
SENATE BILL 5922

State of Washington

61st Legislature

2009 Regular Session

By Senators Kohl-Welles, McDermott, Kline, and Fairley

Read first time 02/06/09. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to protecting consumers from unfair practices by
2 establishing criteria for the dissemination of credit and court record
3 information contained in a consumer's tenant screening report; amending
4 RCW 19.182.110 and 59.18.257; adding new sections to chapter 19.182
5 RCW; adding a new section to chapter 4.24 RCW; creating new sections;
6 and prescribing penalties.

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

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

1 the access of residential tenants to their day in court. These court
2 records threaten a tenant's future housing prospects irrespective as to
3 the outcome of an action. The costs of tenant screening are passed on
4 to applicants in the form of screening fees, and applicants who apply
5 at multiple housing providers must pay repeated screening fees for
6 successive reports containing the same information.

7 NEW SECTION. **Sec. 2.** This act may be known and cited as the fair
8 tenant screening act.

9 NEW SECTION. **Sec. 3.** A new section is added to chapter 19.182 RCW
10 to read as follows:

11 The definitions in this section apply throughout this section and
12 RCW 19.182.005 through 19.182.150 unless the context clearly requires
13 otherwise.

14 (1) "Comprehensive screening report" means a tenant screening
15 report that contains all of the following:

16 (a) A consumer report concerning the prospective tenant prepared by
17 a nationwide consumer reporting agency no more than ninety days
18 preceding the date of the tenant screening;

19 (b) A report containing the prospective tenant's criminal history;
20 and

21 (c) A report containing the prospective tenant's eviction history.

22 (2) "Criminal history" means a report containing or summarizing the
23 contents of any records of the prospective tenant's arrest, indictment,
24 criminal conviction, or other adjudication of a crime, including
25 registration or duty to register as a sex offender with any state, if
26 any, obtained after a search for such records in every state where the
27 prospective tenant has reported living in the seven years preceding the
28 report date.

29 (3) "Eviction history" means a report containing or summarizing the
30 contents of any records of eviction suits or judicial foreclosure
31 actions concerning the prospective tenant, obtained after a search for
32 such records in every state where the prospective tenant has reported
33 living in the seven years preceding the report date.

34 (4) "Eviction suit" means a civil action for unlawful detainer,
35 forcible detainer, ejection, or other claim in which the plaintiff

1 seeks to gain or recover possession of residential real property from
2 one or more defendants.

3 (5) "Nationwide consumer reporting agency" has the same meaning as
4 the term "consumer reporting agency that compiles and maintains files
5 on consumers on a nationwide basis" is defined in 15 U.S.C. Sec.
6 1681a(p).

7 (6) "Prospective landlord" means a landlord, as defined in RCW
8 59.18.030, or a person who advertises, solicits, offers, or otherwise
9 holds a dwelling unit out as available for rent to a prospective
10 tenant.

11 (7) "Prospective tenant" means a tenant or a person who has applied
12 for residential housing governed under chapter 59.18 RCW.

13 (8) "Qualified victim protection records" means:

14 (a) Records or information concerning any judicial or
15 administrative proceeding in which the person, about whom the records
16 or information pertains, sought to obtain any order of protection from
17 domestic violence, sexual assault, stalking, harassment, or other
18 violent crime, including any petition or action for a protection order
19 under chapter 9A.46, 10.14, 10.99, 26.09, 26.26, or 26.50 RCW, or any
20 other law;

21 (b) Records or information concerning any judicial or
22 administrative proceeding in which the person, about whom the records
23 or information pertains, exercised or attempted to exercise any right
24 or obtain any benefit available specifically or exclusively to victims
25 of violence, such as, but not limited to, the early termination of a
26 rental agreement under RCW 59.18.575;

27 (c) Records or information indicating that the person, about whom
28 the records or information pertains, asserted that a claim or defense
29 was available to the person in any judicial or administrative
30 proceeding by reason of the person's status as a victim of violence,
31 such as in a proceeding under chapter 49.60 RCW; or

32 (d) Any other records or information indicating that the person,
33 about whom the records or information pertains, is a victim of domestic
34 violence, sexual assault, or stalking, or protected by a court order.

