H-0333.1

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**HOUSE BILL 1228**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Representatives Barkis, Walen, Dent, Hoff, Jacobsen, Chambers, Ryu, Graham, Ybarra, Caldier, MacEwen, Walsh, Chapman, Boehnke, Dolan, Springer, Chandler, Eslick, Robertson, and Gilday

AN ACT Relating to residential landlord-tenant requirements in response to the COVID-19 public health emergency; reenacting and amending RCW 59.18.200; creating new sections; making an appropriation; providing an expiration date; and declaring an emergency.

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

NEW SECTION. **Sec.**  (1) The legislature finds that the COVID-19 pandemic is causing sustained economic downturn throughout Washington state with unprecedented numbers of layoffs and reduced work hours forcing many residents to suffer economic hardship while being ordered to remain in their residences for extended periods of time. The inability to pay basic household expenses, including rent is restricting housing providers' ability to maintain the costs of operating residences and damaging property owners' ability to secure financing, threatening the future viability of rental housing opportunities across Washington state.

(2) The legislature finds that it is the long-standing practice of the state to make rental assistance available in many such urgent situations, and it is the intent of the legislature to create programs to address rental housing debt and provide payments for tenants to make rental payments to housing providers so that residents are able to remain as rental units to allow tenants to remain in their homes.

(3) The legislature finds that Washington state has underproduced housing by approximately 225,600 units, from 2000 to 2015, which is approximately 7.5 percent of the total 2015 housing stock, with populous regions creating only one new unit of housing for every three new jobs created. Due to the devastating effects of a lack of rental payments available to housing providers, the legislature resolves that it is imperative the state preserve rental housing units as a critical component of the affordable housing portfolio of the state.

NEW SECTION. **Sec.**  The definitions in this section apply throughout sections 3 through 9 of this act unless the context clearly requires otherwise.

(1) "COVID" refers to the COVID-19 pandemic, declared a pandemic by the world health organization on March 11, 2020.

(2) "Eviction moratorium" refers to the governor of the state of Washington's proclamation 20-19, proclaiming a moratorium on certain evictions throughout Washington state on March 18, 2020, and any subsequent orders extending or amending such proclamation by the governor of the state of Washington, as well as any other eviction moratorium or ban entered by any city, town, or county in the state in response to the COVID-19 pandemic.

(3) "Landlord" has the same meaning as defined in RCW 59.18.030.

(4) "Rent" has the same meaning as defined in RCW 59.18.030.

(5) "Tenant" has the same meaning as defined in RCW 59.18.030.

NEW SECTION. **Sec.**  (1) Any eviction moratorium currently in effect is hereby suspended.

(2)(a) A landlord may immediately initiate an action under RCW 59.12.030(4) upon acts in violation of RCW 59.18.130 and 59.18.140 by the tenant, guests of the tenant, and invitees of the tenant, occurring as of the effective date of this section.

(b) Beginning 30 days after the effective date of this section, a landlord must provide to a tenant who has delinquent rent and has not already agreed to a payment plan notice of the affidavit of COVID hardship, notice of early resolution program, and option of payment plan described in sections 4 through 6 of this act.

(3) Within 30 days of receiving the landlord's notice under this section, a tenant must respond to the notice provided by a landlord by returning affidavit of COVID hardship, and selecting notice of early resolution program, or entering into a payment plan described in section 4 of this act. If a tenant does not respond as described in this subsection, a landlord may serve a tenant with a 14-day notice pursuant to RCW 59.12.030(3). A landlord may not serve a tenant with a 14-day notice pursuant to RCW 59.12.030(3) if the tenant has submitted an application for a grant through the emergency rental assistance grant program, but the application has not yet been approved or rejected.

(4) When a landlord serves a 14-day notice pursuant to RCW 59.12.030, the following notice packet must be served on the tenant: 14-day notice as required by RCW 59.18.057, the affidavit of COVID hardship, and the notice of early resolution program described in sections 5 and 6 of this act.

