other fixtures and appliances supplied by the landlord;

12 (4) Not intentionally or negligently destroy, deface, damage,
13 impair, or remove any part of the structure or dwelling, with the
14 appurtenances thereto, including the facilities, equipment, furniture,
15 furnishings, and appliances, or permit any member of his or her family,
16 invitee, licensee, or any person acting under his or her control to do
17 so. Violations may be prosecuted under chapter 9A.48 RCW if the
18 destruction is intentional and malicious;

19 (5) Not permit a nuisance or common waste;

20 (6) Not engage in drug-related activity at the rental premises, or
21 allow a subtenant, sublessee, resident, or anyone else to engage in
22 drug-related activity at the rental premises with the knowledge or
23 consent of the tenant. "Drug-related activity" means that activity
24 which constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW;

25 (7) Maintain the smoke detection device in accordance with the
26 manufacturer's recommendations, including the replacement of batteries
27 where required for the proper operation of the smoke detection device,
28 as required in RCW 48.48.140(3);

29 (8) Not engage in any activity at the rental premises that is:

30 (a) Imminently hazardous to the physical safety of other persons on
31 the premises; and

32 (b)(i) Entails physical assaults upon another person which result
33 in an arrest; or

34 (ii) Entails the unlawful use of a firearm or other deadly weapon
35 as defined in RCW 9A.04.110 which results in an arrest, including
36 threatening another tenant or the landlord with a firearm or other
37 deadly weapon under RCW 59.18.352. Nothing in this subsection (8)
38 shall authorize the termination of tenancy and eviction of the victim

1 of a physical assault or the victim of the use or threatened use of a
2 firearm or other deadly weapon; ((and))

3 (9) Not engage in any gang-related activity at the premises, as
4 defined in RCW 59.18.030, or allow another to engage in such activity
5 at the premises, that renders people in at least two or more dwelling
6 units or residences insecure in life or the use of property or that
7 injures or endangers the safety or health of people in at least two or
8 more dwelling units or residences. In determining whether a tenant is
9 engaged in gang-related activity, a court should consider the totality
10 of the circumstances, including factors such as whether there have been
11 a significant number of complaints to the landlord about the tenant's
12 activities at the property, damages done by the tenant to the property,
13 including the property of other tenants or neighbors, harassment or
14 threats made by the tenant to other tenants or neighbors that have been
15 reported to law enforcement agencies, any police incident reports
16 involving the tenant, and the tenant's criminal history; and

17 (10) Upon termination and vacation, restore the premises to their
18 initial condition except for reasonable wear and tear or conditions
19 caused by failure of the landlord to comply with his or her obligations
20 under this chapter: PROVIDED, That the tenant shall not be charged for
21 normal cleaning if he or she has paid a nonrefundable cleaning fee.

22 **Sec. 3.** RCW 59.18.180 and 1992 c 38 s 3 are each amended to read
23 as follows:

24 (1) If the tenant fails to comply with any portion of RCW 59.18.130
25 or 59.18.140, and such noncompliance can substantially affect the
26 health and safety of the tenant or other tenants, or substantially
27 increase the hazards of fire or accident that can be remedied by
28 repair, replacement of a damaged item, or cleaning, the tenant shall
29 comply within thirty days after written notice by the landlord
30 specifying the noncompliance, or, in the case of emergency as promptly
31 as conditions require. If the tenant fails to remedy the noncompliance
32 within that period the landlord may enter the dwelling unit and cause
33 the work to be done and submit an itemized bill of the actual and
34 reasonable cost of repair, to be payable on the next date when periodic
35 rent is due, or on terms mutually agreed to by the landlord and tenant,
36 or immediately if the rental agreement has terminated. Any substantial
37 noncompliance by the tenant of RCW 59.18.130 or 59.18.140 shall
38 constitute a ground for commencing an action in unlawful detainer in

1 accordance with the provisions of chapter 59.12 RCW, and a landlord may
2 commence such action at any time after written notice pursuant to such
3 chapter. The tenant shall have a defense to an unlawful detainer
4 action filed solely on this ground if it is determined at the hearing
5 authorized under the provisions of chapter 59.12 RCW that the tenant is
6 in substantial compliance with the provisions of this section, or if
7 the tenant remedies the noncomplying condition within the thirty day
8 period provided for above or any shorter period determined at the
9 hearing to have been required because of an emergency: PROVIDED, That
10 if the defective condition is remedied after the commencement of an
11 unlawful detainer action, the tenant may be liable to the landlord for
12 statutory costs and reasonable attorney's fees.

13 (2) If drug-related activity is alleged to be a basis for
14 termination of tenancy under RCW 59.18.130(6), 59.12.030(5), or
15 59.20.140(5), the compliance provisions of this section do not apply
16 and the landlord may proceed directly to an unlawful detainer action.