35 "Qualified victim protection records" does not include records or
36 information tending to indicate that the person, about whom the records
37 or information pertains, was a perpetrator of sexual assault,
38 harassment, or violent crime.

1 (9) "Report date" means the date on which a tenant screening report
2 is sent to a person or entity.

3 (10) "Revised tenant screening report" means a tenant screening
4 report that corrects, updates, or otherwise modifies a prior tenant
5 screening report.

6 (11) "Screening service" means any consumer reporting agency that
7 provides a tenant screening report to any person or entity.

8 (12) "Tenant" has the same meaning as in RCW 59.18.030.

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

13 (14) "Tenant screening report" means a consumer report concerning
14 a prospective tenant that is prepared, transmitted, accessed, used, or
15 expected to be used or collected in whole or in part for tenant
16 screening purposes.

17 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.182 RCW
18 to read as follows:

19 (1) Before sending a tenant screening report to any person or
20 entity, the screening service shall require the person requesting the
21 screening report to specify the mailing address, fax number, or other
22 alternative address, which may be an electronic mail address, at which
23 the prospective tenant has agreed to receive the materials required
24 under this section, as well as any other communications from the
25 screening service.

26 (2) If a screening service provides a tenant screening report to a
27 person or entity concerning a prospective tenant, the screening service
28 shall:

29 (a) Within forty-eight hours of the report date, provide the
30 prospective tenant with an identical copy of the tenant screening
31 report's entire written contents; and

32 (b) Within forty-eight hours of the report date, provide the
33 prospective tenant with a verbatim transcript or detailed written
34 summary of the tenant screening report's nonwritten contents, if any.

35 (3) If a screening service has issued a tenant screening report
36 concerning a prospective tenant, the screening service shall, for sixty
37 days following the report date:

1 (a) Provide the prospective tenant with a revised tenant screening
2 report within forty-eight hours of making any update, correction, or
3 other change in the contents of the original tenant screening report;
4 and

5 (b) Provide a copy of the tenant screening report or most recently
6 revised tenant screening report to any prospective landlord who has
7 been authorized by the prospective tenant to receive the report within
8 forty-eight hours of a request.

9 (4) A screening service that has accepted a fee for issuing a
10 tenant screening report concerning a prospective tenant shall not, for
11 sixty days following the report date, accept any additional
12 compensation for providing any reports required under subsection (3) of
13 this section. A screening service shall maintain reasonable procedures
14 to ensure that it does not collect more than one fee for issuing tenant
15 screening reports concerning the same prospective tenant within a
16 sixty-day period.

17 (5) A screening service or prospective landlord shall promptly
18 refund any fee collected in violation of this section. If a screening
19 service or prospective landlord fails within one week to refund a fee
20 collected in violation of this section, a rebuttable presumption arises
21 that the violation was willful.

22 (6) This section does not limit a prospective tenant's rights or
23 the duties of a screening service as otherwise provided in this chapter
24 or chapter 59.18 RCW.

25 **Sec. 5.** RCW 19.182.110 and 1993 c 476 s 13 are each amended to
26 read as follows:

27 If a person takes an adverse action with respect to a consumer that
28 is based, in whole or in part, on information contained in a consumer
29 report, the person shall:

30 (1) Provide written notice of the adverse action to the consumer,
31 except verbal notice may be given by a person in an adverse action
32 involving a business regulated by the Washington utilities and
33 transportation commission (~~or involving an application for the rental~~
34 ~~or leasing of residential real estate~~) if such verbal notice does not
35 impair a consumer's ability to obtain a credit report without charge
36 under RCW 19.182.100(2); (~~and~~)

1 (2) Provide the consumer with the name, address, and telephone
2 number of the consumer reporting agency that furnished the report to
3 the person; and

4 (3) If the adverse action involves an application for the rental or
5 leasing of residential real estate, the written notice must contain the
6 reasons for the adverse action.

