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SENATE BILL 5826

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Kohl-Welles, Kline, Chase, Nelson, White, Keiser, and Prentice

Read first time 02/17/11. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to the screening of prospective tenants; amending  
2 RCW 59.18.257; reenacting and amending RCW 59.18.030; adding a new  
3 section to chapter 59.18 RCW; creating a new section; and prescribing  
4 penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that residential  
7 landlords frequently use tenant screening reports in evaluating and  
8 selecting tenants for their rental properties. These tenant screening  
9 reports frequently contain misleading, incomplete, or inaccurate  
10 information about: Eviction lawsuits where the landlord was  
11 unsuccessful and the tenant prevailed; protection orders the tenant  
12 obtained for protection against domestic violence, stalking, or sexual  
13 assault; or other court records that, though not predictive of an  
14 applicant's suitability for a residential tenancy, are often cited by  
15 housing providers as a basis for rejecting rental applicants. Such use  
16 of court records unfairly diminishes the housing opportunities of many  
17 qualified rental applicants and impairs the access of residential  
18 tenants to their day in court. These court records threaten a tenant's  
19 future housing prospects irrespective as to the outcome of an action.

1 The costs of tenant screening are passed on to applicants in the form  
2 of screening fees, and applicants who apply at multiple housing  
3 providers must pay repeated screening fees for successive reports  
4 containing the same information. To avoid the pernicious effects of  
5 unfair tenant screening reports, tenants with meritorious claims and  
6 defenses often choose not to enforce their rights in cases against  
7 landlords. This problem affects not only tenants but also the public  
8 as a whole because many provisions of the residential landlord-tenant  
9 act can be enforced only through litigation and the integrity of our  
10 landlord-tenant courts is undermined when tenants are systematically  
11 deterred from presenting meritorious claims.

12 **Sec. 2.** RCW 59.18.030 and 2010 c 148 s 1 are each reenacted and  
13 amended to read as follows:

14 As used in this chapter:

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

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

32 (3) "Distressed home conveyance" has the same meaning as in RCW  
33 61.34.020.

34 (4) "Distressed home purchaser" has the same meaning as in RCW  
35 61.34.020.

36 (5) "Dwelling unit" is a structure or that part of a structure  
37 which is used as a home, residence, or sleeping place by one person or

1 by two or more persons maintaining a common household, including but  
2 not limited to single family residences and units of multiplexes,  
3 apartment buildings, and mobile homes.

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

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

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

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

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

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

20 (i) The mortgagee;

21 (ii) A person licensed or required to be licensed under chapter  
22 19.134 RCW;

23 (iii) A person licensed or required to be licensed under chapter  
24 19.146 RCW;

25 (iv) A person licensed or required to be licensed under chapter  
26 18.85 RCW;

27 (v) An attorney-at-law;

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

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

31 (9) "Landlord" means the owner, lessor, or sublessor of the  
32 dwelling unit or the property of which it is a part, and in addition  
33 means any person designated as representative of the landlord.

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

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

- 1 (a) All or any part of the legal title to property; or
- 2 (b) All or part of the beneficial ownership, and a right to present
- 3 use and enjoyment of the property.

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

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

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

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

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

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

34 (18) A "single family residence" is a structure maintained and used  
35 as a single dwelling unit. Notwithstanding that a dwelling unit shares  
36 one or more walls with another dwelling unit, it shall be deemed a  
37 single family residence if it has direct access to a street and shares

1 neither heating facilities nor hot water equipment, nor any other  
2 essential facility or service, with any other dwelling unit.

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

6 (20) "Tenant screening" means seeking or obtaining a consumer  
7 report about a prospective tenant or using the consumer report in  
8 deciding whether to make or accept an offer for residential rental  
9 property to or from a prospective tenant.

10 (21) "Tenant screening report" means a written, oral, or other  
11 communication of information by a screening service bearing on a  
12 prospective tenant's creditworthiness, credit standing, credit  
13 capacity, character, general reputation, personal characteristics, or  
14 mode of living that is prepared, transmitted, accessed, used, or  
15 expected to be used or collected for tenant screening purposes.

