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ENGROSSED SECOND SUBSTITUTE SENATE BILL 5407

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State of Washington

65th Legislature

2018 Regular Session

By Senate Ways & Means (originally sponsored by Senators Frockt, Miloscia, Walsh, Mullet, Billig, Kuderer, Pedersen, Hasegawa, Darneille, and Keiser)

READ FIRST TIME 02/06/18.

1 AN ACT Relating to ensuring housing options; amending RCW  
2 36.22.178; amending 2017 3rd sp.s. c 4 s 1028 (uncodified); adding a  
3 new section to chapter 59.18 RCW; adding new sections to chapter  
4 43.31 RCW; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 59.18  
7 RCW to read as follows:

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

10 (a) Refuse to lease or rent any real property to a prospective  
11 tenant or current tenant, unless the: (i) Prospective tenant's or  
12 current tenant's source of income is conditioned on the real property  
13 passing inspection; (ii) written estimate of the cost of improvements  
14 necessary to pass inspection is more than one thousand five hundred  
15 dollars; and (iii) landlord has not received moneys from the landlord  
16 mitigation program account to make the improvements;

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

19 (c) Make any distinction, discrimination, or restriction against  
20 a prospective tenant or current tenant in the price, terms,  
21 conditions, fees, or privileges relating to the rental, lease, or

1 occupancy of real property or in the furnishing of any facilities or  
2 services in connection with the rental, lease, or occupancy of real  
3 property;

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

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

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

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

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

19 (2) A landlord may not publish, circulate, issue, or display, or  
20 cause to be published, circulated, issued, or displayed, any  
21 communication, notice, advertisement, or sign of any kind relating to  
22 the rental or lease of real property that indicates a preference,  
23 limitation, or requirement based on any source of income.

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

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

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

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 43.31  
2    RCW to read as follows:

3        (1) Subject to the availability of funds for this purpose, the  
4    landlord mitigation program is created and administered by the  
5    department. The department shall have such rule-making authority as  
6    the department deems necessary to administer the program. The  
7    following types of claims related to landlord mitigation for renting  
8    private market rental units to low-income tenants using a source of  
9    income in section 1(5) of this act are eligible for reimbursement  
10   from the landlord mitigation program account:

11        (a) Up to one thousand dollars for improvements identified in  
12   section 1(1)(a) of this act. In order to be eligible for  
13   reimbursement under this subsection (1)(a), the landlord must pay for  
14   the first five hundred dollars for improvements, and rent to the  
15   tenant whose source of income was conditioned on the real property  
16   passing inspection. Reimbursement under this subsection (1)(a) may  
17   also include up to fourteen days of lost rental income from the date  
18   of offer of housing to the applicant whose source of income was  
19   conditioned on the real property passing inspection until move in by  
20   that applicant;

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

25        (c) Reimbursement for damages established pursuant to subsection  
26   (2) of this section.

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

30        (a) Have ensured that the rental property was inspected at the  
31   commencement of the tenancy by both the tenant and the landlord or  
32   landlord's agent and that a detailed written move-in property  
33   inspection report was prepared and signed by both the tenant and the  
34   landlord or landlord's agent;

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

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

39        (d) Submit to the department copies of the move-in property  
40   inspection report specified in (a) of this subsection, before repair

1 and after repair photographs, videos, copies of repair receipts for  
2 labor and materials, and such other documentation or information as  
3 the department may request.

4 (3) The department shall make reasonable efforts to review a  
5 claim within ten business days from the date it received properly  
6 submitted and complete claims to the satisfaction of the department.  
7 In reviewing a claim, and determining eligibility for reimbursement,  
8 the department must receive documentation, acceptable to the  
9 department in its sole discretion, that the claim involves a private  
10 market rental unit rented to a low-income tenant whose source of  
11 income is specified in section 1(5) of this act and who is using  
12 public rental assistance to pay for rent, such as a housing choice  
13 rental voucher.

14 (4) Damages from a tenancy must total at least five hundred  
15 dollars in order for a claim to be eligible for reimbursement from  
16 the program. While damages may exceed five thousand dollars,  
17 reimbursement from the program may not exceed five thousand dollars  
18 per tenancy.