(5) A landlord may not charge or impose late fees, interest, or other penalties on any rental arrears accrued from February 29, 2020, through June 30, 2021.

(6) All forms required by this act must comply with the requirements of RCW 59.18.058.

NEW SECTION. **Sec.**  (1) Where there is any delinquency related to rent occurring between February 29, 2020, and June 30, 2021, a landlord must offer the tenant an option of payment plan consisting of a repayment schedule equal to or greater than payment of the outstanding debt in monthly payments of at least one-sixth of the outstanding debt owing, except where federal regulations require a different repayment schedule.

(2) A tenant's regular, contractual monthly rental payments must continue.

(3) All repayment plan agreements between a landlord and a tenant must be in writing.

(4) Failure to comply with a repayment agreement requires service of a notice packet as set forth under section 3 of this act.

(5) A tenant becomes ineligible for the early resolution program described in section 6 of this act when the tenant has been served two or more notice packets in six months after defaulting on two or more repayment agreements.

(6) Any payment agreement entered into before the effective date of this section remains in full force and effect.

NEW SECTION. **Sec.**  (1)(a) A tenant who has received notice under section 3 of this act must complete and return to his or her landlord an affidavit of COVID hardship within 60 days of the effective date of this section, or 14 days of service of the notice packet described in section 3 of this act, whichever is later.

(b) The tenant must return the affidavit of COVID hardship to the landlord in person, by first-class mail, or by electronically sending a copy or photograph of the affidavit to the landlord.

(2) COVID hardship exists when a tenant has experienced at least one of the following hardships since February 29, 2020:

(a) Loss of income caused by COVID by more than 50 percent year-over-year;

(b) Extraordinary out-of-pocket expenses directly related to performing essential work during COVID;

(c) Extraordinary expenses directly related to health impacts of COVID;

(d) New care responsibilities for a child or an elderly, disabled, or sick family member directly related to COVID that limit the tenant's ability to earn income;

(e) Extraordinary costs for child care or attending to an elderly, disabled, or sick family member directly related to COVID.

(3) A tenant whose household income exceeds 130 percent of the area median income for the county where the tenant resides may be required to provide additional documentation supporting the tenant's claim of financial distress with his or her affidavit of COVID hardship. If a tenant fails to submit this documentation together with his or her declaration of COVID-related financial distress, and does not either pay the amount demanded in the landlord's notice or deliver possession of the premises back to the landlord, the landlord may begin an unlawful detainer action against the tenant.

(4) Beginning August 31, 2021, a tenant completing the affidavit of COVID hardship must provide proof of hardship.

(5) If a tenant fails to complete and return the affidavit of COVID hardship to the landlord within the time frame set forth in subsection (1)(a) of this section, the landlord may commence an unlawful detainer action by filing a summons and complaint with the court pursuant to chapter 59.12 RCW.

(6) The affidavit of COVID hardship provided by the landlord must be in substantially the following form:

Date:

Tenant Name(s):

Tenant Address:

Landlord Name:

Landlord Address:

AFFIDAVIT OF COVID HARDSHIP AFFECTING PAYMENT OF RENT

The tenant must provide this signed document to the landlord within 14 days of the date above.

I attest that the foregoing are true and correct:

(1) I am unable to pay my regular monthly rent for one of the following reasons:

(a) Loss of income caused by the COVID-19 pandemic by more than 50 percent year-over-year.

(b) Extraordinary out-of-pocket expenses directly related to performing essential work during the COVID-19 pandemic.

(c) Extraordinary expenses directly related to health impacts of the COVID-19 pandemic.

(d) Child care responsibilities or responsibilities to care for an elderly, disabled, or sick family member directly related to the COVID-19 pandemic that limit my ability to earn income.

(e) Extraordinary costs for child care or attending to an elderly, disabled, or sick family member directly related to the COVID-19 pandemic.

(2) My income is less than 130 percent of the area median income for the county where I reside. (If the landlord alleges you earn more than 130 percent of area median income for the county where the rental property is located, you must provide information supporting your claim of COVID hardship.)