16 (22) "Screening service" means any person who, for monetary fees or  
17 dues, or on a cooperative nonprofit basis, regularly engages in the  
18 business of assembling or evaluating information on individuals for the  
19 purpose of furnishing tenant screening reports to third parties, and  
20 who uses any means or facility of commerce for the purpose of preparing  
21 or furnishing tenant screening reports. "Screening service" does not  
22 include a person who obtains a tenant screening report and provides the  
23 report or information contained in it to a subsidiary or affiliate of  
24 the person.

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

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

30 (25) "Eviction suit" means a civil action for unlawful detainer,  
31 forcible detainer, ejectment, or other claim in which the plaintiff  
32 seeks to gain or recover possession of residential real property from  
33 one or more defendants.

34 (26)(a) "Qualified victim protection records" means:

35 (i) Records or information concerning any judicial or  
36 administrative proceeding in which the person about whom the records or  
37 information pertains sought to obtain an order of protection from  
38 domestic violence, sexual assault, stalking, harassment, or other

1 violent crime, including any petition or action for a protection order  
2 under chapter 9A.46, 10.14, 10.99, 26.09, 26.26, or 26.50 RCW, or any  
3 other law;

4 (ii) Records or information concerning any judicial or  
5 administrative proceeding in which the person about whom the records or  
6 information pertains exercised or attempted to exercise a right or  
7 obtain a benefit available specifically or exclusively to victims of  
8 violence, such as, but not limited to, the early termination of a  
9 rental agreement under RCW 59.18.575;

10 (iii) Records or information indicating that the person about whom  
11 the records or information pertains asserted that a claim or defense  
12 was available to the person in a judicial or administrative proceeding  
13 by reason of the person's status as a victim of violence, such as in a  
14 proceeding under chapter 49.60 RCW; and

15 (iv) Any other records or information indicating that the person  
16 about whom the records or information pertains is a victim of domestic  
17 violence, sexual assault, or stalking, or is protected by a court  
18 order.

19 (b) "Qualified victim protection records" does not include records  
20 or information tending to indicate that the person about whom the  
21 records or information pertains was a perpetrator of sexual assault,  
22 harassment, or violent crime.

23 **Sec. 3.** RCW 59.18.257 and 1991 c 194 s 3 are each amended to read  
24 as follows:

25 (1)(a) If a prospective landlord uses a ((tenant)) screening  
26 service, ((then the landlord may only charge for the costs incurred for  
27 using the tenant screening service under this section.)) and prior to  
28 obtaining a tenant screening report about a prospective tenant, the  
29 prospective landlord shall first notify the prospective tenant in  
30 writing of the following:

31 (i) What criteria may result in denial of the application;

32 (ii) The name and address of the screening service that will be  
33 used;

34 (iii) What types of information will be accessed to conduct the  
35 tenant screening; and

36 (iv) The prospective tenant's rights to obtain a free copy of the

1 tenant screening report in the event of a denial or other adverse  
2 action, and to dispute the accuracy of information appearing in the  
3 tenant screening report.

4 (b) The landlord may charge a prospective tenant a maximum of ten  
5 dollars for using the tenant screening service.

6 (c) If a prospective landlord takes an adverse action with respect  
7 to a prospective tenant that is based, in whole or in part, on  
8 information contained in a tenant screening report, the prospective  
9 landlord shall provide a written notice of the adverse action to the  
10 prospective tenant that states the reasons for the adverse action and  
11 contains the name, address, and telephone number of the screening  
12 service that furnished the tenant screening report that contributed to  
13 the adverse action.

14 (2)(a) If a landlord conducts his or her own screening of tenants,  
15 ((then)) the landlord may charge his or her actual costs in obtaining  
16 the background information, but the amount may not exceed the customary  
17 costs charged by a screening service in the general area. The  
18 prospective landlord's actual costs include costs incurred for long  
19 distance phone calls and for time spent calling landlords, employers,  
20 and financial institutions.