7 NEW SECTION. Sec. 6. A new section is added to chapter 19.182 RCW
8 to read as follows:

9 (1) A consumer reporting agency may not make a tenant screening
10 report that contains any of the following items of information about a
11 prospective tenant:

12 (a) Eviction suits, unless the eviction suit resulted in a judgment
13 or other adjudication that is less than seven years old in which the
14 consumer was found to be a responsible party. For the purposes of this
15 subsection, a consumer is deemed to have been a responsible party only
16 if:

17 (i) The consumer's right to possession of the premises to which the
18 eviction suit related had not been terminated by a foreclosure sale
19 within ninety days of the eviction suit;

20 (ii) A judgment or other order was entered in the eviction suit
21 finding that the party was guilty of unlawful detainer or otherwise in
22 unlawful possession of the premises; and

23 (iii) The judgment or order has not been vacated, expunged, sealed,
24 or similarly impaired;

25 (b) Qualified victim protection records; or

26 (c) Other information prohibited from disclosure under RCW
27 19.182.040.

28 (2) Any person who violates this section is liable to the consumer
29 for any other amount as authorized under this section and the amount of
30 the consumer's actual damages and costs of the action together with
31 reasonable attorneys' fees as determined by the court. A screening
32 service that willfully fails to comply with any requirement imposed
33 under this section in connection with a tenant or prospective tenant is
34 liable to the tenant or prospective tenant in the amount of one
35 thousand dollars for each willful violation.

1 **Sec. 7.** RCW 59.18.257 and 1991 c 194 s 3 are each amended to read
2 as follows:

3 (1) Before requesting or obtaining a tenant screening report about
4 a prospective tenant, a prospective landlord shall obtain from the
5 prospective tenant a mailing address, fax number, or other alternative
6 address, which may be an electronic mail address, at which the
7 prospective tenant has agreed to receive communications from the
8 screening service, including copies of any tenant screening reports.

9 (2) If a prospective landlord uses a tenant screening service,
10 ((then)) the prospective landlord may only charge for the costs
11 incurred for using the ((tenant)) screening service under this section.
12 A prospective landlord may not charge any tenant screening costs to a
13 prospective tenant who provided the prospective landlord with a
14 comprehensive screening report within sixty days of the report date.
15 If a prospective landlord conducts his or her own screening of
16 prospective tenants, ((then)) the prospective landlord may charge his
17 or her actual costs in obtaining the background information, but the
18 amount may not exceed the customary costs charged by a screening
19 service in the general area. The prospective landlord's actual costs
20 include costs incurred for long distance phone calls and for time spent
21 calling landlords, employers, and financial institutions.

22 ((+2)) (3) A prospective landlord may not charge a prospective
23 tenant for the cost of obtaining background information under this
24 section unless the prospective landlord first notifies the prospective
25 tenant in writing of what a tenant screening entails, the prospective
26 tenant's rights to dispute the accuracy of information provided by the
27 ((tenant)) screening service or provided by the entities listed on the
28 tenant application who will be contacted for information concerning the
29 tenant, ((and)) the name and address of the ((tenant)) screening
30 service used by the prospective landlord((-
31 (+3)), and, if the prospective landlord uses a screening service,
32 the prospective tenant's right to avoid tenant screening fees by
33 providing a comprehensive screening report.

34 (4) This section does not preclude a prospective landlord from
35 seeking or obtaining background information about a prospective tenant
36 at the prospective landlord's own expense.

37 (5) A prospective landlord who takes any adverse action toward a

1 prospective tenant shall make the disclosures as required under chapter
2 19.182 RCW and 15 U.S.C. Sec. 1681m.

3 (6) Nothing in this section requires a landlord to disclose
4 information to a prospective tenant that was obtained from a (~~tenant~~)
5 screening service or from entities listed on the tenant application
6 which is not required under chapter 19.182 RCW or the federal fair
7 credit reporting act, 15 U.S.C. Sec. 1681 et seq.

8 (~~(+4)~~) (7) Any prospective landlord who violates this section
9 (~~may be~~) is liable to the prospective tenant for (~~an~~) the amount
10 (~~not to exceed one hundred dollars. The prevailing party may also~~
11 ~~recover court costs and reasonable attorneys' fees.~~) of the
12 prospective tenant's actual damages and costs of the action together
13 with reasonable attorneys' fees as determined by the court. However,
14 where a prospective landlord has willfully failed to comply with any
15 requirement imposed under this section, the prospective tenant must
16 also be awarded a monetary penalty of one thousand dollars for each
17 willful violation.

18 (8) For the purposes of this section, "tenant screening," "tenant
19 screening report," "screening service," "prospective landlord," "report
20 date," "prospective tenant," and "comprehensive screening report" all
21 have the same meanings as provided in section 3 of this act.

