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**SUBSTITUTE SENATE BILL 5407**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Senate Financial Institutions & Insurance (originally sponsored by Senators Frockt, Miloscia, Walsh, Mullet, Billig, Kuderer, Pedersen, Hasegawa, Darneille, and Keiser)

AN ACT Relating to ensuring housing options; amending RCW 36.22.178; amending 2017 3rd sp.s. c 4 s 1028 (uncodified); adding a new section to chapter 59.18 RCW; adding new sections to chapter 43.31 RCW; and prescribing penalties.

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

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

(1) A landlord may not, based on the source of income of an otherwise eligible prospective tenant or current tenant:

(a) Refuse to lease or rent any real property to a prospective tenant or current tenant, unless the prospective tenant's or current tenant's source of income is conditioned on the real property passing inspection, and the written estimate of the cost of improvements necessary to pass inspection is one times the monthly rent of the real property plus five thousand dollars;

(b) Expel a prospective tenant or current tenant from any real property;

(c) Make any distinction, discrimination, or restriction against a prospective tenant or current tenant in the price, terms, conditions, fees, or privileges relating to the rental, lease, or occupancy of real property or in the furnishing of any facilities or services in connection with the rental, lease, or occupancy of real property;

(d) Attempt to discourage the rental or lease of any real property to a prospective tenant or current tenant;

(e) Assist, induce, incite, or coerce another person to commit an act or engage in a practice that violates this section;

(f) Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of the person having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected under this section;

(g) Represent to a person that a dwelling unit is not available for inspection or rental when the dwelling unit in fact is available for inspection or rental; or

(h) Otherwise make unavailable or deny a dwelling unit to a prospective tenant or current tenant that, but for his or her source of income, would be eligible to rent real property.

(2) A landlord may not, based on the source of income of an otherwise eligible prospective tenant or current tenant, publish, circulate, issue, or display, or cause to be published, circulated, issued, or displayed, any communication, notice, advertisement, or sign of any kind relating to the rental or lease of real property that indicates any source of income.

(3) If a landlord requires that a prospective tenant or current tenant have a certain threshold level of income, any source of income in the form of a rent voucher or subsidy must be subtracted from the total of the monthly rent prior to calculating if the income criteria have been met.

(4) A person in violation of this section shall be held liable in a civil action for up to four times the monthly rent of the real property at issue, as well as court costs and reasonable attorneys' fees.

(5) As used in this section, "source of income" includes benefits or subsidy programs including housing assistance, public assistance, emergency rental assistance, veterans benefits, social security, supplemental security income or other retirement programs, and other programs administered by any federal, state, local, or nonprofit entity. "Source of income" does not include income derived in an illegal manner.

NEW SECTION. **Sec.**  A new section is added to chapter 43.31 RCW to read as follows:

(1) Subject to the availability of funds for this purpose, the landlord mitigation program is created. The department may reimburse eligible claims for property damage, cost of unpaid rent, matching amounts for eligible repairs required after an inspection under section 1(1)(a) of this act, attorneys' fees and costs to obtain the judgment, and up to fourteen days of lost rental income from the date of offer of housing to the subsidy holder to the date of move-in by the subsidy holder.

(a) The following reimbursement requirements apply:

(i) To be eligible for reimbursement for lost rental income, the landlord must rent to the tenant applying for the rental unit.

(ii) To be eligible for reimbursement for late fees and attorneys' fees, the landlord must have a court judgment.

(iii) To be eligible for reimbursements for repairs required due to an inspection under section 1(1)(a) of this act, after subtracting the value of one month's rent from the total cost of repairs, a landlord must match dollar for dollar eligible costs up to five thousand dollars in total costs.

(b) All reimbursements for eligible claims must be made on a first come, first served basis, to the extent of available funds.

(c) The department may request to inspect the property and the landlord's records related to a claim to assist in making its claim review and determination of eligibility.

(2)(a) In order for a claim to be eligible for reimbursement from the landlord mitigation program account:

(i) A landlord may submit a judgment against the tenant through either an unlawful detainer proceeding, or through a civil action in a court of competent jurisdiction after a hearing; or

(ii) A landlord may submit a claim directly to the department.

(b) In order for a damage claim to be eligible for reimbursement from the landlord mitigation program account, a landlord must:

(i) First make repairs and then apply for reimbursement; and

(ii) Submit copies of the move-in inspection, descriptions and documentation of the damages upon move-out, including before repair and after repair photographs, and copies of repair receipts for labor and materials.

(3) Properly submitted and complete claims shall be reviewed by the department within ten business days of receipt. In reviewing a claim, and determining eligibility for reimbursement, the department must also confirm that the claim involves a private market rental unit rented to a tenant whose source of income is specified in section 1(5) of this act. A landlord making a claim must sign a statement under penalty of perjury attesting to the receipt of a judgment or damages caused by a tenant participating in the source of income landlord mitigation program, and that the damages are real and beyond normal wear and tear, and the landlord agrees that the department may inspect records and the property to verify a claim.

(4) Damages from a tenancy must total at least five hundred dollars in order for a claim to be eligible for reimbursement from the program. Damages may exceed five thousand dollars, however 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; broken windows; damage to household fixtures such as disposal, toilet, sink, sink handle, ceiling fan, and lighting. Other property damage beyond normal wear and tear may also be eligible for reimbursement. Damages may also include unpaid rent.

