

SSB 6459 - H COMM AMD

By Committee on Judiciary

ADOPTED 3/02/2010

1 Strike everything after the enacting clause and insert the
2 following:

3
4 "Sec. 1. RCW 59.18.030 and 2008 c 278 s 12 are each amended to
5 read as follows:

6 As used in this chapter:

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

8 (2) "Distressed home conveyance" has the same meaning as in RCW
9 61.34.020.

10 (3) "Distressed home purchaser" has the same meaning as in RCW
11 61.34.020.

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

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

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

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

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

27 (i) The mortgagee;

1 (ii) A person licensed or required to be licensed under chapter
2 19.134 RCW;

3 (iii) A person licensed or required to be licensed under chapter
4 19.146 RCW;

5 (iv) A person licensed or required to be licensed under chapter
6 18.85 RCW;

7 (v) An attorney-at-law;

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

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

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

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

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

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

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

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

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

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

32 (12) A "single family residence" is a structure maintained and
33 used as a single dwelling unit. Notwithstanding that a dwelling unit
34 shares one or more walls with another dwelling unit, it shall be

1 deemed a single family residence if it has direct access to a street
2 and shares neither heating facilities nor hot water equipment, nor any
3 other essential facility or service, with any other dwelling unit.

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

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

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

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

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

1 risk of injury to occupants, and (h) conditions that increase the risk
2 of fire.

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

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

15
16 NEW SECTION. Sec. 2. A new section is added to chapter 59.18 RCW
17 to read as follows:

18 (1) Local municipalities may require that landlords provide a
19 certificate of inspection as a business license condition. A local
20 municipality does not need to have a business license or registration
21 program in order to require that landlords provide a certificate of
22 inspection. A certificate of inspection does not preclude or limit
23 inspections conducted pursuant to the tenant remedy as provided for in
24 RCW 59.18.115, at the request or consent of the tenant, or pursuant to
25 a warrant.

26 (2) A qualified inspector who is conducting an inspection under
27 this section may only investigate a rental property as needed to
28 provide a certificate of inspection.

29 (3) A local municipality may only require a certificate of
30 inspection on a rental property once every three years.

31 (4)(a) A rental property that has received a certificate of
32 occupancy within the last four years and has had no code violations
33 reported on the property during that period is exempt from inspection
34 under this section.

1 (b) A rental property inspected by a government agency or other
2 qualified inspector within the previous twenty-four months may provide
3 proof of that inspection which the local municipality may accept in
4 lieu of a certificate of inspection. If any additional inspections of
5 the rental property are conducted, a copy of the findings of these
6 inspections may also be required by the local municipality.

7 (5) A rental property owner may choose to inspect one hundred
8 percent of the units on the rental property and provide only the
9 certificate of inspection for all units to the local municipality.
10 However, if a rental property owner chooses to inspect only a sampling
11 of the units, the owner must send written notice of the inspection to
12 all units at the property. The notice must advise tenants that some
13 of the units at the property will be inspected and that the tenants
14 whose units need repairs or maintenance should send written
15 notification to the landlord as provided in RCW 59.18.070. The notice
16 must also advise tenants that if the landlord fails to adequately
17 respond to the request for repairs or maintenance, the tenants may
18 contact local municipality officials. A copy of the notice must be
19 provided to the inspector upon request on the day of inspection.

20 (6)(a) If a rental property has twenty or fewer dwelling units, no
21 more than four dwelling units at the rental property may be selected
22 by the local municipality to provide a certificate of inspection as
23 long as the initial inspection reveals that no conditions exist that
24 endanger or impair the health or safety of a tenant.

25 (b) If a rental property has twenty-one or more units, no more
26 than twenty percent of the units, rounded up to the next whole number,
27 on the rental property, and up to a maximum of fifty units at any one
28 property, may be selected by the local municipality to provide a
29 certificate of inspection as long as the initial inspection reveals
30 that no conditions exist that endanger or impair the health or safety
31 of a tenant.

32 (c) If a rental property is asked to provide a certificate of
33 inspection for a sample of units on the property and a selected unit
34 fails the initial inspection, the local municipality may require up to

1 one hundred percent of the units on the rental property to provide a
2 certificate of inspection.

3 (d) If a rental property has had conditions that endanger or
4 impair the health or safety of a tenant reported since the last
5 required inspection, the local municipality may require one hundred
6 percent of the units on the rental property to provide a certificate
7 of inspection.

8 (e) If a rental property owner chooses to hire a qualified
9 inspector other than a municipal housing code enforcement officer, and
10 a selected unit of the rental property fails the initial inspection,
11 both the results of the initial inspection and any certificate of
12 inspection must be provided to the local municipality.

13 (7)(a) The landlord shall provide written notification of his or
14 her intent to enter an individual unit for the purposes of providing a
15 local municipality with a certificate of inspection in accordance with
16 RCW 59.18.150(6). The written notice must indicate the date and
17 approximate time of the inspection and the company or person
18 performing the inspection, and that the tenant has the right to see
19 the inspector's identification before the inspector enters the
20 individual unit. A copy of this notice must be provided to the
21 inspector upon request on the day of inspection.