21 ((+2)) (b) A landlord may not charge a prospective tenant for the  
22 cost of obtaining background information under this section unless the  
23 landlord first notifies the prospective tenant in writing of ((what a  
24 tenant screening entails, the prospective tenant's rights to dispute  
25 the accuracy of information provided by the tenant screening service or  
26 provided by the entities listed on the tenant application who will be))  
27 the following:

28 (i) What criteria may result in denial of the application;

29 (ii) What types of information will be accessed to conduct the  
30 tenant screening; and

31 (iii) The prospective tenant's right to dispute the accuracy of  
32 information provided by the entities contacted for information  
33 concerning the tenant((, and the name and address of the tenant  
34 screening service used by the landlord)).

35 ((3) Nothing in this section requires a landlord to disclose  
36 information to a prospective tenant that was obtained from a tenant  
37 screening service or from entities listed on the tenant application

1 ~~which is not required under the federal fair credit reporting act, 15~~  
2 ~~U.S.C. Sec. 1681 et seq.~~

3 ~~(4)) (c) If a prospective landlord takes an adverse action with~~  
4 ~~respect to a prospective tenant that is not based on information~~  
5 ~~obtained from a tenant screening report, the prospective landlord shall~~  
6 ~~provide a written notice of the adverse action to the prospective~~  
7 ~~tenant that states the reasons for the adverse action.~~

8 ~~(3)(a) A screening service shall not, if requested by a consumer,~~  
9 ~~fail to generate and transmit to the consumer a tenant screening report~~  
10 ~~regarding that consumer. The form and contents of the tenant screening~~  
11 ~~report must be identical or substantially similar to the tenant~~  
12 ~~screening report that the screening service would generate and transmit~~  
13 ~~to a prospective landlord regarding the consumer, and must be~~  
14 ~~transmitted to the consumer in substantially the same time and manner~~  
15 ~~as the screening service would transmit such a report to a prospective~~  
16 ~~landlord. The screening service shall provide the report free of~~  
17 ~~charge, unless the screening service has provided a tenant screening~~  
18 ~~report to that same consumer within the preceding twelve months, in~~  
19 ~~which case the screening service may charge a fee not exceeding the~~  
20 ~~charge that the screening service would customarily charge a~~  
21 ~~prospective landlord for generating and transmitting a tenant screening~~  
22 ~~report. The amount of any charge must be disclosed to the consumer~~  
23 ~~before furnishing the information.~~

24 ~~(b) A tenant screening report may not contain any of the following~~  
25 ~~items of information about a prospective tenant:~~

26 ~~(i) Eviction suits that did not result in a judgment or other~~  
27 ~~adjudication finding that the prospective tenant was a responsible~~  
28 ~~party. For purposes of this subsection, a person is deemed to have~~  
29 ~~been a responsible party only if: (A) A judgment or other order was~~  
30 ~~entered in the eviction suit finding that the person was guilty of~~  
31 ~~unlawful detainer or otherwise in unlawful possession of the premises;~~  
32 ~~(B) the person's right to possession of the premises to which the~~  
33 ~~eviction suit related had not been terminated by a foreclosure sale~~  
34 ~~within ninety days of when the eviction suit was filed; and (C) the~~  
35 ~~judgment or order has not been vacated, expunged, sealed, or similarly~~  
36 ~~impaired;~~

37 ~~(ii) Qualified victim protection records; or~~

1 (iii) Other information prohibited from disclosure under RCW  
2 19.182.040.

3 (4) Any landlord or prospective landlord who violates this section  
4 may be liable to the prospective tenant for an amount not to exceed one  
5 hundred dollars. The prevailing party may also recover court costs and  
6 reasonable attorneys' fees.

7 (5) Any screening service that violates this section is liable to  
8 the prospective tenant in the amount of his or her actual damages and  
9 costs of the action together with reasonable attorneys' fees as  
10 determined by the court. A screening service that willfully fails to  
11 comply with any requirement imposed under this section is liable to the  
12 prospective tenant in the amount of one thousand dollars for each  
13 willful violation.

14 (6) This section does not limit a prospective tenant's rights or  
15 the duties of a screening service as otherwise provided in chapter  
16 19.182 RCW.