(3) Beginning August 31, 2021, a tenant completing the affidavit of COVID hardship must provide proof of hardship.

(4) I have used best efforts to obtain all available government assistance for rent or housing.

(5) I am using best efforts to make timely partial payments that are as close to the full payment as my circumstances may permit, taking into account other nondiscretionary expenses.

(6) If evicted I would likely become homeless, need to move into a homeless shelter, or need to move into a new residence shared by other people who live in close quarters because I have no other available housing options.

(7) I understand that I must still pay rent or make a housing payment, and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected on rent due after June 30, 2021.

(8) I further understand that failure to provide this notice to my housing provider may require payment in full for all payments not made from February 29, 2020, to present and may make me subject to eviction pursuant to state and local laws.

**The Washington state Office of the Attorney General has this notice in multiple languages on its website. You will also find information there on how to find a lawyer or advocate at low or no cost and any available resources to help you pay your rent. Alternatively, for no-cost legal assistance for low-income renters contact your county's housing justice project, or, if none, a statewide organization providing housing advocacy services for low-income residents. You may find additional information to help you at http://www.washingtonlawhelp.org.**

**State law provides you the right to receive interpreter services at court.**

Signature of Tenant: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NEW SECTION. **Sec.**  (1) The administrative office of the courts shall establish the early resolution program to facilitate the resolution of nonpayment of rent cases through dispute resolution centers or a third-party facilitator prior to the landlord filing an unlawful detainer action.

(2) In counties where the population is under 275,000, at minimum, the program must maintain a facilitator acting as an independent third party to resolve disputes between landlord and tenant. In counties with a population over 275,000, the local dispute resolution center shall be utilized to address and facilitate COVID hardship-related nonpayment of rent cases.

(3) The program shall be used only for nonpayment of rent cases between landlord and tenant.

(4) Prior to filing any unlawful detainer action, the landlord must provide notice to the tenant of the early resolution program. The landlord's notice to the tenant shall provide the following information regarding the early resolution program:

(a) Contact information for the local dispute resolution center or conciliation program;

(b) Contact information for the county's housing justice project, or, if none, a statewide organization providing housing advocacy services for low-income residents;

(c) "The Washington state Office of the Attorney General has this notice in multiple languages on its website. You will also find information there on how to find a lawyer or advocate at low or no cost and any available resources to help you pay your rent. Alternatively, you may find additional information to help you at http://www.washingtonlawhelp.org.";

(d) The name and contact information of the landlord and tenant; and

(e) That failure to respond to the notice of early resolution program within 14 days may result in the filing of a summons and complaint of unlawful detainer with the court.

(5) To engage with the early resolution program, a landlord must also send a copy of the notice to the office of civil legal aid at the time of service to the tenant. The office of civil legal aid shall distribute the notice to the local county dispute resolution center or county facilitator.

(6) Every notice of the early resolution program provided by the landlord must be in substantially the following form:

**\*\*Tenants: Respond within 14 days of the date below!\*\***

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
| **TO** | **FROM (Send Response here)** |
| **Name:** | **Name of Landlord (LL):****Name of LL's Attorney:** |
| **Telephone:** | **Telephone for LL:****Telephone for LL's Attorney:** |
| **Email:** | **Email for LL:****Email for LL's Attorney:** |

**HELP & RESOURCES ARE AVAILABLE – DO NOT DELAY!**

**(1)** **Tenants:** A NEUTRAL THIRD PARTY OR LOCAL LEGAL AID PROGRAM MAY BE ABLE TO HELP YOU WITH YOUR RENT AT NO COST TO YOU.

**(2)** **Tenants:** YOU MAY ASK FOR A MEDIATOR TO ASSIST YOU AND THE LANDLORD.

**(3)** **Tenants: GET HELP:** To get free early resolution or free legal help contact the **Dispute Resolution Center** or **Get a Lawyer** telephone numbers below in the county where you live.