22 (b) A tenant who continues to deny access to his or her unit is
23 subject to RCW 59.18.150(8).

24 (8) If a rental property owner does not agree with the findings of
25 an inspection performed by a local municipality under this section,
26 the local municipality shall offer an appeals process.

27 (9) A penalty for noncompliance under this section may be assessed
28 by a local municipality. A local municipality may also notify the
29 landlord that until a certificate of inspection is provided, it is
30 unlawful to rent or to allow a tenant to continue to occupy the
31 dwelling unit.

32 (10) Any person who knowingly submits or assists in the submission
33 of a falsified certificate of inspection, or knowingly submits
34 falsified information upon which a certificate of inspection is

1 issued, is, in addition to the penalties provided for in subsection
2 (9) of this section, guilty of a gross misdemeanor and must be
3 punished by a fine of not more than five thousand dollars.

4 (11) As of the effective date of this section, a local
5 municipality may not enact an ordinance requiring a certificate of
6 inspection unless the ordinance complies with this section. This
7 prohibition does not preclude any amendments made to ordinances
8 adopted before the effective date of this section.

9
10 **Sec. 3.** RCW 59.18.150 and 2002 c 263 s 1 are each amended to read
11 as follows:

12 (1) The tenant shall not unreasonably withhold consent to the
13 landlord to enter into the dwelling unit in order to inspect the
14 premises, make necessary or agreed repairs, alterations, or
15 improvements, supply necessary or agreed services, or exhibit the
16 dwelling unit to prospective or actual purchasers, mortgagees,
17 tenants, workers, or contractors.

18 (2) Upon written notice of intent to seek a search warrant, when a
19 tenant or landlord denies a fire official the right to search a
20 dwelling unit, a fire official may immediately seek a search warrant
21 and, upon a showing of probable cause specific to the dwelling unit
22 sought to be searched that criminal fire code violations exist in the
23 dwelling unit, a court of competent jurisdiction shall issue a warrant
24 allowing a search of the dwelling unit.

25 Upon written notice of intent to seek a search warrant, when a
26 landlord denies a fire official the right to search the common areas
27 of the rental building other than the dwelling unit, a fire official
28 may immediately seek a search warrant and, upon a showing of probable
29 cause specific to the common area sought to be searched that a
30 criminal fire code violation exists in those areas, a court of
31 competent jurisdiction shall issue a warrant allowing a search of the
32 common areas in which the violation is alleged.

33 The superior court and courts of limited jurisdiction organized
34 under Titles 3, 35, and 35A RCW have jurisdiction to issue such search

1 warrants. Evidence obtained pursuant to any such search may be used
2 in a civil or administrative enforcement action.

3 (3) As used in this section:

4 (a) "Common areas" means a common area or those areas that contain
5 electrical, plumbing, and mechanical equipment and facilities used for
6 the operation of the rental building.

7 (b) "Fire official" means any fire official authorized to enforce
8 the state or local fire code.

9 (4)(a) A search warrant may be issued by a judge of a superior
10 court or a court of limited jurisdiction under Titles 3, 35, and 35A
11 RCW to a code enforcement official of the state or of any county,
12 city, or other political subdivision for the purpose of allowing the
13 inspection of any specified dwelling unit and premises to determine
14 the presence of an unsafe building condition or a violation of any
15 building regulation, statute, or ordinance.

16 (b) A search warrant must only be issued upon application of a
17 designated officer or employee of a county or city prosecuting or
18 regulatory authority supported by an affidavit or declaration made
19 under oath or upon sworn testimony before the judge, establishing
20 probable cause that a violation of a state or local law, regulation,
21 or ordinance regarding rental housing exists and endangers the health
22 or safety of the tenant or adjoining neighbors. In addition, the
23 affidavit must contain a statement that consent to inspect has been
24 sought from the owner and the tenant but could not be obtained because
25 the owner or the tenant either refused or failed to respond within
26 five days, or a statement setting forth facts or circumstances
27 reasonably justifying the failure to seek such consent. A landlord
28 may not take or threaten to take reprisals or retaliatory action as
29 defined in RCW 59.18.240 against a tenant who gives consent to a code
30 enforcement official of the state or of any county, city, or other
31 political subdivision to inspect his or her dwelling unit to determine
32 the presence of an unsafe building condition or a violation of any
33 building regulation, statute, or ordinance.

34 (c) In determining probable cause, the judge is not limited to

1 evidence of specific knowledge, but may also consider any of the
2 following:

- 3 (i) The age and general condition of the premises;
- 4 (ii) Previous violations or hazards found present in the premises;
- 5 (iii) The type of premises;
- 6 (iv) The purposes for which the premises are used; or
- 7 (v) The presence of hazards or violations in and the general
8 condition of premises near the premises sought to be inspected.

9 (d) Before issuing an inspection warrant, the judge shall find
10 that the applicant has: (i) Provided written notice of the date,
11 approximate time, and court in which the applicant will be seeking the
12 warrant to the owner and, if the applicant reasonably believes the
13 dwelling unit or rental property to be inspected is in the lawful
14 possession of a tenant, to the tenant; and (ii) posted a copy of the
15 notice on the exterior of the dwelling unit or rental property to be
16 inspected. The judge shall also allow the owner and any tenant who
17 appears during consideration of the application for the warrant to
18 defend against or in support of the issuance of the warrant.

