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**HOUSE BILL 2878**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Davis, Macri, Robinson, and Santos

AN ACT Relating to addressing housing concerns for individuals impacted by the criminal justice system; amending RCW 59.18.257; reenacting and amending RCW 59.18.030; adding a new section to chapter 59.18 RCW; creating new sections; and prescribing penalties.

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

NEW SECTION. **Sec.**  The legislature finds that increasing housing access and promoting housing stability for all residents of the state, including people impacted by the criminal justice system, furthers the public health and welfare, results in better reentry outcomes, reunifies families, and strengthens communities. The legislature further finds that criminal record screening for rental housing applicants and tenants has a disparate impact on people and communities of color due to racial inequities in the criminal justice system that are compounded by racial bias in the tenant application and selection process. Therefore, it is the intent of the legislature with this act to address housing discrimination against people impacted by the criminal justice system, and that the provisions of this act be liberally construed to serve its beneficial purposes.

NEW SECTION. **Sec.**  This act may be known and cited as the housing justice act.

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

(1) A landlord may not:

(a) Advertise, publicize, or implement any policy or practice that automatically or categorically excludes from any rental housing all individuals with any arrest record or conviction record;

(b) Require disclosure, inquire about, or take an adverse action against a prospective tenant, tenant, or member of the tenant's household, based on any arrest record or conviction record, except as provided in (c) of this subsection and subject to the exclusions and legal requirements in subsection (7) of this section;

(c) Carry out an adverse action based on registry information of a prospective tenant, tenant, or member of the tenant's household, unless the landlord has a legitimate business reason for taking such action.

(2)(a) If a landlord takes an adverse action based on a legitimate business reason, the landlord must provide written notice by email, mail, or in person of the adverse action to the prospective tenant or tenant and state the specific registry information that was the basis for the adverse action.

(b) If a tenant screening report or comprehensive reusable tenant screening report is used by a landlord as part of the screening process, the landlord must provide the name and address of the consumer reporting agency and the prospective occupant's or tenant's rights to obtain a free copy of the tenant screening report in the event of a denial or other adverse action and to dispute the accuracy of information appearing in the tenant screening report. The prospective tenant or tenant must be provided at least five business days from the time of notice to dispute the accuracy and relevance of the tenant screening report.

(c) Any refusal of tenancy under this subsection must be communicated to the tenant pursuant to RCW 59.18.257.

(3) A landlord in violation of this section may be liable up to four and one-half times the monthly rent of the real property at issue, as well as court costs and reasonable attorneys' fees.

(4) It is a defense to an unlawful detainer action under chapter 59.12 RCW that the action to remove the tenant and recover possession of the premises is in violation of this section.

(5) This section does not prohibit adverse housing decisions based upon other lawful factors within the landlord's knowledge.

(6) This section does not affect, modify, or limit the authority of a local government to adopt any rule, regulation, code, statute, or ordinance that is more stringent than this section as applicable to each local government's respective corporate limits or boundaries. Otherwise, this section supersedes and preempts all other local rules, regulations, codes, statutes, or ordinances regarding the provision of rental housing to tenants or prospective tenants with a conviction record or arrest record.

(7) This section does not apply to:

(a) The renting, subrenting, leasing, or subleasing of any dwelling unit owned or managed by a public housing authority organized under chapter 35.82 RCW;

(b) The renting, subrenting, leasing, or subleasing of a single-family dwelling unit in which the owner or subleasing tenant or subrenting tenant occupy part of the single-family dwelling unit;

(c) The renting, subrenting, leasing, or subleasing of an accessory dwelling unit or detached accessory dwelling unit in which the owner or person entitled to possession of the unit maintains a permanent residence, home, or abode on the same lot.

(8) For purposes of this section:

(a) "Adverse action" means:

(i) Refusing to engage in or negotiate a rental real estate transaction;

(ii) Denying tenancy;

(iii) Representing that real property listed for rent or lease is not available for inspection, rental, or lease when in fact it is so available;

(iv) Failing or refusing to add a household member to an existing lease;

(v) Expelling or evicting an occupant from real property or otherwise making unavailable or denying a dwelling;

(vi) Applying different terms, conditions, or privileges to a rental agreement including, but not limited to, the setting of rates for rental or lease, establishment of damage deposits, or other financial conditions for rental or lease, or in the furnishing of facilities or services in connection with such transaction;

(vii) Refusing or intentionally failing to list real property for rent or lease;

(viii) Refusing or intentionally failing to show real property listed for rent or lease;

(ix) Refusing or intentionally failing to accept or transmit any reasonable offer to lease, or rent real property;

(x) Terminating a lease; or

(xi) Threatening, penalizing, retaliating, or otherwise discriminating against any person for any reason prohibited under this section.

(b) "Arrest record" includes, but is not limited to, information indicating that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted, or tried for any felony, misdemeanor, or other offense pursuant to any law enforcement or military authority.

(c) "Conviction record" includes, but is not limited to, information indicating that a person has been convicted of a felony, misdemeanor, or other offense including a civil ordinance violation (forfeiture), placed on probation, fined, imprisoned, or paroled pursuant to any law enforcement or military authority.

