

# SENATE BILL REPORT

## SB 5407

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As Reported by Senate Committee On:  
Financial Institutions & Insurance, January 25, 2018  
Ways & Means, February 6, 2018

**Title:** An act relating to ensuring housing options.

**Brief Description:** Concerning the preservation of housing options for tenants. [**Revised for 2nd Substitute:** Ensuring housing options.]

**Sponsors:** Senators Frockt, Miloscia, Walsh, Mullet, Billig, Kuderer, Pedersen, Hasegawa, Darneille and Keiser.

**Brief History:**

**Committee Activity:** Financial Institutions & Insurance: 1/31/17, 1/11/18, 1/25/18 [DPS-WM, DNP, w/oRec].

Ways & Means: 2/05/18, 2/06/18 [DP2S, DNP, w/oRec].

**Brief Summary of Second Substitute Bill**

- Prohibits landlords from refusing to rent property, expel tenants, discriminate, or discourage a rental to a tenant based on their source of income.
- Creates a landlord mitigation program in the Department of Commerce (Commerce) allowing landlords to seek reimbursement for repairs of documented damages to qualifying rental units.
- Authorizes a \$3 increase to a surcharge on document recording fees with a portion of the new surcharge deposited into the Landlord Mitigation Account.

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Majority Report:** That Substitute Senate Bill No. 5407 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Mullet, Chair; Hasegawa, Vice Chair; Hobbs and Kuderer.

**Minority Report:** Do not pass.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Signed by Senators Angel, Ranking Member; Fortunato.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Baumgartner.

**Staff:** Jeff Olsen (786-7428)

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5407 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair; Billig, Carlyle, Conway, Darneille, Fain, Hasegawa, Hunt, Keiser, Mullet, Palumbo, Pedersen, Ranker, Rivers, Van De Wege and Wagoner.

**Minority Report:** Do not pass.

Signed by Senators Bailey and Schoesler.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Braun, Ranking Member; Becker, Brown and Warnick.

**Staff:** Claire Goodwin (786-7736)

**Background:** The Residential Landlord-Tenant Act regulates the creation of residential tenancies and the relationship between landlords and tenants of residential dwelling units.

Laws Against Discrimination. Under Washington's laws against discrimination, a landlord may not discriminate against a prospective or current tenant with regard to sex; marital status; sexual orientation; race; creed; color; national origin; families with children status; honorably discharged veteran status; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a person with a disability.

Source of income discrimination. Twelve states—California, Connecticut, Maine, Massachusetts, Minnesota, New Jersey, North Dakota, Oklahoma, Oregon, Utah, Vermont, Wisconsin, and the District of Columbia—have statutes that prohibit a landlord from discriminating against a tenant in regard to the tenant's lawful source of income. Except for California's and Utah's statutes, these laws specifically prohibit discrimination based on a tenant's use of Section 8 or other government assistance or subsidies. In California, there is case law that clarifies that source of income does not include Section 8. In Washington, Seattle, King County, Redmond, Kirkland, Bellevue, Redmond, and Vancouver have ordinances which prohibit a landlord from discriminating against a tenant who receives a Section 8 subsidy, and some ordinances include additional types of government assistance.

Document Recording Fee. County auditors in Washington State collect funds called a "document recording fee" that is charged to documents such as deeds. Washington currently has three separate document recording fees—all funds support programs that address homelessness. The funds generated from the Affordable Housing for All Surcharge is split between counties and the state with the state retaining approximately 38 percent of the total.

**Summary of Bill (Second Substitute):** A new section is added to the Residential Landlord Tenant Act prohibiting a landlord from taking certain actions based on the source of income of an otherwise eligible prospective tenant or current tenant, including:

- refusing to lease or rent any real property unless the tenant's source of income is conditioned on real property passing inspection and the estimate of improvements is greater than \$1,500;
- expelling the tenant;
- making any distinction, discrimination, or restriction in the price, terms, conditions, fees, or privileges; or
- attempting to discourage the rental.

A landlord may not publish or display communications or notices relating to the rental of real property that indicates any source of income. Source of income is defined to include benefits or subsidy programs including housing assistance, public assistance, emergency rental assistance, veterans benefits, social security, supplemental security income or other retirement programs, and other programs administered by any federal, state, local, or nonprofit entity. Source of income does not include income derived in an illegal manner.

If a landlord requires that a tenant have a certain threshold level of income, any source of income in the form of a rent voucher or subsidy must be subtracted from the total of the monthly rent prior to calculating if the income criteria have been met. A person violating the section shall be held liable in a civil action for up to four and one-half times the monthly rent, as well as court costs and reasonable attorneys' fees.