17 (3) If activity on the premises that creates an imminent hazard to
18 the physical safety of other persons on the premises as defined in RCW
19 59.18.130(8) is alleged to be the basis for termination of the tenancy,
20 and the tenant is arrested as a result of this activity, then the
21 compliance provisions of this section do not apply and the landlord may
22 proceed directly to an unlawful detainer action against the tenant who
23 was arrested for this activity.

24 (4) If gang-related activity, as prohibited under RCW 59.18.130(9),
25 is alleged to be the basis for termination of the tenancy, then the
26 compliance provisions of this section do not apply and the landlord may
27 proceed directly to an unlawful detainer action in accordance with
28 chapter 59.12 RCW, and a landlord may commence such an action at any
29 time after written notice under chapter 59.12 RCW.

30 (5) A landlord may not be held liable in any cause of action for
31 bringing an unlawful detainer action against a tenant for drug-related
32 activity ~~((or))~~, for creating an imminent hazard to the physical safety
33 of others, or for engaging in gang-related activity that renders people
34 in at least two or more dwelling units or residences insecure in life
35 or the use of property or that injures or endangers the safety or
36 health of people in at least two or more dwelling units or residences
37 under this section, if the unlawful detainer action was brought in good
38 faith. Nothing in this section shall affect a landlord's liability

1 under RCW 59.18.380 to pay all damages sustained by the tenant should
2 the writ of restitution be wrongfully sued out.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 59.18 RCW
4 to read as follows:

5 The legislature finds and declares that the ability to feel safe
6 and secure in one's own home and in one's own community is of primary
7 importance. The legislature recognizes that certain gang-related
8 activity can affect the safety of a considerable number of people in
9 the rental premises and dwelling units. Therefore, such activity,
10 although it may be occurring within an individual's home or the
11 surrounding areas of an individual's home, becomes the community's
12 concern.

13 The legislature intends that the remedy provided in section 5 of
14 this act be used solely to protect the health and safety of the
15 community. The remedy is not a means for private citizens to bring
16 malicious or unfounded actions against fellow tenants or residential
17 neighbors for personal reasons. In determining whether the tenant's
18 activity is the type prohibited under RCW 59.18.130(9), the court
19 should consider the totality of the circumstances, including factors
20 such as whether there have been numerous complaints to the landlord,
21 damage to property, police or incident reports, reports of disturbance,
22 and arrests. An absence of any or all of these factors does not
23 necessarily mean gang activity is not occurring. In determining
24 whether the tenant is engaging in gang-related activity, the court
25 should consider the purpose and intent of section 5 of this act. The
26 legislature intends to give people in the community a tool that will
27 help them restore the health and vibrance of their community.

28 NEW SECTION. **Sec. 5.** A new section is added to chapter 59.18 RCW
29 to read as follows:

30 (1)(a) Any person whose life, safety, health, or use of property is
31 being injured or endangered by a tenant's gang-related activity, who
32 has legal standing and resides, works in, or owns property in the same
33 multifamily building, apartment complex, or within a one-block radius
34 may serve the landlord with a ten-day notice and demand that the
35 landlord commence an unlawful detainer action against the tenant. The
36 notice and demand must set forth, in reasonable detail, facts and
37 circumstances that lead the person to believe gang-related activity is

1 occurring. The notice and demand shall be served by delivering a copy
2 personally to the landlord or the landlord's agent. If the person is
3 unable to personally serve the landlord after exercising due diligence,
4 the person may deposit the notice and demand in the mail, postage
5 prepaid, to the landlord's or the landlord's agent's last known
6 address.

7 (b) A copy of the notice and demand must also be served upon the
8 tenant engaging in the gang-related activity by delivering a copy
9 personally to the tenant. However, if the person is prevented from
10 personally serving the tenant due to threats or violence, or if
11 personal service is not reasonable under the circumstances, the person
12 may deposit the notice and demand in the mail, postage prepaid, to the
13 tenant's address, or leave a copy of the notice and demand in a
14 conspicuous location at the tenant's residence.

15 (2)(a) Within ten days from the time the notice and demand is
16 served, the landlord has a duty to take reasonable steps to investigate
17 the tenant's alleged noncompliance with RCW 59.18.130(9). The landlord
18 must notify the person who brought the notice and demand that an
19 investigation is occurring. The landlord has ten days from the time he
20 or she notifies the person in which to conduct a reasonable
21 investigation.

22 (b) If, after reasonable investigation, the landlord finds that the
23 tenant is not in compliance with RCW 59.18.130(9), the landlord may
24 proceed directly to an unlawful detainer action or take reasonable
25 steps to ensure the tenant discontinues the prohibited activity and
26 complies with RCW 59.18.130(9). The landlord shall notify the person
27 who served the notice and demand of whatever action the landlord takes.