(6) A landlord in receipt of reimbursement from the program is prohibited from:

(a) Taking legal action against the tenant for damages during the tenancy in which reimbursed damages occurred including, but not limited to, legal action based on the same damages for which the landlord was reimbursed; or

(b) Pursuing collection, or authorizing another entity to pursue collection on the landlord's behalf, of a judgment against the tenant during the tenancy in which reimbursed damages occurred including, but not limited to, the same damages for which the landlord was reimbursed.

(7) A tenant may request that the department provide notice to the tenant regarding the result of a claim involving the tenant and landlord from the landlord mitigation program.

(8)(a) A report to the appropriate committees of the legislature on the effectiveness of the program and modifications recommended by the department shall be submitted by January 1, 2021. The department shall convene 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 effectiveness and recommendations of the following:

(i) The number and amount of claims reimbursed to landlords by the landlord mitigation program account;

(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) The process to obtain reimbursement to landlords by the landlord mitigation program account;

(v) The amount and process to obtain reimbursement for lost rental income due to the rental inspection and tenant screening process;

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

(9) Determinations regarding reimbursements shall be made by the department in its sole discretion. Notwithstanding subsection (6) of this section, any landlord denied reimbursement under the landlord mitigation program 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 shall reimburse the landlord for that portion of such judgment that is based on damages reimbursable under the landlord mitigation program, subject to the limitations in this section.

(10) 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.

(11) As used in this section, "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 assisted by a public housing agency under 42 U.S.C. Sec. 1437 as it existed on January 1, 2018. Assistance does not extend to that provided under 42 U.S.C. Sec. 1437f as it existed on January 1, 2018.

NEW SECTION. **Sec.**  A new section is added to chapter 43.31 RCW to read as follows:

(1) The landlord mitigation program account is created in the custody of the state treasury. All transfers and appropriations by the legislature, repayments, private contributions, and all other sources must be deposited into the account. Expenditures from the account may only be used for the landlord mitigation program under this chapter to reimburse landlords for eligible claims identified in section 2 of this act to private market rental units during the time of their rental to tenants whose source of income is specified in section 1(5) of this act. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Administrative costs associated with application, distribution, and other program activities of the department may not exceed ten 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.

**Sec.**  RCW 36.22.178 and 2011 c 110 s 1 are each amended to read as follows:

The surcharge provided for in this section shall be named the affordable housing for all surcharge.

(1) Except as provided in subsection (3) of this section, a surcharge of ((~~ten~~)) thirteen dollars per instrument shall be charged by the county auditor for each document recorded, which will be in addition to any other charge authorized by law. The county may retain up to five percent of these funds collected solely for the collection, administration, and local distribution of these funds. Of the remaining funds, forty percent of the revenue generated through this surcharge will be transmitted monthly to the state treasurer who will deposit the portion of funds attributable to ten dollars of the surcharge into the affordable housing for all account created in RCW 43.185C.190 and deposit the portion of funds attributable to three dollars of the surcharge into the landlord mitigation account created in section 3 of this act. The department of commerce must use these funds to provide housing and shelter for extremely low-income households, including but not limited to housing for victims of human trafficking and their families and grants for building operation and maintenance costs of housing projects or units within housing projects that are affordable to extremely low-income households with incomes at or below thirty percent of the area median income, and that require a supplement to rent income to cover ongoing operating expenses.

(2) All of the remaining funds generated by this surcharge will be retained by the county and be deposited into a fund that must be used by the county and its cities and towns for eligible housing activities as described in this subsection that serve very low-income households with incomes at or below fifty percent of the area median income. The portion of the surcharge retained by a county shall be allocated to eligible housing activities that serve extremely low and very low-income households in the county and the cities within a county according to an interlocal agreement between the county and the cities within the county consistent with countywide and local housing needs and policies. A priority must be given to eligible housing activities that serve extremely low-income households with incomes at or below thirty percent of the area median income. Eligible housing activities to be funded by these county funds are limited to:

(a) Acquisition, construction, or rehabilitation of housing projects or units within housing projects that are affordable to very low-income households with incomes at or below fifty percent of the area median income, including units for homeownership, rental units, seasonal and permanent farmworker housing units, units reserved for victims of human trafficking and their families, and single room occupancy units;

(b) Supporting building operation and maintenance costs of housing projects or units within housing projects eligible to receive housing trust funds, that are affordable to very low-income households with incomes at or below fifty percent of the area median income, and that require a supplement to rent income to cover ongoing operating expenses;

(c) Rental assistance vouchers for housing units that are affordable to very low-income households with incomes at or below fifty percent of the area median income, including rental housing vouchers for victims of human trafficking and their families, to be administered by a local public housing authority or other local organization that has an existing rental assistance voucher program, consistent with or similar to the United States department of housing and urban development's section 8 rental assistance voucher program standards; and

(d) Operating costs for emergency shelters and licensed overnight youth shelters.

(3) The surcharge imposed in this section does not apply to assignments or substitutions of previously recorded deeds of trust.

**Sec.**  2017 3rd sp.s. c 4 s 1028 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF COMMERCE**

Rapid Housing Improvement Program (30000863)

The reappropriation in this section is subject to the following conditions and limitations:

(1) Except as provided in subsection (2) of this section, the reappropriation is subject to the provisions of section 1010, chapter 35, Laws of 2016 sp. sess.

(2) The department may use the reappropriation to implement this act.

Reappropriation:

Washington Housing Trust Account—State $194,000

Prior Biennia (Expenditures) $31,000

Future Biennia (Projected Costs) $0

TOTAL $225,000

**--- END ---**