**1694.E AMS FIET S7042.2 - NOT FOR FLOOR USE**

**EHB 1694** - S COMM AMD

By Committee on Financial Institutions, Economic Development & Trade

**ADOPTED AS AMENDED 03/03/2020**

Strike everything after the enacting clause and insert the following:

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

(1)(a) Except as provided in (b) of this subsection, upon receipt of a tenant's written request, a landlord must permit the tenant to pay any deposits, nonrefundable fees, and last month's rent in installments.

(b) A landlord is not required to permit a tenant to pay in installments if the total amount of the deposits and nonrefundable fees do not exceed twenty-five percent of the first full month's rent and payment of the last month's rent is not required at the inception of the tenancy.

(2) In all cases where premises are rented for a specified time that is three months or longer, the tenant may elect to pay any deposits, nonrefundable fees, and last month's rent in three consecutive and equal monthly installments, beginning at the inception of the tenancy. In all other cases, the tenant may elect to pay any deposits, nonrefundable fees, and last month's rent in two consecutive and equal monthly installments, beginning at the inception of the tenancy.

(3) A landlord may not impose any fee, charge any interest, or otherwise impose a cost on a tenant because a tenant elects to pay in installments. Installment payments are due at the same time as rent is due. All installment schedules must be in writing and signed by the landlord and the tenant.

(4)(a) A fee or deposit to hold a dwelling unit or secure that the prospective tenant will move into a dwelling unit, as authorized under RCW 59.18.253, shall not be considered a deposit or nonrefundable fee for purposes of this section.

(b) A landlord may not request a fee or deposit to hold a dwelling unit or secure that the prospective tenant will move into a dwelling unit in excess of one-third of the first month's rent. The fee or deposit to hold the dwelling unit must be applied to the first month's rent once the tenancy begins.

(5) Beginning January 1, 2021, any landlord who refuses to permit a tenant to pay any deposits, nonrefundable fees, and last month's rent in installments upon the tenant's written request as described in subsection (1) of this section is subject to a statutory penalty of one month's rent and reasonable attorneys' fees payable to the tenant.

(6)(a) In any application seeking relief pursuant RCW 59.18.283(3), the court shall issue a finding as to whether the tenant is low-income, limited resourced, or experiencing hardship to determine if the landlord would be eligible for reimbursement through the landlord mitigation program account established within RCW 43.31.605(1)(c). In making this finding, the court may include an inquiry regarding the tenant's income relative to area median income, household composition, any extenuating circumstances, or other factors, and may rely on written declarations or oral testimony by the parties at the hearing.

(b) After a finding that the tenant is low-income, limited resourced, or experiencing hardship, the court may issue an order: (i) Finding that the landlord is eligible to receive on behalf of the tenant and may apply for reimbursement from the landlord mitigation program; and (ii) directing the clerk to remit, without further order of the court, any future payments made by the tenant in order to reimburse the department of commerce pursuant to RCW 43.31.605(1)(c)(iii). Nothing in this subsection shall be deemed to obligate the department of commerce to provide assistance in claim reimbursement through the landlord mitigation program if there are not sufficient funds.

(c) Upon payment by the department of commerce to the landlord for the remaining or total amount of the judgment, as applicable, the judgment is satisfied and the landlord shall file a satisfaction of judgment with the court.

**Sec.**  RCW 43.31.605 and 2019 c 356 s 12 are each amended to read as follows:

(1)(a) Subject to the availability of funds for this purpose, the landlord mitigation program is created and administered by the department. The department shall have such rule-making authority as the department deems necessary to administer the program.

(b) The following types of claims related to landlord mitigation for renting private market rental units to low-income tenants using a housing subsidy program are eligible for reimbursement from the landlord mitigation program account:

(i) Up to one thousand dollars for improvements identified in RCW 59.18.255(1)(a). In order to be eligible for reimbursement under this subsection (1)(b)(i), the landlord must pay for the first five hundred dollars for improvements, and rent to the tenant whose housing subsidy program was conditioned on the real property passing inspection. Reimbursement under this subsection (1)(b)(i) may also include up to fourteen days of lost rental income from the date of offer of housing to the applicant whose housing subsidy program was conditioned on the real property passing inspection until move in by that applicant;

(ii) Reimbursement for damages as reflected in a judgment obtained against the tenant through either an unlawful detainer proceeding, or through a civil action in a court of competent jurisdiction after a hearing;

(iii) Reimbursement for damages established pursuant to subsection (2) of this section; and

(iv) Reimbursement for unpaid rent and unpaid utilities, provided that the landlord can evidence it to the department's satisfaction.