(d) A "legitimate business reason" exists when the policy or practice is necessary to achieve a substantial, legitimate, and nondiscriminatory interest, which is determined by the landlord by demonstrating, through reliable evidence, a nexus between the policy or practice and resident safety or protecting the property, or both, in light of the following factors:

(i) The nature and severity of the conviction;

(ii) The number and types of convictions;

(iii) The time that has elapsed since the date of conviction;

(iv) The age of the individual at the time of conviction;

(v) Evidence of good tenant history before or after the conviction occurred;

(vi) Any supplemental information related to the individual's rehabilitation, good conduct, and additional facts or explanations if provided by the individual. Such a review of conviction information is limited to those convictions included in registry information.

(e) "Registry information" means information solely obtained from a county, statewide, or national sex offender registry including, but not limited to, the registrant's physical description, address, and conviction description and dates.

(f) "Supplemental information" means any information produced by the prospective tenant or tenant, or produced on the tenant's behalf, with respect to the tenant's rehabilitation or good conduct including, but not limited to:

(i) Written or oral statement from the prospective tenant or tenant;

(ii) Written or oral statement from a current or previous employer;

(iii) Written or oral statement from a current or previous landlord;

(iv) Written or oral statement from a member of the judiciary or law enforcement, parole or probation officer, or person who provides similar services;

(v) Written or oral statement from a member of the clergy, counselor, therapist, social worker, community or volunteer organization, or person or institution who provides similar services;

(vi) Certificate of rehabilitation;

(vii) Certificate of completion or enrollment in an educational or vocational training program, including apprenticeship programs; or

(viii) Certificate of completion or enrollment in a drug or alcohol treatment program or in a rehabilitation program.

**Sec.**  RCW 59.18.030 and 2019 c 356 s 5, 2019 c 232 s 24, and 2019 c 23 s 1 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "Active duty" means service authorized by the president of the United States, the secretary of defense, or the governor for a period of more than thirty consecutive days.

(2) "Certificate of inspection" means an unsworn statement, declaration, verification, or certificate made in accordance with the requirements of chapter 5.50 RCW by a qualified inspector that states that the landlord has not failed to fulfill any substantial obligation imposed under RCW 59.18.060 that endangers or impairs the health or safety of a tenant, including (a) structural members that are of insufficient size or strength to carry imposed loads with safety, (b) exposure of the occupants to the weather, (c) plumbing and sanitation defects that directly expose the occupants to the risk of illness or injury, (d) not providing facilities adequate to supply heat and water and hot water as reasonably required by the tenant, (e) providing heating or ventilation systems that are not functional or are hazardous, (f) defective, hazardous, or missing electrical wiring or electrical service, (g) defective or hazardous exits that increase the risk of injury to occupants, and (h) conditions that increase the risk of fire.

(3) "Commercially reasonable manner," with respect to a sale of a deceased tenant's personal property, means a sale where every aspect of the sale, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a landlord may sell the tenant's property by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(4) "Comprehensive reusable tenant screening report" means a tenant screening report prepared by a consumer reporting agency at the direction of and paid for by the prospective tenant and made available directly to a prospective landlord at no charge, which contains all of the following: (a) A consumer credit report prepared by a consumer reporting agency within the past thirty days; (b) except as limited in section 3 of this act, the prospective tenant's criminal history; (c) the prospective tenant's eviction history; (d) an employment verification; and (e) the prospective tenant's address and rental history.

(5) "Criminal history" means a report containing or summarizing (a) the prospective tenant's criminal convictions and pending cases, the final disposition of which antedates the report by no more than seven years, and (b) the results of a sex offender registry and United States department of the treasury's office of foreign assets control search, all based on at least seven years of address history and alias information provided by the prospective tenant or available in the consumer credit report.

(6) "Designated person" means a person designated by the tenant under RCW 59.18.590.

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

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

(9) "Distressed home purchaser" has the same meaning as in RCW 61.34.020.

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

(11) "Eviction history" means a report containing or summarizing the contents of any records of unlawful detainer actions concerning the prospective tenant that are reportable in accordance with state law, are lawful for landlords to consider, and are obtained after a search based on at least seven years of address history and alias information provided by the prospective tenant or available in the consumer credit report.

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

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

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

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

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

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

(i) The mortgagee;

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

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

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

(v) An attorney-at-law;

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

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

(15) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the owner, lessor, or sublessor including, but not limited to, an agent, a resident manager, or a designated property manager.

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

(17) "Orders" means written official military orders, or any written notification, certification, or verification from the service member's commanding officer, with respect to the service member's current or future military status.

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

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

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

(19) "Permanent change of station" means: (a) Transfer to a unit located at another port or duty station; (b) change in a unit's home port or permanent duty station; (c) call to active duty for a period not less than ninety days; (d) separation; or (e) retirement.

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

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

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

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

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

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

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

(27) "Reasonable manner," with respect to disposing of a deceased tenant's personal property, means to dispose of the property by donation to a not-for-profit charitable organization, by removal of the property by a trash hauler or recycler, or by any other method that is reasonable under the circumstances.