**RESOURCES**

**\*\*Tenants: You may also complete the information below and return this Notice to your landlord within 14 days of the date above by email or other means to access the Early Resolution Program. If possible, keep a copy of the form for yourself.\*\***

I want assistance in resolving my unpaid rent. My contact information is:

Tenant's Name:

Tenant's Address:

Tenant's Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Tenant's Email:

**Tenants:** You may return this Form to your landlord to initiate Early Dispute Resolution.

**Tenants:** This Notice is available in different languages.

Failure to respond to the Notice of Early Resolution Program within 14 days may result in the filing of a summons and complaint of unlawful detainer with the court.

**The Washington state Office of the Attorney General has this notice in multiple languages on its website. You will also find information there on how to find a lawyer or advocate at low or no cost and any available resources to help you pay your rent. Alternatively, for no-cost legal assistance for low-income renters contact your county's housing justice project, or, if none, a statewide organization providing housing advocacy services for low-income residents. You may find additional information to help you at http://www.washingtonlawhelp.org.**

**State law provides you the right to receive interpreter services.**

NEW SECTION. **Sec.**  (1) The early resolution program account is created in the state treasury. All receipts from sources directed to the early resolution program must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used solely for the purpose of the early resolution program as described in section 6 of this act.

(2) Administrative costs associated with application, distribution, and other program activities of the department of commerce may not exceed five percent of the annual funds available for the early resolution program. Reappropriations must not be included in the calculation of the annual funds available for determining the administrative costs.

(3)(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 June 1, 2022. In preparing the report, the department of commerce 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, a representative of the housing authorities, and representatives of dispute resolution centers in Washington state.

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

(i) The number of total cases received by the program in each county since inception;

(ii) The total cost to administer the program in each county;

(iii) A summary of each county's early resolution program, including the cost of each program and an outline of each county's process to permit landlords and tenants to engage in the program;

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

(v) An evaluation of the feasibility to expand the use of the program; and

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

NEW SECTION. **Sec.**  (1) The emergency rental assistance grant program is created in the department of commerce to reimburse tenants and landlords for past due rental payments. Tenants or landlords may apply for grant assistance for reimbursement of past due rental payments owing by tenants.

(2) A tenant applying for a grant must self-certify that he or she has a COVID hardship as described in section 5 of this act.

(3) To be eligible for a grant, a tenant must earn less than 80 percent of the area median income for the county in which he or she resides or have experienced or demonstrated a COVID hardship certified by an affidavit of COVID hardship as described in section 5 of this act.

(4) When a landlord applies for a grant award under this section, the department of commerce must notify the tenant of any grant awarded to a tenant of that landlord along with repayment requirements by tenant and acknowledgment that rent remains due and payable by tenant to landlord.

(5) Grant recipients shall receive 80 percent of total contract rental amount in arrears at the time of anticipated payment date, which shall occur not later than 15 days from date of application. Upon receipt of 80 percent of rent in arrears, the landlord must forgive the remainder of the tenant's past due rent.

(6) The department of commerce must provide notification of rejection of application to both tenant and landlord, regardless of which party applied.

(7) The department of commerce must prioritize funding for the biggest areas of need as identified by the department. Within 45 days of establishing the program, the department must expand the program statewide.

(8) The program must first prioritize tenants and landlords with largest arrears first and successively assist applications with smaller arrears.

(9) Administrative costs associated with application, distribution, and other program activities of the department of commerce may not exceed five percent of the annual funds available for the landlord mitigation program. Reappropriations must not be included in the calculation of the annual funds available for determining the administrative costs.

(10)(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 June 1, 2022. In preparing the report, the department of commerce 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, a representative of the housing authorities, and representatives of dispute resolution centers in Washington state.

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

(i) The number of total claims and total amount reimbursed by the program in each county since inception;

(ii) The total cost to administer the program in each county;

(iii) A summary of each county's emergency rental assistance grants, including the cost of each program and an outline of each county's process to permit landlords and tenants to engage in the program;

(iv) Any indices of fraud identified by the department of commerce;

(v) An evaluation of the feasibility to expand the use of the program; and

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

NEW SECTION. **Sec.**  The emergency rental assistance account is created in the state treasury. All receipts from sources directed to the emergency rental assistance grant program must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used solely for the purpose of the emergency rental assistance grant program as described in section 8 of this act.