(c) Claims related to landlord mitigation for an unpaid judgment for rent, unpaid judgments resulting from the tenant's failure to comply with an installment payment agreement identified in section 1 of this act, late fees, attorneys' fees, and costs after a court order pursuant to RCW 59.18.410(3), including any unpaid portion of the judgment after the tenant defaults on the payment plan pursuant to RCW 59.18.410(3)(c), are eligible for reimbursement from the landlord mitigation program account and are exempt from any postjudgment interest required under RCW 4.56.110. Any claim for reimbursement under this subsection (1)(c) is not an entitlement.

(i) The department shall provide for a form on its web site for tenants and landlords to apply for reimbursement funds for the landlord pursuant to this subsection (1)(c).

(ii) The form must include: (A) Space for the landlord and tenant to provide names, mailing addresses, phone numbers, date of birth for the tenant, and any other identifying information necessary for the department to process payment; (B) the landlord's statewide vendor identification number and how to obtain one; (C) name and address to whom payment must be made; (D) the amount of the judgment with instructions to include any other supporting documentation the department may need to process payment; (E) instructions for how the tenant is to reimburse the department under (c)(iii) of this subsection; (F) a description of the consequences if the tenant does not reimburse the department as provided in this subsection (1)(c); (G) a signature line for the landlord and tenant to confirm that they have read and understood the contents of the form and program; and (H) any other information necessary for the operation of the program. If the tenant has not signed the form after the landlord has made good faith efforts to obtain the tenant's signature, the landlord may solely submit the form but must attest to the amount of money owed and sign the form under penalty of perjury.

(iii) When a landlord has been reimbursed pursuant to this subsection (1)(c), the tenant for whom payment was made shall reimburse the department by depositing the amount disbursed from the landlord mitigation program account into the court registry of the superior court in which the judgment was entered. The tenant or other interested party may seek an ex parte order of the court under the unlawful detainer action to order such funds to be disbursed by the court. Upon entry of the order, the court clerk shall disburse the funds and include a case number with any payment issued to the department. If directed by the court, a clerk shall issue any payments made by a tenant to the department without further court order.

(iv) The department may deny an application made by a tenant who has failed to reimburse the department for prior payments issued pursuant to this subsection (1)(c).

(v) With any disbursement from the account to the landlord, the department shall notify the tenant at the address provided within the application that a disbursement has been made to the landlord on the tenant's behalf and that failure to reimburse the account for the payment through the court registry may result in a denial of a future application to the account pursuant to this subsection (1)(c). The department may include any other additional information about how to reimburse the account it deems necessary to fully inform the tenant.

(vi) The department's duties with respect to obtaining reimbursement from the tenant to the account are limited to those specified within this subsection (1)(c).

(vii) If at any time funds do not exist in the landlord mitigation program account to reimburse claims submitted under this subsection (1)(c), the department must create and maintain a waitlist and distribute funds in the order the claims are received pursuant to subsection (6) of this section. Payment of any claims on the waitlist shall be made only from the landlord mitigation program account. The department shall not be civilly or criminally liable and may not have any penalty or cause of action of any nature arise against it regarding the provision or lack of provision of funds for reimbursement.

(2) In order for a claim under subsection (1)(b)(iii) of this section to be eligible for reimbursement from the landlord mitigation program account, a landlord must:

(a) Have ensured that the rental property was inspected at the commencement of the tenancy by both the tenant and the landlord or landlord's agent and that a detailed written move-in property inspection report, as required in RCW 59.18.260, was prepared and signed by both the tenant and the landlord or landlord's agent;

(b) Make repairs and then apply for reimbursement to the department;

(c) Submit a claim on a form to be determined by the department, signed under penalty of perjury; and

(d) Submit to the department copies of the move-in property inspection report specified in (a) of this subsection and supporting materials including, but not limited to, before repair and after repair photographs, videos, copies of repair receipts for labor and materials, and such other documentation or information as the department may request.