(28) "Rent" or "rental amount" means recurring and periodic charges identified in the rental agreement for the use and occupancy of the premises, which may include charges for utilities. Except as provided in RCW 59.18.283(3), these terms do not include nonrecurring charges for costs incurred due to late payment, damages, deposits, legal costs, or other fees, including attorneys' fees.

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

(30) "Service member" means an active member of the United States armed forces, a member of a military reserve component, or a member of the national guard who is either stationed in or a resident of Washington state.

(31) A "single-family residence" is a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single-family residence if it has direct access to a street and shares neither heating facilities nor hot water equipment, nor any other essential facility or service, with any other dwelling unit.

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

(33) "Tenant representative" means:

(a) A personal representative of a deceased tenant's estate if known to the landlord;

(b) If the landlord has no knowledge that a personal representative has been appointed for the deceased tenant's estate, a person claiming to be a successor of the deceased tenant who has provided the landlord with proof of death and an affidavit made by the person that meets the requirements of RCW 11.62.010(2);

(c) In the absence of a personal representative under (a) of this subsection or a person claiming to be a successor under (b) of this subsection, a designated person; or

(d) In the absence of a personal representative under (a) of this subsection, a person claiming to be a successor under (b) of this subsection, or a designated person under (c) of this subsection, any person who provides the landlord with reasonable evidence that he or she is a successor of the deceased tenant as defined in RCW 11.62.005. The landlord has no obligation to identify all of the deceased tenant's successors.

(34) "Tenant screening" means using a consumer report or other information about a prospective tenant subject to section 3 of this act in deciding whether to make or accept an offer for residential rental property to or from a prospective tenant.

(35) "Tenant screening report" means a consumer report as defined in RCW 19.182.010 and any other information collected by a tenant screening service except as limited under section 3 of this act.

**Sec.**  RCW 59.18.257 and 2016 c 66 s 2 are each amended to read as follows:

(1)(a) Prior to obtaining any information about a prospective tenant and subject to section 3 of this act, the prospective landlord shall first notify the prospective tenant in writing, or by posting, of the following:

(i) What types of information will be accessed to conduct the tenant screening;

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

(iii) If a consumer report is used, the name and address of the consumer reporting agency and the prospective tenant's rights to obtain a free copy of the consumer report in the event of a denial or other adverse action, and to dispute the accuracy of information appearing in the consumer report; and

(iv) Whether or not the landlord will accept a comprehensive reusable tenant screening report made available to the landlord by a consumer reporting agency. If the landlord indicates its willingness to accept a comprehensive reusable tenant screening report, the landlord may access the landlord's own tenant screening report regarding a prospective tenant as long as the prospective tenant is not charged for the landlord's own tenant screening report.

(b)(i) The landlord may charge a prospective tenant for costs incurred in obtaining a tenant screening report only if the prospective landlord provides the information as required in (a) of this subsection.

(ii) If a prospective landlord conducts his or her own screening of tenants, the prospective landlord may charge his or her actual costs in obtaining the background information only if the prospective landlord provides the information as required in (a) of this subsection. The amount charged may not exceed the customary costs charged by a screening service in the general area. The prospective landlord's actual costs include costs incurred for long distance phone calls and for time spent calling landlords, employers, and financial institutions.

(c) If a prospective landlord takes an adverse action, the prospective landlord shall provide a written notice of the adverse action to the prospective tenant that states the reasons for the adverse action. The adverse action notice must contain the following information in a substantially similar format, including additional information as may be required under chapter 19.182 RCW:

"ADVERSE ACTION NOTICE

Name

Address

City/State/Zip Code

This notice is to inform you that your application has been:

..... Rejected

..... Approved with conditions:

..... Residency requires an increased deposit

..... Residency requires a qualified guarantor

..... Residency requires last month's rent

..... Residency requires an increased monthly rent of $........

..... Other:

Adverse action on your application was based on the following:

..... Information contained in a consumer report (The prospective landlord must include the name, address, and phone number of the consumer reporting agency that furnished the consumer report that contributed to the adverse action.)

..... The consumer credit report did not contain sufficient information

..... Information received from previous rental history or reference

..... Information received in a criminal history record that relates to a legitimate business reason as described in section 3 of this act of the landlord (as described in this notice)

..... Information received in a civil record

..... Information received from an employment verification

Dated this ..... day of ........, ....(year)

Agent/Owner Signature"

(2) Any landlord who maintains a web site advertising the rental of a dwelling unit or as a source of information for current or prospective tenants must include a statement on the property's home page stating whether or not the landlord will accept a comprehensive reusable tenant screening report made available to the landlord by a consumer reporting agency. If the landlord indicates its willingness to accept a comprehensive reusable tenant screening report, the landlord may access the landlord's own tenant screening report regarding a prospective tenant as long as the prospective tenant is not charged for the landlord's own tenant screening report.

(3) Any landlord or prospective landlord who violates subsection (1) of this section may be liable to the prospective tenant for an amount not to exceed one hundred dollars. The prevailing party may also recover court costs and reasonable attorneys' fees.

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

**--- END ---**