19 (e) All warrants must include at least the following:

20 (i) The name of the agency and building official requesting the
21 warrant and authorized to conduct an inspection pursuant to the
22 warrant;

23 (ii) A reasonable description of the premises and items to be
24 inspected; and

25 (iii) A brief description of the purposes of the inspection.

26 (f) An inspection warrant is effective for the time specified in
27 the warrant, but not for a period of more than ten days unless it is
28 extended or renewed by the judge who signed and issued the original
29 warrant upon satisfying himself or herself that the extension or
30 renewal is in the public interest. The inspection warrant must be
31 executed and returned to the judge by whom it was issued within the
32 time specified in the warrant or within the extended or renewed time.
33 After the expiration of the time specified in the warrant, the

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1 warrant, unless executed, is void.

2 (g) An inspection pursuant to a warrant must not be made:

3 (i) Between 7:00 p.m. of any day and 8:00 a.m. of the succeeding
4 day, on Saturday or Sunday, or on any legal holiday, unless the owner
5 or, if occupied, the tenant specifies a preference for inspection
6 during such hours or on such a day;

7 (ii) Without the presence of an owner or occupant over the age of
8 eighteen years or a person designated by the owner or occupant unless
9 specifically authorized by a judge upon a showing that the authority
10 is reasonably necessary to effectuate the purpose of the search
11 warrant; or

12 (iii) By means of forcible entry, except that a judge may
13 expressly authorize a forcible entry when:

14 (A) Facts are shown that are sufficient to create a reasonable
15 suspicion of a violation of a state or local law or rule relating to
16 municipal or county building, fire, safety, environmental, animal
17 control, land use, plumbing, electrical, health, minimum housing, or
18 zoning standards that, if the violation existed, would be an immediate
19 threat to the health or safety of the tenant; or

20 (B) Facts are shown establishing that reasonable attempts to serve
21 a previous warrant have been unsuccessful.

22 (h) Immediate execution of a warrant is prohibited, except when
23 necessary to prevent loss of life or property.

24 (i) Any person who willfully refuses to permit inspection,
25 obstructs inspection, or aids in the obstruction of an inspection of
26 property authorized by warrant issued pursuant to this section is
27 subject to remedial and punitive sanctions for contempt of court under
28 chapter 7.21 RCW. Such conduct may also be subject to a civil penalty
29 imposed by local ordinance that takes into consideration the facts and
30 circumstances and the severity of the violation.

31 (5) The landlord may enter the dwelling unit without consent of
32 the tenant in case of emergency or abandonment.

33 ~~((45))~~ (6) The landlord shall not abuse the right of access or
34 use it to harass the tenant. Except in the case of emergency or if it

1 is impracticable to do so, the landlord shall give the tenant at least
2 two days' notice of his or her intent to enter and shall enter only at
3 reasonable times. The tenant shall not unreasonably withhold consent
4 to the landlord to enter the dwelling unit at a specified time where
5 the landlord has given at least one day's notice of intent to enter to
6 exhibit the dwelling unit to prospective or actual purchasers or
7 tenants. A landlord shall not unreasonably interfere with a tenant's
8 enjoyment of the rented dwelling unit by excessively exhibiting the
9 dwelling unit.

10 ~~((+6+))~~ (7) The landlord has no other right of access except by
11 court order, arbitrator or by consent of the tenant.

12 ~~((+7+))~~ (8) A landlord or tenant who continues to violate the
13 rights of the tenant or landlord with respect to the duties imposed on
14 the other as set forth in this section after being served with one
15 written notification alleging in good faith violations of this section
16 listing the date and time of the violation shall be liable for up to
17 one hundred dollars for each violation after receipt of the notice.
18 The prevailing landlord or tenant may recover costs of the suit or
19 arbitration under this section, and may also recover reasonable
20 attorneys' fees.

21 ~~((+8+))~~ (9) Nothing in this section is intended to (a) abrogate or
22 modify in any way any common law right or privilege or (b) affect the
23 common law as it relates to a local municipality's right of entry
24 under emergency or exigent circumstances.

25
26 NEW SECTION. **Sec. 4.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected."

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EFFECT: The striking amendment makes the following changes:

- Modifies the definition of "certificate of inspection";

- Removes the term "substantially" in provisions relating to conditions that substantially endanger or impair the health or safety of a tenant;
- Permits a local municipality to notify the landlord that until a certificate of inspection is provided, it is unlawful to rent or to allow a tenant to continue to occupy the unit;
- Adds a provision prohibiting landlords from taking retaliatory action against a tenant who permits a code enforcement officer to inspect his or her unit;
- Modifies the statement required in an affidavit for a search warrant to require a statement that consent has been sought but could not be obtained because the owner or tenant refused or failed to respond within 5 days; and
- Restructures changes made in the bill for clarity and corrects a grammatical error.

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