(3) The department shall make reasonable efforts to review a claim within ten business days from the date it received properly submitted and complete claims to the satisfaction of the department. In reviewing a claim pursuant to subsection (1)(b) of this section, and determining eligibility for reimbursement, the department must receive documentation, acceptable to the department in its sole discretion, that the claim involves a private market rental unit rented to a low-income tenant who is using a housing subsidy program.

(4) Claims pursuant to subsection (1)(b) of this section related to a tenancy must total at least five hundred dollars in order for a claim to be eligible for reimbursement from the program. While claims or damages may exceed five thousand dollars, total reimbursement from the program may not exceed five thousand dollars per tenancy.

(5) Damages, beyond wear and tear, that are eligible for reimbursement include, but are not limited to: Interior wall gouges and holes; damage to doors and cabinets, including hardware; carpet stains or burns; cracked tiles or hard surfaces; broken windows; damage to household fixtures such as disposal, toilet, sink, sink handle, ceiling fan, and lighting. Other property damages beyond normal wear and tear may also be eligible for reimbursement at the department's discretion.

(6) All reimbursements for eligible claims shall be made on a first-come, first-served basis, to the extent of available funds. The department shall use best efforts to notify the tenant of the amount and the reasons for any reimbursements made.

(7) The department, in its sole discretion, may inspect the property and the landlord's records related to a claim, including the use of a third-party inspector as needed to investigate fraud, to assist in making its claim review and determination of eligibility.

(8) A landlord in receipt of reimbursement from the program pursuant to subsection (1)(b) of this section is prohibited from:

(a) Taking legal action against the tenant for damages attributable to the same tenancy; or

(b) Pursuing collection, or authorizing another entity to pursue collection on the landlord's behalf, of a judgment against the tenant for damages attributable to the same tenancy.

(9) A landlord denied reimbursement under subsection (1)(b)(iii) of this section may seek to obtain a judgment from a court of competent jurisdiction and, if successful, may resubmit a claim for damages supported by the judgment, along with a certified copy of the judgment. The department may reimburse the landlord for that portion of such judgment that is based on damages reimbursable under the landlord mitigation program, subject to the limitations set forth in this section.

(10) Determinations regarding reimbursements shall be made by the department in its sole discretion.

(11) The department must establish a web site that advertises the landlord mitigation program, the availability of reimbursement from the landlord mitigation program account, and maintains or links to the agency rules and policies established pursuant to this section.

(12) Neither the state, the department, or persons acting on behalf of the department, while acting within the scope of their employment or agency, is liable to any person for any loss, damage, harm, or other consequence resulting directly or indirectly from the department's administration of the landlord mitigation program or determinations under this section.

(13)(a) A report to the appropriate committees of the legislature on the effectiveness of the program and recommended modifications shall be submitted to the governor and the appropriate committees of the legislature by January 1, 2021. In preparing the report, the department shall convene and solicit input from a group of stakeholders to include representatives of large multifamily housing property owners or managers, small rental housing owners in both rural and urban markets, a representative of tenant advocates, and a representative of the housing authorities.

(b) The report shall include discussion of the effectiveness of the program as well as the department's recommendations to improve the program, and shall include the following:

(i) The number of total claims and total amount reimbursed to landlords by the fund;

(ii) Any indices of fraud identified by the department;

(iii) Any reports by the department regarding inspections authorized by and conducted on behalf of the department;

(iv) An outline of the process to obtain reimbursement for improvements and for damages from the fund;

(v) An outline of the process to obtain reimbursement for lost rent due to the rental inspection and tenant screening process, together with the total amount reimbursed for such damages;

(vi) An evaluation of the feasibility for expanding the use of the mitigation fund to provide up to ninety-day no interest loans to landlords who have not received timely rental payments from a housing authority that is administering section 8 rental assistance;

(vii) Any other modifications and recommendations made by stakeholders to improve the effectiveness and applicability of the program.

