

# SENATE BILL REPORT

## SB 5160

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As of January 19, 2021

**Title:** An act relating to addressing landlord-tenant relations by providing certain tenant protections during and after public health emergencies, providing for legal representation in eviction cases, and authorizing landlord access to state rental assistance programs.

**Brief Description:** Addressing landlord-tenant relations by providing certain tenant protections during and after public health emergencies, providing for legal representation in eviction cases, and authorizing landlord access to state rental assistance programs.

**Sponsors:** Senators Kuderer, Liias, Conway, Das, Lovelett, Saldaña and Wilson, C..

**Brief History:**

**Committee Activity:** Housing & Local Government: 1/20/21.

### Brief Summary of Bill

- Prohibits landlords from terminating or refusing to renew a rental lease that expires at the end of the lease term or is subject to a 20-day termination notice until two years after expiration of any public health emergency, with exceptions.
- Authorizes tenants adversely impacted by COVID-19 to terminate their tenancy upon a 20-day written notice.
- Prohibits landlords from charging or imposing late fees or other charges for nonpayment of rent during any public health emergency.
- Requires landlords, before any collection action for unpaid rent accrued during the Governor's eviction moratorium, or during any public health emergency, to first offer tenants a repayment plan based on the individual, financial, health, or other circumstances of the tenant.
- Requires the court to appoint counsel for indigent tenants at the initial hearing and at trial and for the state to pay the costs of such legal services subject to amounts appropriated.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

- Requires the Department of Commerce to authorize landlord access to state rental assistance programs, if feasible, while establishing necessary application and eligibility and conditions on receipt of funds by rule.
- Requires courts to seal unlawful detainer actions unless the landlord prevails at the initial hearing or trial or any default judgment is not vacated or set aside within 60 days of the complaint filing.
- Eliminates the optional notice for landlords to use in nonpayment of rent cases that instructs tenants to pay into the court registry the rent allegedly owed or file a statement denying rent is owed.

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## SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

**Staff:** Brandon Popovac (786-7465)

**Background:** Residential-Landlord Tenant Act—Generally. The Residential Landlord-Tenant Act (RLTA) regulates the creation of residential tenancies and the relationship between landlords and tenants of residential dwelling units. The RLTA establishes rights and duties of both tenants and landlords, procedures for the parties to enforce their rights, how and when a tenancy expires or may be terminated, and remedies for violations of the RLTA.

In the last biennium, the Legislature enacted several reforms covering a wide variety of issues governing the landlord-tenant relationship, including:

- modifying how rent is defined and how and when landlords apply tenant payments to rent or other costs and nonpossessory fees;
- providing a uniform 14-day notice to pay or vacate with an updated summons form for landlords to use when a tenant fails to pay rent;
- modifying the tenancy reinstatement process, with limits on late fees, before a judgement is issued during an unlawful detainer action;
- establishing how and when judges can exercise judicial discretion to stay a writ of restitution after judgment in cases involving non-payment of rent;
- prohibiting access to such judicial discretion if a tenant is issued three 14-day notices to pay or vacate within the prior 12-month period; and
- requiring landlords to accept any pledge of emergency rental assistance funds provided to the tenant from a governmental or nonprofit entity before the notice to pay or vacate for nonpayment of rent expires, and to suspend any court action for seven court days after they provide necessary payment information to the nonprofit or governmental entity to allow for payment of the assistance funds.

Governor's Eviction Moratorium. On March 18, 2020, Governor Inslee issued Proclamation 20-19 to prohibit a number of activities related to evictions by all residential

landlords operating residential rental property in the state. Since then, the Governor has issued multiple extensions of the eviction moratorium with the current variation, Proclamation 20-19.5, set to expire March 31, 2021.

The eviction moratorium prohibits residential landlords, manufactured housing community landlords, property managers, and property owners from:

- serving or enforcing, or threatening to serve or enforce, any notice requiring a resident to vacate any dwelling or parcel of land occupied as a dwelling, including an eviction notice, notice to pay or vacate, notice of unlawful detainer, notice of termination of rental, or notice to comply or vacate, as applied to tenancies or other housing arrangements, such as hotel/motel or camping area stays of more than 14 days, that have expired or that will expire during the moratorium's effective period; and
- seeking or enforcing, or threatening to seek or enforce, judicial eviction orders involving any dwelling or parcel of land occupied as a dwelling, unless, as applied to both circumstances:
  - an affidavit to the eviction or termination of tenancy notice attests that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or
  - at least 60 days' written notice of the property owner's intent to personally occupy the premises as a primary residence or sell the property is provided to the tenant by affidavit signed under penalty of perjury.