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

19 (1) In any hearing in an action for the possession of real property  
20 under this title, the court shall order the court files and records in  
21 the proceeding, or any part of the court files and records, to be  
22 sealed or redacted in a manner minimally necessary to protect the  
23 defendant's ability to obtain rental housing in the future if the court  
24 finds that:

25 (a) The defendant is neither a homeowner nor an incarcerated  
26 person;

27 (b) Unfettered public access to the record of the action is likely  
28 to materially diminish the defendant's ability to obtain rental housing  
29 in the future; and

30 (c) The diminution of the defendant's future rental housing  
31 prospects would be inequitable in light of the totality of the  
32 circumstances, including the public's interest in access to the  
33 affected court records.

34 (2) It is presumed that the diminution of a defendant's future  
35 rental housing prospects would be inequitable in light of the totality  
36 of the circumstances if:

1 (a) The court has entered a final order in the action, and the  
2 defendant was not found guilty of unlawful detainer or otherwise in  
3 unlawful possession of the disputed premises;

4 (b) The defendant occupied the real property as a tenant prior to  
5 a foreclosure sale concerning the same premises, and the action was  
6 filed less than ninety days after the foreclosure sale;

7 (c) Notwithstanding any other findings or orders in the case, the  
8 defendant prevailed on an affirmative defense, counterclaim, or setoff  
9 asserted in the action, such as a claim for breach of an implied  
10 warranty of habitability or breach of the covenant of quiet enjoyment;  
11 or

12 (d) A judgment entered solely for nonpayment of rent has been fully  
13 cured and the defendant's tenancy reinstated pursuant to RCW 59.12.170,  
14 59.12.190, or 59.18.410, or any other law.

15 (3) The presumption arising under subsection (2) of this section  
16 may be rebutted by evidence establishing that the public's interest in  
17 access to the court records outweighs the defendant's interest in  
18 obtaining future rental housing, and that the public access will not  
19 materially chill tenants with meritorious defenses from appearing and  
20 defending in unlawful detainer actions.

21 (4) A person for whose benefit an order to seal or redact court  
22 records has been entered under this section, when engaged in an effort  
23 to secure possession of residential rental property:

24 (a) Has no duty to disclose the action to any prospective landlord  
25 or provider of any services in connection with housing on any written  
26 or nonwritten application; and

27 (b) May not be penalized in any manner, or denied any right or  
28 privilege, for making to any prospective landlord or provider of any  
29 services in connection with housing a statement denying the existence  
30 of the action or denying knowledge of its existence.

31 (5) A screening service shall not unreasonably make a tenant  
32 screening report containing information the court has sealed or  
33 redacted under this section. Such a report is presumed to be  
34 unreasonable if the screening service provided the report based on  
35 records obtained from the court more than thirty days prior to the  
36 report date. A screening service that violates this section is liable  
37 to the prospective tenant in the amount of his or her actual damages

1 and costs of the action together with reasonable attorneys' fees as  
2 determined by the court and for a monetary penalty in the amount of one  
3 thousand dollars in the case of a willful violation.

4 (6) A person having notice of an order to seal or redact unlawful  
5 detainer case records shall not, either directly or through any agent,  
6 disclose the existence of the action, or other information expected to  
7 enable discovery of the action, to any tenant screening service or  
8 prospective landlord seeking information about the person for whose  
9 benefit the order was entered. The duty imposed under this subsection  
10 cannot be waived by the person for whose benefit the order to seal was  
11 entered, and any purported or attempted waiver, whether written or  
12 nonwritten, is void and has no effect. A person who willfully violates  
13 this subsection is liable to the person for whose benefit the order was  
14 entered in the amount of such person's actual damages and costs of  
15 suit, together with reasonable attorneys' fees as determined by the  
16 court, and a monetary penalty of one thousand dollars for each willful  
17 violation. A violation of this subsection is considered willful only  
18 if the person committing the violation had actual knowledge of the  
19 order to seal or redact.

20 (7) This section does not limit or impair the right of any party to  
21 an unlawful detainer action from pursuing, or of a court from ordering,  
22 the sealing or redaction of court records under any other provision of  
23 law.

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