(14) As used in this section:

(a) "Housing subsidy program" means a housing voucher as established under 42 U.S.C. Sec. 1437 as of January 1, 2018, or other housing subsidy program including, but not limited to, valid short-term or long-term federal, state, or local government, private nonprofit, or other assistance program in which the tenant's rent is paid either partially by the program and partially by the tenant, or completely by the program directly to the landlord;

(b) "Low-income" means income that does not exceed eighty percent of the median income for the standard metropolitan statistical area in which the private market rental unit is located; and

(c) "Private market rental unit" means any unit available for rent that is owned by an individual, corporation, limited liability company, nonprofit housing provider, or other entity structure, but does not include housing acquired, or constructed by a public housing agency under 42 U.S.C. Sec. 1437 as it existed on January 1, 2018.

**Sec.**  RCW 59.18.253 and 2011 c 132 s 12 are each amended to read as follows:

(1) It shall be unlawful for a landlord to require a fee or deposit from a prospective tenant for the privilege of being placed on a waiting list to be considered as a tenant for a dwelling unit.

(2) A landlord who charges a prospective tenant a fee or deposit to hold a dwelling unit or secure that the prospective tenant will move into a dwelling unit, after the dwelling unit has been offered to the prospective tenant, must provide the prospective tenant with a receipt for the fee or deposit, together with a written statement of the conditions, if any, under which the fee or deposit may be retained, immediately upon payment of the fee or deposit.

(3) A landlord may not request a fee or deposit to hold a dwelling or secure that the prospective tenant will move into the dwelling unit in excess of one-third of the first month's rent as described in section 1(4) of this act.

(4)(a) If the prospective tenant does occupy the dwelling unit, then the landlord must credit the amount of the fee or deposit to the tenant's first month's rent or to the tenant's security deposit. If the prospective tenant does not occupy the dwelling unit, then the landlord may keep up to the full amount of any fee or deposit that was paid by the prospective tenant to secure the tenancy, so long as it is in accordance with the written statement of conditions furnished to the prospective tenant at the time the fee or deposit was charged.

(b) A fee or deposit to hold a dwelling unit or secure that the prospective tenant will move into a dwelling unit under this subsection does not include any cost charged by a landlord to use a tenant screening service or obtain background information on a prospective tenant.

(c) A portion of the fee or deposit may not be withheld if the dwelling unit fails a tenant-based rental assistance program inspection by a qualified inspector as defined in RCW 59.18.030. If the inspection does not occur within ten days from the date of collection of the fee or deposit or a longer period of time that the landlord and tenant may agree upon, the landlord may notify the tenant that the dwelling unit will no longer be held. The landlord shall promptly return the fee or deposit to the prospective tenant after the landlord is notified that the dwelling unit failed the inspection or the landlord has notified the tenant that the dwelling unit will no longer be held. The landlord complies with this section by promptly depositing the fee or deposit in the United States mail properly addressed with first-class postage prepaid.

((~~(4)~~)) (5) In any action brought for a violation of this section, a landlord may be liable for the amount of the fee or deposit charged. In addition, any landlord who violates this section may be liable to the prospective tenant for an amount not to exceed two times the fee or deposit. The prevailing party may also recover court costs and a reasonable attorneys' fee."

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**ADOPTED AS AMENDED 03/03/2020**

On page 1, line 2 of the title, after "installments;" strike the remainder of the title and insert "amending RCW 43.31.605 and 59.18.253; and adding a new section to chapter 59.18 RCW."

EFFECT: (1) Allows landlords and tenants facing certain hardships to seek reimbursement from the landlord mitigation program account. Limits holding fees or deposits to no more than one-third of the first month's rent. Makes landlords that do not allow for installment payments of certain fees and rents subject to a fine of one-month's rent payable to a tenant.

(2) Makes the language consistent by using the term dwelling unit that is used throughout the Residential Landlord Tenant Act.

(3) Clarifies that the penalty for a landlord not allowing installment payments is supposed to be directed to the tenant through a statutory penalty.

(4) Amends the statute concerning deposits to secure occupancy by limiting landlords to charging no more than one-third of the first month's rent for a deposit.