The current moratorium also prohibits landlords from:

- assessing, or threatening to assess, late fees for the nonpayment or late payment of rent or other charges as of February 29, 2020;
- retaliating against individuals for invoking their rights or protections under the moratorium or any other state or federal law providing rights or protections for residential dwellings, with the exception for landlords to engage in reasonable communications with tenants to explore repayment plans;
- assessing, or threatening to assess, rent or other charges for any period during which the resident's access to, or occupancy of, the dwelling was prevented as a result of COVID-19; and
- treating any unpaid rent or other charges as an enforceable debt or obligation that is owing or collectable, when nonpayment of rent or other charges resulted from COVID-19 and occurred on or after February 29, 2020, including attempts to collect, or threats to collect, through a collection agency, by filing an unlawful detainer or other judicial action, withholding any portion of a security deposit, billing or invoicing, reporting to credit bureaus, or by any other means, with the exception for landlords who demonstrates by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a repayment plan that was reasonable based on the individual financial, health, and other circumstances of that resident.

A failure to provide a reasonable repayment plan under the moratorium is a defense to any lawsuit or other attempts to collect. A landlord may engage in customary and routine communications with residents of a dwelling or parcel of land occupied as a dwelling. Within these communications, landlords may provide information to residents regarding financial resources, including coordinating with residents to apply for state or other rental assistance programs, and information on how to engage with them in discussions regarding reasonable repayment plans.

The moratorium also strongly encourages landlords and tenants to access services offered at existing dispute resolution centers to come to agreement on payment and repayment solutions.

Right to Counsel. Both the federal and state constitutions contain guarantees of the right to legal representation for an accused person in a criminal prosecution. Court decisions at both the federal and state levels have construed these provisions to require public funding of indigent legal representation in criminal prosecutions in which the accused's liberty is at stake. Statutes and court decisions have also extended the right to publicly funded counsel to other cases, such as involuntary commitments, dependencies, and juvenile cases. A determination of indigence is to be made for any person requesting the appointment of counsel in a criminal, juvenile, involuntary commitment, dependency, or other case in which the right to counsel attaches. The indigent defense services law defines an indigent person as one who:

- receives public assistance in one of several enumerated forms;
- has been involuntarily committed to a public mental health facility;
- has an income of 125 percent or less of the federal poverty level; or
- has insufficient available funds to retain counsel.

There is no federal or state guaranteed right to counsel for indigent tenants in unlawful detainer eviction cases. A few cities in the county implement some form of right to counsel legal services for tenants.

Office of Civil Legal Aid. The Legislature established the Office of Civil Legal Aid (OCLA) in 2005 as an independent agency in the judicial branch. OCLA is responsible for the administration and oversight of state funds that are appropriated by the Legislature to provide civil legal aid services. OCLA does not provide legal aid services directly, but contracts with attorneys to provide civil legal aid services to eligible low-income clients throughout the state. The Northwest Justice Project is the primary statewide provider of civil legal aid services. OCLA is responsible for reporting to the legal aid oversight committee on the use of state funds for legal aid.

Manufactured/Mobile Home Landlord-Tenant Act. The Manufactured/Mobile Home Landlord-Tenant Act (MHLTA) governs the legal rights, remedies, and obligations arising from any rental agreement between a landlord and a tenant regarding a mobile home lot within a mobile home park where the tenant has no ownership interest in the property, or in

the association that owns the property.

Unlawful Detainer Filing Fee. In addition to any other fee required by law, any party filing the first or initial document in any civil action must pay at the time of filing a fee of \$200. However, in an unlawful detainer action under the RLTA or MHLTA, the plaintiff—landlord must pay a case initiating filing fee of \$45, which may not include an order to show cause or any other order or judgment except for a default order or judgment. An additional surcharge of \$40 is also collected at the time of filing and if the defendant—tenant serves or files an answer to the unlawful detainer complaint, the plaintiff—landlord must pay an additional \$112 before proceeding with the unlawful detainer action.

Payment of Rent Into Court Registry. The RLTA includes an additional, optional notice for landlords to use when the unlawful detainer action is based on a tenant's nonpayment of rent. If this form is also served, the tenant must either pay the amount of rent allegedly due and owing into the court registry, or file a sworn statement denying and setting forth the reasons that the rent is owing. If the tenant fails to do one or the other, the landlord is entitled to obtain an immediate writ of restitution without further notice and without paying a bond. The tenant may seek a hearing on the merits and an immediate stay of the writ, but must prove to the court that the landlord is not entitled to possession of the property based on certain legal or equitable defenses.

Limited Dissemination. The RLTA and MHLTA allows courts to order an unlawful detainer action to be of limited dissemination under certain circumstances, including for good cause, and prohibits a tenant screening service provider from disclosing or using the existence of the unlawful detainer action if such an order has been entered.

