

EHB 1694 - S COMM AMD

By Committee on Financial Institutions, Economic Development & Trade

ADOPTED AND ENGROSSED 3/3/20

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 59.18
4 RCW to read as follows:

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

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

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

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

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

31 (b) A landlord may not request a fee or deposit to hold a
32 dwelling unit or secure that the prospective tenant will move into a

1 dwelling unit in excess of twenty-five percent of the first month's
2 rent.

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

9 (6) (a) In any application seeking relief pursuant RCW
10 59.18.283(3), the court shall issue a finding as to whether the
11 tenant is low-income, limited resourced, or experiencing hardship to
12 determine if the landlord would be eligible for reimbursement through
13 the landlord mitigation program account established within RCW
14 43.31.605(1)(c). In making this finding, the court may include an
15 inquiry regarding the tenant's income relative to area median income,
16 household composition, any extenuating circumstances, or other
17 factors, and may rely on written declarations or oral testimony by
18 the parties at the hearing.

19 (b) After a finding that the tenant is low-income, limited
20 resourced, or experiencing hardship, the court may issue an order:
21 (i) Finding that the landlord is eligible to receive on behalf of the
22 tenant and may apply for reimbursement from the landlord mitigation
23 program; and (ii) directing the clerk to remit, without further order
24 of the court, any future payments made by the tenant in order to
25 reimburse the department of commerce pursuant to RCW
26 43.31.605(1)(c)(iii). Nothing in this subsection shall be deemed to
27 obligate the department of commerce to provide assistance in claim
28 reimbursement through the landlord mitigation program if there are
29 not sufficient funds.

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

34 **Sec. 2.** RCW 43.31.605 and 2019 c 356 s 12 are each amended to
35 read as follows:

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

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

5 (i) Up to one thousand dollars for improvements identified in RCW
6 59.18.255(1)(a). In order to be eligible for reimbursement under this
7 subsection (1)(b)(i), the landlord must pay for the first five
8 hundred dollars for improvements, and rent to the tenant whose
9 housing subsidy program was conditioned on the real property passing
10 inspection. Reimbursement under this subsection (1)(b)(i) may also
11 include up to fourteen days of lost rental income from the date of
12 offer of housing to the applicant whose housing subsidy program was
13 conditioned on the real property passing inspection until move in by
14 that applicant;

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

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

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

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

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

36 (ii) The form must include: (A) Space for the landlord and tenant
37 to provide names, mailing addresses, phone numbers, date of birth for
38 the tenant, and any other identifying information necessary for the
39 department to process payment; (B) the landlord's statewide vendor
40 identification number and how to obtain one; (C) name and address to

1 whom payment must be made; (D) the amount of the judgment with
2 instructions to include any other supporting documentation the
3 department may need to process payment; (E) instructions for how the
4 tenant is to reimburse the department under (c)(iii) of this
5 subsection; (F) a description of the consequences if the tenant does
6 not reimburse the department as provided in this subsection (1)(c);
7 (G) a signature line for the landlord and tenant to confirm that they
8 have read and understood the contents of the form and program; and
9 (H) any other information necessary for the operation of the program.
10 If the tenant has not signed the form after the landlord has made
11 good faith efforts to obtain the tenant's signature, the landlord may
12 solely submit the form but must attest to the amount of money owed
13 and sign the form under penalty of perjury.

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

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

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

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

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

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

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

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

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

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

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

37 (4) Claims pursuant to subsection (1)(b) of this section related
38 to a tenancy must total at least five hundred dollars in order for a
39 claim to be eligible for reimbursement from the program. While claims

1 or damages may exceed five thousand dollars, total reimbursement from
2 the program may not exceed five thousand dollars per tenancy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (14) As used in this section:

37 (a) "Housing subsidy program" means a housing voucher as
38 established under 42 U.S.C. Sec. 1437 as of January 1, 2018, or other
39 housing subsidy program including, but not limited to, valid short-
40 term or long-term federal, state, or local government, private

1 nonprofit, or other assistance program in which the tenant's rent is
2 paid either partially by the program and partially by the tenant, or
3 completely by the program directly to the landlord;

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

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

12 **Sec. 3.** RCW 59.18.253 and 2011 c 132 s 12 are each amended to
13 read as follows:

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

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

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

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

37 (b) A fee or deposit to hold a dwelling unit or secure that the
38 prospective tenant will move into a dwelling unit under this
39 subsection does not include any cost charged by a landlord to use a

1 tenant screening service or obtain background information on a
2 prospective tenant.

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

16 ~~((4))~~ (5) In any action brought for a violation of this
17 section, a landlord may be liable for the amount of the fee or
18 deposit charged. In addition, any landlord who violates this section
19 may be liable to the prospective tenant for an amount not to exceed
20 two times the fee or deposit. The prevailing party may also recover
21 court costs and a reasonable attorneys' fee."

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22 On page 1, line 2 of the title, after "installments;" strike the
23 remainder of the title and insert "amending RCW 43.31.605 and
24 59.18.253; and adding a new section to chapter 59.18 RCW."

--- END ---