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**SENATE BILL 5435**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators Trudeau, Saldaña, Frame, Hunt, Keiser, Kuderer, Lovelett, Nguyen, Robinson, Stanford, and C. Wilson

AN ACT Relating to residential rent increases under the residential landlord-tenant act and the manufactured/mobile home landlord-tenant act; adding new sections to chapter 59.18 RCW; adding new sections to chapter 59.20 RCW; prescribing penalties; and declaring an emergency.

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:

The definitions in this section apply throughout sections 2 through 8 of this act unless the context clearly requires otherwise.

(1) "Department" means the department of commerce.

(2) "Rate of inflation as measured by the consumer price index" means the September 12-month percent change in the consumer price index for all urban consumers (CPI-U), west region, all items, not seasonally adjusted, or a successor index, as published by the bureau of labor statistics of the United States department of labor in September of the current calendar year.

(3) "Rent increase" includes any new recurring and periodic charges added to a rental agreement that were not identified in the initial rental agreement. For example, new parking, utility, or other charges.

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

(1) Except as authorized by an exemption described in section 3 of this act, a landlord may not increase the rent for a month-to-month tenancy or a tenancy with a term greater than month-to-month:

(a) During the first 12 months after the tenancy begins; and

(b) During any 12-month period, in an amount greater than the rate of inflation as measured by the consumer price index or three percent, whichever is greater, up to a maximum of seven percent above the existing rent. The maximum annual rent increase percentage allowed for each calendar year is calculated and published by the department as required in section 4 of this act.

(2) If a landlord increases the rent above the amount allowed in subsection (1) of this section, the landlord must include facts supporting the exemption claimed under section 2 of this act in the written notice of the rent increase. Notice must comply with section 4 of this act, RCW 59.18.140, and be served in accordance with RCW 59.12.040.

(3) A tenant who is charged rent in violation of this section and pays rent in excess of amounts permitted by this section has a cause of action against the landlord to recover actual damages in the amount of the excess rent paid, mandatory punitive damages equal to three months of the higher rent that the tenant paid in violation of this section, and reasonable attorneys' fees and costs incurred in bringing the action.

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

A landlord may increase rent in an amount greater than allowed under section 2 of this act only as authorized by the exemptions described in this section.

(1) If the first certificate of occupancy for the dwelling unit was issued 10 or less years before the date of the notice of the rent increase, rent increases for the dwelling unit are not limited by section 2 of this act.

(2) For a tenancy in a federally funded property owned or operated by a public housing authority under chapter 35.82 RCW, or a tenancy in a property that is funded through a housing assistance program under chapter 43.185 RCW, rent increases during the tenancy are not limited by section 2 of this act.

(3)(a) During any 12-month period after the first 12 months of a tenancy, a landlord may increase rent for the dwelling unit by up to seven percent, or by four percent plus the maximum annual rent increase percentage allowed for the calendar year, whichever is greater, if:

(i) A landlord has paid for improvements to the dwelling unit or the common areas of the rental property that the tenant has unrestricted access to, for which the costs or the tenant's proportional share of the costs were greater than an amount equal to four months' rent; and

(ii) The improvements were made during the 12 months immediately preceding the month in which the landlord gives the tenant written notice of the rent increase.

(b) For the purposes of this subsection, "improvements to the dwelling unit" do not include basic maintenance.

(4)(a) If a landlord is experiencing significant hardship in complying with the maximum annual rent increase percentage for the current calendar year due to a disparity between the local costs for providing housing and the statewide costs for providing housing, the landlord may request that the department issue a significant hardship exemption from section 2 of this act and approve an alternate maximum annual rent increase percentage consistent with the increased local costs for providing housing. Under section 8 of this act, a landlord as defined in chapter 59.20 RCW may also request a significant hardship exemption.