Dispute Resolution Centers. Dispute Resolution Centers (DRCs) were first authorized in statute as part of the 1984 Court Improvement Act in order to provide forums in which persons may voluntarily participate in the resolution of disputes in an informal and less adversarial atmosphere than a judicial setting. A DRC may be created and operated by a city or county, or by a nonprofit corporation. Participation by all parties is voluntary, and services offered by a DRC must be provided without charge to the participants or for a fee which is based upon the participant's ability to pay. DRCs handle numerous types of cases and disputes, including for landlords and tenants.

State Rental Assistance Programs. The Department of Commerce (Commerce) administers a number of rental assistance programs that serve a variety of populations depending on certain eligibility standards. Funds received from the federal CARES Act have allowed Commerce to set up an eviction rent assistance program to help qualifying households impacted by COVID-19. Funds are distributed to county grantees, such as county governments and nonprofit entities, which provide rent assistance to qualifying households.

**Summary of Bill:** A landlord may not terminate or refuse to renew a rental lease that

expires at the end of the lease term or is subject to a 20-day termination notice until two years after expiration of any public health emergency unless:

- the landlord intends to sell the rental dwelling unit or property on which it sits or occupy the rental dwelling unit as their primary residence and at least 60 days' notice is provided to the tenant as an affidavit signed under penalty of perjury; or
- the landlord and tenant reside in the same dwelling unit.

There is a rebuttable presumption that any notice issued to a tenant who has unpaid rent accrued between March 1, 2020, and the expiration date of the Governor's eviction moratorium and indicating expiration of the lease term or lease termination after 20 days constitutes a reprisal or retaliatory action. A landlord may also not take any adverse action against a tenant who raises their rights under these provisions.

A tenant's right to possession of a dwelling unit used primarily for residential purposes may not be conditioned on satisfaction of any rent that accrued between March 1, 2020, and the expiration date of the Governor's eviction moratorium.

Any tenant adversely impacted by COVID-19 may terminate their tenancy upon a 20-day written notice, which includes a statement that termination of the tenancy is due to COVID-19. If a tenant elects to issue such a 20-day written notice:

- a landlord may not assess any penalty, early termination fee, or any other amount on the tenant for failing to continue their tenancy;
- any deposit paid by the tenant is not deemed forfeited unless rent is still owed upon termination, in which case the landlord may apply deposit funds to the outstanding rent amount or any other charges; and
- such decision may not be a factor in any housing decision affecting the tenant's right or ability to occupy a rental dwelling unit, as applied to both tenants and prospective tenants.

Any nonpayment of any rent that accrued between March 1, 2020, and the expiration date of the Governor's eviction moratorium may also not be a factor in any housing decision effecting a tenant's right or ability to occupy a rental dwelling unit, as applied to both tenants and prospective tenants.

A landlord may not impose late fees or other charges for a tenant's nonpayment of rent during any public health emergency.

A landlord may not deny, discourage application for, or otherwise make unavailable any rental dwelling unit based on a tenant's or prospective tenant's medical history, including any prior or current exposure or infection to the COVID-19 virus. A landlord may also not inquire about, consider, or require disclosure of a tenant's or prospective tenant's medical records or history, unless such disclosure is necessary to evaluate a reasonable accommodation or modification request. Any violation of these prohibitions constitutes a violation of the laws against discrimination.



Any landlord in violation of the aforementioned prohibitions and requirements is liable for four and one-half times the monthly rent, with court costs and attorneys' fees. The court must determine the penalty amount in order to deter future violations.

"Public health emergency" is defined as Governor Proclamation 20-05 and its amendments, as well as any proclamation declaring a state of emergency for all counties in the state. "Tenant" is defined to include persons residing in transient lodging, such as hotels/motels or camping areas as primary dwellings, for more than 14 days, but does not include persons entering onto land without the permission of the owner or lessor.

Repayment Plans. Before taking any collection action for unpaid rent accrued between March 1, 2020, and the expiration date of the Governor's eviction moratorium, or during any public health emergency, a landlord must first offer tenants a repayment plan based on the individual, financial, health, or other circumstances or life-sustaining financial obligations of the tenant and whether a tenant may meet other necessary life-sustaining financial obligations after any repayment plan requirements, including food, utility, child support and care, medical care, or similar payments or expenses. A "collection action" is defined as any attempt or threat to collect through a collection agency, by filing an unlawful detainer or other judicial action, withholding any portion of a security deposit, billing or invoicing, reporting to credit bureaus, reporting to tenant screening companies, or by any other means.