A Landlord Mitigation Program (Program) is created in Commerce, allowing landlords of private market rental units rented to tenants with qualifying sources of income reimbursement for damages, up to \$1,000 for eligible repairs, up to 14 days of lost rental income, and reimbursement for damages reflected in a judgment obtained against the tenant. A Landlord Mitigation Program Account (Account) is created to reimburse landlords for damages caused to private market rental units during the time of rental to tenants with qualifying sources of income. In addition, reappropriations in the Rapid Housing Improvement Program may be used to implement the act. Before a claim is eligible for reimbursement from the Account, a landlord must first make repairs and then apply for reimbursement. A landlord making a claim must sign a statement attesting to the receipt of a judgment or damages caused by a tenant and authorizing the Department of Commerce to inspect property and records to verify a claim. Damages from a tenancy must total at least \$500 to be eligible for reimbursement from the program, and claims may not exceed \$5,000 per tenancy. A landlord who receives reimbursement from the Program is prohibited from taking legal action against the tenant and pursuing collection for damages.

Commerce must submit a report to the appropriate committees of the Legislature on the effectiveness of the Program and recommended modifications by January 1, 2021.

**EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):**

- Reduces the amount of improvements a landlord must perform due to an inspection from one month's rent plus \$5,000 to \$500 plus \$1,000 from the Account.

- Allows a landlord to not rent property if repairs required from an inspection exceed \$1,500 or funding for repairs is not available from the Account.
- Provides for civil penalties for violations up to four and one-half times the monthly rent.
- Specifies the process for applying for reimbursement for damage claims and grants rule-making authority to Commerce to administer the program.

**EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE (First Substitute):**

- Modifies the amount of repairs a landlord is required to perform due to an inspection and authorizes matching funds to assist with up to \$5,000 in improvements.
- Specifies that violations of the source of income requirements may result in a civil action up to four times the monthly rent.
- Expands the type of claims eligible for reimbursement from the Landlord Mitigation Program, including certain loss of rental income, late fees and attorney fees.
- Requires landlords making claims to sign statements regarding judgments or damages and authorizing Commerce to inspect property and records to verify a claim.
- Authorizes a \$3 increase to a surcharge on document recording fees with a portion of the new surcharge deposited in to the Account.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Financial Institutions & Insurance):** *Testimony from 2017 Regular Session. The committee recommended a different version of the bill than what was heard.* PRO: Banning source of income discrimination on the state level will be the fair, just thing for tenants and the citizens of this state. We are living in a state of housing distress. A tenant should not be denied simply because they are using an alternative source of income. This is not rent control. The subsidies are used to supplement other sources of income to calculate eligibility. The required applications and inspections do not take much of the landlords time. Some people are being discriminated against even though they have never missed a rent payment. For some rejected tenants, the option is homelessness. There have been no adverse effects to landlords in Oregon since 2014. This will help get rid of racially segregated housing opportunities. We need a statewide system to protect all renters. Only 43 percent of current voucher holders are finding housing. This is leveling the playing field, not giving some people an advantage.

CON: Housing authority agencies can work well, but some do not. Sometimes the only way to get a housing authority's attention is to threaten not to accept the vouchers. The HUD voucher program is voluntary, so it should be voluntary for landlords as well. Landlords will

be compelled to take a higher risk of under-compensation in the case of property damage. The subsidies do not pay security deposits.

OTHER: Sometimes landlords stop participating in the voucher program with little notice. Lack of participating landlords can arise if landlords do not understand the Section 8 voucher program or have stereotypes of the typical voucher holder. Source of income discrimination damages communities and schools as well as individual families.

**Persons Testifying (Financial Institutions & Insurance):** PRO: Senator David Frockt, Prime Sponsor; Michele Thomas, Washington Low Income Housing Alliance; Jim Adrian, citizen; Kim Toskey, citizen; Claude DeCorsi, Auburn City Council; Toya Thomas, citizen; Dominique Horn, citizen; Kate Budd, Vancouver Council for the Homeless; Patricia Abbat, Solid Ground; Megan Hyla, King County Housing Authority; Kurt Wiest, Bremerton Housing Authority; Michael Mirra, Tacoma Housing Authority/Executive Director; Colleen Melody, Attorney General's Office, Assistant Attorney General; Mark Smith, Housing Consortium of Everett & Snohomish County; Keith Scully, Council Member, City of Shoreline; Ed Prince, Renton City Council.