(b) In issuing a significant hardship exemption, the department must consider evidence of the landlord's significant hardship; the landlord's actual costs for providing housing; and the local and statewide costs for maintenance, operating expenses, and property taxes. If the department finds that the local costs for providing housing are increasing at a significantly higher rate than the statewide costs for providing housing such that complying with the maximum annual rent increase percentage allowed by section 2 of this act imposes a significant hardship on the landlord, the department may approve an alternate maximum annual rent increase percentage consistent with the increased local costs for providing housing.

(c) The department must issue a letter to the landlord describing its findings and the reasons for its decision to grant or deny the request. If the request is granted, the letter must clearly state the alternate maximum annual rent increase percentage allowed.

(d) The landlord must attach the letter issued by the department to the rent increase notice required by section 4 of this act.

(e) The department shall adopt rules in accordance with chapter 34.05 RCW to establish a process to review landlord requests for individual significant hardship exemptions.

(5)(a) If a landlord participates in the banked capacity program administered by the department as authorized in this subsection, the landlord may increase the rent above the maximum annual rent increase percentage by an additional three percent for each year that the landlord has banked capacity. Under section 8 of this act, a landlord as defined in chapter 59.20 RCW may also participate in the banked capacity program.

(b) The banked capacity program operates as follows:

(i) If a landlord does not increase rent in a 12-month period, the landlord may choose to bank the rent increase capacity for future years. For each preceding year since the last increase in rent, the landlord may increase rent by an additional three percent. A landlord who participates in the banked capacity program must provide an annual notice in substantially the same form as provided in section 4 of this act to current and prospective tenants of the total banked capacity and possible future rent increases. Notice must be served in accordance with RCW 59.12.040. A landlord forfeits their right to claim banked rent increase capacity if they fail to properly deliver this form to a tenant;

(ii) If a tenant is evicted or if a tenant leaves after an eviction has been initiated, for any new rental agreement entered into within 12 months of the termination of the prior tenancy, the amount of rent that a landlord may charge a new tenant is limited to the previous tenant's rent plus any banked capacity that was accrued under the prior tenancy, unless another exemption under this section applies;

(iii) If a tenant voluntarily moves out, the amount of rent that a landlord may charge a new tenant is not limited by the maximum annual rent increase percentage or any banked capacity, and the landlord may reset the rent to market rate. However, if the landlord increases the rent for the new tenant beyond the previous tenant's rent, any banked capacity is lost. If a landlord chooses not to increase the rent and charges a new tenant the same amount of rent that the landlord charged the previous tenant, the landlord may retain any banked capacity that was accrued under the prior tenancy; and

(iv) If a new owner buys a property and takes over a lease, the new owner may not increase rent for existing tenants beyond the amount that the previous landlord would have been allowed to increase rent, unless another exemption under this section applies. The former landlord's banked capacity may be transferred as part of a property sale.

(c) The department shall adopt rules in accordance with chapter 34.05 RCW to implement the banked capacity program and establish a process to document when a landlord decides not to increase rent in a 12-month period and bank that capacity for future years. In order to participate in the banked capacity program, a landlord must comply with the process established by the department.

(d) The department must make information about the banked capacity program available on its website, including a method for a tenant to verify their landlord's participation in the program and the amount of total banked capacity for their dwelling unit or mobile home lot.

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

(1) On September 30, 2023, and on each following September 30th, the department shall calculate the maximum annual rent increase percentage allowed by sections 2 and 6 of this act for the following calendar year. The maximum annual rent increase percentage allowed for the following calendar year is the rate of inflation as measured by the consumer price index or three percent, whichever is greater, up to a maximum of seven percent. For the purposes of this section, "rate of inflation as measured by the consumer price index" means the September 12-month percent change in the consumer price index for all urban consumers (CPI-U), west region, all items, not seasonally adjusted, or a successor index, as published by the bureau of labor statistics of the United States department of labor in September of the current calendar year.

(2) On September 30, 2023, and on each following September 30th, the department shall publish the maximum annual rent increase percentage calculated under subsection (1) of this section, along with the relevant maximum rent increase provisions in sections 2 and 6 of this act, in a press release.