19 (5) Damages, beyond wear and tear, that are eligible for  
20 reimbursement include, but are not limited to: Interior wall gouges  
21 and holes; damage to doors and cabinets, including hardware; carpet  
22 stains or burns; cracked tiles or hard surfaces; broken windows;  
23 damage to household fixtures such as disposal, toilet, sink, sink  
24 handle, ceiling fan, and lighting. Other property damages beyond  
25 normal wear and tear may also be eligible for reimbursement at the  
26 department's discretion. Damages may also include unpaid rent,  
27 provided that the landlord can evidence it to the department's  
28 satisfaction, in an amount not to exceed twenty percent of the total  
29 claim submitted.

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

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

38 (8) A landlord in receipt of reimbursement from the program is  
39 prohibited from:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (14) As used in this section:

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

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

24 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.31  
25 RCW to read as follows:

26 (1) The landlord mitigation program account is created in the  
27 custody of the state treasury. All transfers and appropriations by  
28 the legislature, repayments, private contributions, and all other  
29 sources must be deposited into the account. Expenditures from the  
30 account may only be used for the landlord mitigation program under  
31 this chapter to reimburse landlords for eligible claims identified in  
32 section 2 of this act related to private market rental units during  
33 the time of their rental to tenants whose source of income is  
34 specified in section 1(5) of this act and for the administrative  
35 costs identified in subsection (2) of this section. Only the director  
36 or the director's designee may authorize expenditures from the  
37 account. The account is subject to allotment procedures under chapter  
38 43.88 RCW, but an appropriation is not required for expenditures.

1 (2) Administrative costs associated with application,  
2 distribution, and other program activities of the department may not  
3 exceed ten percent of the annual funds available for the landlord  
4 mitigation program. Reappropriations must not be included in the  
5 calculation of the annual funds available for determining the  
6 administrative costs.

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

9 **FOR THE DEPARTMENT OF COMMERCE**

10 Rapid Housing Improvement Program (30000863)

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

13 (1) Except as provided in subsection (2) of this section, the  
14 reappropriation is subject to the provisions of section 1010, chapter  
15 35, Laws of 2016 sp. sess.

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

18 Reappropriation:

19	Washington Housing Trust Account—State. . . . .	\$194,000
20	Prior Biennia (Expenditures). . . . .	\$31,000
21	Future Biennia (Projected Costs). . . . .	\$0
22	TOTAL. . . . .	\$225,000

23 **Sec. 5.** RCW 36.22.178 and 2011 c 110 s 1 are each amended to  
24 read as follows:

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

27 (1) Except as provided in subsection (3) of this section, a  
28 surcharge of ((~~ten~~)) thirteen dollars per instrument shall be charged  
29 by the county auditor for each document recorded, which will be in  
30 addition to any other charge authorized by law. The county may retain  
31 up to five percent of these funds collected solely for the  
32 collection, administration, and local distribution of these funds. Of  
33 the remaining funds, forty percent of the revenue generated through  
34 this surcharge will be transmitted monthly to the state treasurer who  
35 will deposit: (a) The portion of the funds attributable to ten  
36 dollars of the surcharge into the affordable housing for all account  
37 created in RCW 43.185C.190. The department of commerce must use these

1 funds to provide housing and shelter for extremely low-income  
2 households, including but not limited to housing for victims of human  
3 trafficking and their families and grants for building operation and  
4 maintenance costs of housing projects or units within housing  
5 projects that are affordable to extremely low-income households with  
6 incomes at or below thirty percent of the area median income, and  
7 that require a supplement to rent income to cover ongoing operating  
8 expenses; and (b) the portion of the funds attributable to three  
9 dollars of the surcharge into the landlord mitigation program account  
10 created in section 3 of this act.

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

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

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

39 (c) Rental assistance vouchers for housing units that are  
40 affordable to very low-income households with incomes at or below



1 fifty percent of the area median income, including rental housing  
2 vouchers for victims of human trafficking and their families, to be  
3 administered by a local public housing authority or other local  
4 organization that has an existing rental assistance voucher program,  
5 consistent with or similar to the United States department of housing  
6 and urban development's section 8 rental assistance voucher program  
7 standards; and

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

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

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