NEW SECTION. **Sec.**  The sum of $600,000,000, or as much thereof as may be necessary, is appropriated from the budget stabilization account for the fiscal year ending June 30, 2021, and is provided solely for expenditure into the emergency rental assistance grant program to implement the emergency rental assistance grant program described in section 8 of this act. For purposes of RCW 43.88.055(4), the appropriation in this section does not alter the requirement to balance in the ensuing biennium.

**Sec.**  RCW 59.18.200 and 2019 c 339 s 1 and 2019 c 23 s 2 are each reenacted and amended to read as follows:

(1)(a) When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated by written notice of ((~~twenty~~)) 45 days or more, preceding the end of any of the months or periods of tenancy, given by either party to the other.

(b) Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependent, may terminate a rental agreement with less than ((~~twenty~~)) 45 days' written notice if the tenant receives permanent change of station or deployment orders that do not allow a ((~~twenty-day~~)) 45-day written notice.

(2)(a) Whenever a landlord plans to change to a policy of excluding children, the landlord shall give a written notice to a tenant at least ((~~ninety~~)) 90 days before termination of the tenancy to effectuate such change in policy. Such ((~~ninety-day~~)) 90-day notice shall be in lieu of the notice required by subsection (1) of this section. However, if after giving the ((~~ninety-day~~)) 90-day notice the change in policy is delayed, the notice requirements of subsection (1) of this section shall apply unless waived by the tenant.

(b) Whenever a landlord plans to change any apartment or apartments to a condominium form of ownership, the landlord shall provide a written notice to a tenant at least ((~~one hundred twenty~~)) 120 days before termination of the tenancy, in compliance with RCW 64.34.440(1), to effectuate such change. The ((~~one hundred twenty-day~~)) 120-day notice is in lieu of the notice required in subsection (1) of this section. However, if after providing the ((~~one hundred twenty-day~~)) 120-day notice the change to a condominium form of ownership is delayed, the notice requirements in subsection (1) of this section apply unless waived by the tenant.

(c)(i) Whenever a landlord plans to demolish or substantially rehabilitate premises or plans a change of use of premises, the landlord shall provide a written notice to a tenant at least ((~~one hundred twenty~~)) 120 days before termination of the tenancy. This subsection (2)(c)(i) does not apply to jurisdictions that have created a relocation assistance program under RCW 59.18.440 and otherwise provide ((~~one hundred twenty~~)) 120 days' notice.

(ii) For purposes of this subsection (2)(c):

(A) "Assisted housing development" means a multifamily rental housing development that either receives government assistance and is defined as federally assisted housing in RCW 59.28.020, or that receives other federal, state, or local government assistance and is subject to use restrictions.

(B) "Change of use" means: (I) Conversion of any premises from a residential use to a nonresidential use that results in the displacement of an existing tenant; (II) conversion from one type of residential use to another type of residential use that results in the displacement of an existing tenant, such as conversion to a retirement home, emergency shelter, or transient hotel; or (III) conversion following removal of use restrictions from an assisted housing development that results in the displacement of an existing tenant: PROVIDED, That displacement of an existing tenant in order that the owner or a member of the owner's immediate family may occupy the premises does not constitute a change of use.

(C) "Demolish" means the destruction of premises or the relocation of premises to another site that results in the displacement of an existing tenant.

(D) "Substantially rehabilitate" means extensive structural repair or extensive remodeling of premises that requires a permit such as a building, electrical, plumbing, or mechanical permit, and that results in the displacement of an existing tenant.

(3) A person in violation of subsection (2)(c)(i) of this section may be held liable in a civil action up to three times the monthly rent of the real property at issue. The prevailing party may also recover court costs and reasonable attorneys' fees.

NEW SECTION. **Sec.**  This act expires one year after the effective date of this section.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**