28 (c) If, after reasonable investigation, the landlord finds that the
29 tenant is in compliance with RCW 59.18.130(9), the landlord shall
30 notify the person who served the notice and demand of the landlord's
31 findings.

32 (3) The person who served the notice and demand may petition the
33 appropriate court to have the tenancy terminated and the tenant removed
34 from the premises if: (a) Within ten days of service of the notice and
35 demand, the tenant fails to discontinue the gang-related activity and
36 the landlord fails to conduct a reasonable investigation; or (b) the
37 landlord notifies the person that the landlord conducted a reasonable
38 investigation and found that the tenant was not engaged in gang-related
39 activity as prohibited under RCW 59.18.130(9); or (c) the landlord took

1 reasonable steps to have the tenant comply with RCW 59.18.130(9), but
2 the tenant has failed to comply within a reasonable time.

3 (4) If the court finds that the tenant was not in compliance with
4 RCW 59.18.130(9), the court shall enter an order terminating the
5 tenancy and requiring the tenant to vacate the premises. The court
6 shall not issue the order terminating the tenancy unless it has found
7 that the allegations of gang-related activity are corroborated by a
8 source other than the person who has petitioned the court.

9 (5) The prevailing party shall recover reasonable attorneys' fees
10 and costs. The court may impose sanctions, in addition to attorneys'
11 fees, on a person who has brought an action under this chapter against
12 the same tenant on more than one occasion, if the court finds the
13 petition was brought with the intent to harass. However, the court
14 must order the landlord to pay costs and reasonable attorneys' fees to
15 the person petitioning for termination of the tenancy if the court
16 finds that the landlord failed to comply with the duty to investigate,
17 regardless of which party prevails.

18 **Sec. 6.** RCW 59.12.030 and 1983 c 264 s 1 are each amended to read
19 as follows:

20 A tenant of real property for a term less than life is guilty of
21 unlawful detainer either:

22 (1) When he or she holds over or continues in possession, in person
23 or by subtenant, of the property or any part thereof after the
24 expiration of the term for which it is let to him or her. When real
25 property is leased for a specified term or period by express or implied
26 contract, whether written or oral, the tenancy shall be terminated
27 without notice at the expiration of the specified term or period;

28 (2) When he or she, having leased property for an indefinite time
29 with monthly or other periodic rent reserved, continues in possession
30 thereof, in person or by subtenant, after the end of any such month or
31 period, when the landlord, more than twenty days prior to the end of
32 such month or period, has served notice (in manner in RCW 59.12.040
33 provided) requiring him or her to quit the premises at the expiration
34 of such month or period;

35 (3) When he or she continues in possession in person or by
36 subtenant after a default in the payment of rent, and after notice in
37 writing requiring in the alternative the payment of the rent or the
38 surrender of the detained premises, served (in manner in RCW 59.12.040

1 provided) in behalf of the person entitled to the rent upon the person
2 owing it, has remained uncomplied with for the period of three days
3 after service thereof. The notice may be served at any time after the
4 rent becomes due;

5 (4) When he or she continues in possession in person or by
6 subtenant after a neglect or failure to keep or perform any other
7 condition or covenant of the lease or agreement under which the
8 property is held, including any covenant not to assign or sublet, than
9 one for the payment of rent, and after notice in writing requiring in
10 the alternative the performance of such condition or covenant or the
11 surrender of the property, served (in manner in RCW 59.12.040 provided)
12 upon him or her, and if there is a subtenant in actual possession of
13 the premises, also upon such subtenant, shall remain uncomplied with
14 for ten days after service thereof. Within ten days after the service
15 of such notice the tenant, or any subtenant in actual occupation of the
16 premises, or any mortgagee of the term, or other person interested in
17 its continuance, may perform such condition or covenant and thereby
18 save the lease from such forfeiture;

19 (5) When he or she commits or permits waste upon the demised
20 premises, or when he or she sets up or carries on thereon any unlawful
21 business, or when he or she erects, suffers, permits, or maintains on
22 or about the premises any nuisance, and remains in possession after the
23 service (in manner in RCW 59.12.040 provided) upon him or her of three
24 days' notice to quit; ((or))

25 (6) A person who, without the permission of the owner and without
26 having color of title thereto, enters upon land of another and who
27 fails or refuses to remove therefrom after three days' notice, in
28 writing and served upon him or her in the manner provided in RCW
29 59.12.040. Such person may also be subject to the criminal provisions
30 of chapter 9A.52 RCW; or

31 (7) When he or she commits or permits any gang-related activity at
32 the premises as prohibited by RCW 59.18.130.

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