Any repayment plan entered into by the landlord and tenant must:

- begin no sooner than 60 days after the plan is offered;
- cover rent only and not legal fees, late fees, or other charges;
- allow for payment from any source of income, including benefits, assistance or subsidy programs, or from pledges by non-profits, churches, religious institutions, or governmental entities;
- not include provisions or be conditioned on:
  - the tenant's compliance with the rental agreement, payment of attorneys' fees, court costs, or other costs related to litigation if the tenant defaults on the agreement;
  - a requirement that the tenant apply for or provide proof of receipt of governmental benefits; and
  - the tenant's waiver of any rights to an unlawful detainer notice or related provisions before a writ of restitution is issued.

A landlord may pursue an unlawful detainer action for nonpayment of rent by issuing a 14-day pay or vacate notice if the tenant knowingly refuses the offer of repayment plan, fails to respond to the offer, or defaults on the repayment plan. Issuance of the 14-day pay or vacate notice is subject to any pre-filing conciliation and formal mediation requirements from any court administering the eviction resolution pilot program. It is a defense to an unlawful detainer eviction if the landlord did not offer a repayment plan, but not if the

landlord can prove that tenant was offered and knowingly refused or failed to respond to or comply with the repayment plan.

Right to Counsel. Courts must appoint an attorney for an indigent tenant at any show cause hearing or scheduled trial. "Indigent" is defined as any person:

- receiving assistance from certain public and medical benefits programs;
- with an annual income, after taxes, at 200 percent or below of the federally established poverty level; or
- unable to pay anticipated cost of counsel due to insufficient funds.

The state must pay the costs of right to counsel legal services subject to the availability of amounts appropriated for such services. OCLA is responsible for implementation of the indigent tenant's right to counsel program and for the administration of program funds. OCLA must contract with attorneys and other agencies to implement right to counsel legal services within appropriated amounts. Within 90 days of the effective date of the act, OCLA must also submit to the Legislature and Administrative Office of the Courts a plan outlining full implementation of the right to counsel program within 12 months of the effective date of the act.

The uniform 14-day pay or vacate notice for nonpayment of rent is updated to inform tenants of the right to counsel mandate for qualifying low-income renters as well as state and local rental assistance programs as listed on the Office of the Attorney General's website. A landlord must also provide the 14-day notice to the DRC located within or serving the county of tenancy. DRCs are encouraged to notify the housing justice project or Northwest Justice Project located within or serving the county in which the DRC is located, as appropriate, once the 14-day notice is received from the landlord. It is a defense to an unlawful detainer eviction if a landlord does not provide the notice to the appropriate DRC.

The eviction summons is also updated to inform tenants of the right to counsel mandate for indigent tenants.

State Rental Assistance Programs. The Department of Commerce must authorize landlord access to state rental assistance programs the department administers, if feasible, and establish necessary application and eligibility requirements and any conditions on the receipt of funds by rule.

Unlawful Detainer Filing Fee. The \$45 initial case filing fee for unlawful detainer actions under the RLTA and MHLTA is removed.

Limited Dissemination. Provisions relating to the limited dissemination of unlawful detain action are replaced with a requirement for courts to allow access to unlawful detainer case records to the following:

- a party to the action, including a party's attorney;
- a person providing the court names of at least one plaintiff and one defendant and the



address of the premises;

- a resident of the premises who provides the court with the name of one of the parties or the case number and shows proof of residency; or
- any person by order of the court on a showing of good cause.

Otherwise, courts must automatically and permanently seal any unlawful detainer actions unless, within 60 days after the complaint is filed, the landlord prevails at the show cause hearing or trial or any default or default judgment is not vacated or set aside. A court may issue an order prohibiting access to the unlawful detainer action case record if stipulated by the parties to the action.

Payment of Rent Into Court Registry. The additional, optional notice for landlords to use in nonpayment of rent cases, instructing tenants with unpaid rent to pay into the court registry the amount of rent allegedly owed or file a sworn statement denying that rent is owing, is eliminated.

Residential-Landlord Tenant Act—Generally. Any oral or written agreement between the landlord and tenant pursuant to an unlawful detainer eviction action in which the tenant agrees to pay any amount other than for rent due or rent to retain the tenancy, pay any amount more than statutory judgment limits, or waives any rights afforded to the tenant under the court exercise of judicial discretion in nonpayment of rent cases or under the RLTA is void and unenforceable.

The prohibition on judicial discretion eligibility if a tenant receives three or more pay or vacate notices for failure to pay rent within the previous 12 months of the current pay or vacate notice is removed.

Application to the Manufactured/Mobile Home Landlord-Tenant Act. Provisions relating to the right to counsel legal services for indigent tenants, the sealing of unlawful detainer action case records, and the eviction summons form are applied to unlawful detainer actions for MHLTA tenancies.

**Appropriation:** None.

**Fiscal Note:** Requested on January 12, 2021.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.