22 NEW SECTION. Sec. 8. A new section is added to chapter 4.24 RCW
23 to read as follows:

24 (1) A defendant in any action for the possession of real property
25 under Title 59 RCW, or for ejectment under chapter 7.28 RCW, may, at
26 any time after the action is commenced, apply to the court for an order
27 directing the plaintiff to appear and show cause why an order should
28 not issue sealing or redacting the court records. The application must
29 identify the grounds upon which the defendant seeks to seal or redact
30 the records and, if less than the entire court file, which records the
31 moving party seeks to seal or redact. Upon application, the court
32 shall by order fix a time and place for a hearing of the motion, which
33 must not be less than seven days from the date of service of the order
34 and application upon the plaintiff. The order must state that if any
35 person opposing the sealing of the court records fails to appear and
36 show cause at the time and place specified by the order, the court may
37 order the records sealed as requested by the application.

1 (2) At the hearing on the motion, the court shall order the court
2 files and records in the proceeding, or any part of the files or
3 records, to be sealed or redacted in the manner minimally necessary to
4 protect the moving party, if the court finds that the moving party has
5 compelling privacy or safety concerns that outweigh the public interest
6 in access to the court record, or if the sealing or redaction is
7 necessary to preserve the integrity of the court's adjudicatory
8 functions.

9 (3) A person is found to have a compelling privacy and safety
10 concern if the court records that he or she wishes to seal or redact
11 are likely to diminish his or her ability to obtain access to rental
12 housing. This privacy and safety concern alone outweighs the public
13 interest in access to the court record if:

14 (a) The court has entered a final order in the action and the
15 moving party was not found guilty of unlawful detainer or otherwise in
16 unlawful possession of the disputed premises;

17 (b) The person seeking the order of redaction or sealing occupied
18 the real property as a tenant prior to a foreclosure sale concerning
19 the same premises, and the action was filed less than ninety days after
20 the foreclosure sale;

21 (c) Notwithstanding any other findings or orders in the case, the
22 moving party prevailed on any affirmative defense, counterclaim, or
23 setoff asserted in the action, such as a claim for breach of an implied
24 warranty of habitability or breach of the covenant of quiet enjoyment;

25 (d) A judgment entered solely for the nonpayment of rent has been
26 fully cured and the moving party's tenancy reinstated under RCW
27 59.12.170, 59.12.190, or 59.18.410, or any other law; or

28 (e) Another circumstance shows that public access to the court
29 record would unjustly diminish the moving party's future housing
30 opportunities.

31 (4) A person for whose benefit an order to seal or redact court
32 records is entered under this section, when engaged in an effort to
33 secure possession of residential rental property:

34 (a) Does not have a duty to disclose the action to any prospective
35 landlord or provider of any services in connection with housing on any
36 written or nonwritten application; and

37 (b) Must not be penalized in any manner, or denied any right or

1 privilege, for making to any prospective landlord or provider of any
2 services in connection with housing a statement denying the existence
3 of the action or denying knowledge of its existence.

4 (5) Once the court has ordered the court file or records of an
5 action sealed under this section, a person having notice of the order
6 to seal shall not, either directly or through any agent, disclose the
7 existence of the action, or other information expected to enable
8 discovery of the action, to any tenant screening service or prospective
9 landlord seeking information about the person for whose benefit the
10 order to seal was entered, unless the court has authorized the
11 disclosure after notice to the person for whose benefit the order to
12 seal was entered. The duty imposed under this subsection may not be
13 waived by the person for whose benefit the order to seal was entered,
14 and any purported or attempted waiver, whether written or nonwritten,
15 is void and has no effect.

16 (6) A person who violates the duty imposed under subsection (5) of
17 this section is liable to the person for whose benefit the order to
18 seal was entered for the amount of such person's actual damages and
19 costs of suit, together with reasonable attorneys' fees as determined
20 by the court, and if the violation was willful, for a monetary penalty
21 of one thousand dollars for each willful violation.

22 (7) This section does not limit or impair the right of the moving
23 party or any other person from pursuing, or of the court from ordering,
24 the sealing or redaction of court records under any other provision of
25 law in the event a person is not entitled to an order sealing or
26 redacting the court records as of right under this section.

--- END ---