CON: Kathryn Hedrick, Washington Multi-Family Housing Association; Greg Cerbana, Weidner Apartment Homes; Rob Kellum, SUHRCO; Kyle Woodring, Rental Housing Association; Chester Baldwin, Washington Rental Owners Association.

OTHER: Scott Crain, Northwest Justice Project.

**Persons Signed In To Testify But Not Testifying (Financial Institutions & Insurance):** PRO: Michael Althaus, Columbia Legal Services; Monica Mendoza-Castrejon, Tenants Union of Washington State; Clifford Cawthon, Tenants Union and SAFE (Standing Against Foreclosure and Evictions); Clifford Cawthon, Tenants Union and SAFE; Mary Hackney, STEPS and SAFE; Mary Miles, STEPS Housing and SAFE; Monica Mendoza-Castrejon, Tenants Union of Washington State; Laurie Lippold, Partners for Our Children; Patricia Abbate, Solid Ground; Xochitl Maykovich, Washington CAN/Political Organizer.

**Staff Summary of Public Testimony on Proposed Substitute (Financial Institutions & Insurance):** *The committee recommended a different version of the bill than what was heard.* PRO: There has been a lot of work since last year, and the bill will go a long way to ensure housing subsidies have their intended effect. Twelve states have source of income laws, including Oregon, without negative impacts on the rental market. The landlord mitigation program is included to address negative impacts to landlords, and funding for the program is a priority. Ninety-four percent of households using rental assistance consist of children, elderly, or disabled persons. This bill does not require landlords to lower rent. Tenant advocates and landlord advocates have been working together on the bill and additional changes are being negotiated to develop a robust program. Over 21,000 people each night experience homelessness, and there are long waiting lists for rental assistance vouchers, and many tenants lose their assistance trying to find housing. Many rental listings advertise that they do not accept Section 8 and that is discrimination against poor people. There have been no reports of problems from landlords and tenants in areas currently banning source of income discrimination.

OTHER: Stakeholders are still negotiating components of the source of income bill including finding a durable funding source, how to administer the program through the Department of Commerce, and how to have a consistent program statewide and harmonize local ordinances. The program needs to protect both the landlord and the tenant. Temporary sources of funding are eligible for the program, landlords should be able to have a lease that matches the term of the subsidy. Currently, there are 13 different programs across the state. There should be an exemption for small landlords that operate one to four units. Section 8 protection does not guarantee a rental, there is a housing shortage. The goal is to allow renters to access the rental market, and it needs to make economic sense to landlords. There are concerns about the program, it needs to be low cost with good customer service and still protect taxpayers funds.

**Persons Testifying (Financial Institutions & Insurance):** PRO: Senator Frockt, prime sponsor; Michele Thomas, Washington Low Income Housing Alliance; Toya Thomas; Mark Smith, Housing Consortium of Everett & Snohomish County; Stephen Norman, King County Housing Authority; Antonio Ginatta, Columbia Legal Services.

OTHER: Tedd Kelleher, Washington Department of Commerce; Kyle Woodring, Rental Housing Association of Washington; Brett Waller, Washington Multi-Family Housing Association; Chester Baldwin, Washington Landlord Association.

**Persons Signed In To Testify But Not Testifying (Financial Institutions & Insurance):** No one.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** *The committee recommended a different version of the bill than what was heard.* PRO: Ninety-four percent of households using federal rental assistance consist of children, elderly, or disabled persons. Currently it is legal to deny housing to renters using housing assistance. This program is a win-win for landlords, tenants and local governments. The fiscal impacts in the bill are due to the creation of a mitigation program to assist landlords to apply for reimbursement for damages and is paid for by a \$3.00 surcharge on document recording fees. The administrative costs of the program are included in the fee. Section 8 tenants are very low income and do not always have sufficient funds for a deposit. Research has shown that landlords systematically do not respond or show their rental units to tenants with housing vouchers, which results in an increase in homelessness.

OTHER: The Rental Association is supportive of the process to establish the program and there is still work to determine how best to administer the program at the Department of Commerce. The current program at the Department of Commerce uses a judgment process from a court, and the idea is to get the Department review claims to reimburse landlords. If third party inspections are required to verify damages, that would be cumbersome and take too much time.

**Persons Testifying (Ways & Means):** PRO: Michele Thomas, Washington Low Income Housing Alliance; Caroline Johnson, citizen.

OTHER: Kyle Woodring, Rental Housing Association of Washington.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.