(3) The department shall maintain publicly available information on its website about the maximum annual rent increase percentage for the previous calendar year and for the current calendar year, and on or after September 30th of each year, for the following calendar year.

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

(1) A landlord must provide annual notice to current and prospective tenants of rent increases, possible future rent increases, and banked capacity in substantially the following form:

"TO TENANTS: (tenant name(s))

AT ADDRESS: (tenant address)

**NOTICE REGARDING POSSIBLE FUTURE RENT INCREASES**

This notice is required by Washington State law to inform you of your rights regarding rent increases. Washington state limits how much your landlord can raise your rent each year.

(1) Your landlord can raise your rent one time each year, as allowed by section 1 of this act. The Washington State Department of Commerce will post the maximum increase allowed each year, as required by section 2 of this act.

(2) Your landlord may be exempt from the rent increase cap for reasons described in section 1 of this act. If your landlord claims an exemption from the rent increase cap, your landlord is required to include facts supporting the exemption claimed in the written notice of the rent increase.

Your landlord may also request a significant hardship exemption from the rent increase cap. If your landlord's significant hardship exemption request is granted by the Washington State Department of Commerce, then the landlord is required to attach the letter from the Washington State Department of Commerce to this notice.

(3) Your landlord is not required to raise the rent. Your landlord is not required to raise the rent by the maximum amount allowed. When a landlord decides not to increase your rent, the landlord can bank some of the increase for a future year by participating in the banked capacity program administered by the Washington State Department of Commerce. This means that your landlord may be able to raise your rent in a future year by more than the annual cap.

If your landlord chooses to bank capacity, your landlord is required to inform you in writing, delivered to you personally, by properly and fully completing the below form. Your landlord forfeits your landlord's right to claim banked rent increase capacity if your landlord fails to properly deliver this form to you.

Your landlord must properly and fully complete the form below to notify you of a rent increase, whether your landlord is banking some of the unused rent increase for future years, the total banked capacity for your dwelling unit or mobile home lot, and whether your landlord is claiming an exemption.

**ATTENTION**: (tenant names) at (tenant address)

**RENT INCREASE NOTICE TO TENANTS**

Your landlord (name) intends to (check one of the following):

\_\_ Not raise your rent.

\_\_ Not raise your rent but bank this unused rent increase for a future year. Your landlord did not raise your rent in (list year or years), for a total of (number of) year(s). The total banked capacity for your dwelling unit or mobile home lot is (percent). Information about the banked capacity program is available on the Washington State Department of Commerce's website, including a method to verify your landlord's participation in the program and the amount of total banked capacity for your dwelling unit or mobile home lot.

\_\_ Raise your rent:

Your rent increase effective (date) will be (percent), which totals an additional $(dollar amount) per month, for a new total rent of $(dollar amount) per month.

This rent increase is allowed by state law and is (check one of the following):

\_\_ A lower rent increase than otherwise allowed by state law.

\_\_ The maximum increase allowed by state law.

\_\_ If the rent increase is using banked capacity to exceed the maximum otherwise set by state law, the "BANKED CAPACITY RENT INCREASE NOTICE TO TENANTS" form below must be fully and properly filled out.

\_\_ If the rent increase is using a significant hardship exemption to exceed the maximum otherwise set by state law, the "LANDLORD SIGNIFICANT HARDSHIP EXEMPTION RENT INCREASE NOTICE TO TENANTS" form below must be fully and properly filled out.

\_\_If the rent increase is using any other exemption authorized by state law to exceed the maximum otherwise set by state law, the "LANDLORD EXEMPTION RENT INCREASE NOTICE TO TENANTS" form below must be fully and properly filled out.

**ATTENTION**: (tenant names) at (tenant address)

**BANKED CAPACITY RENT INCREASE NOTICE TO TENANTS**

Under penalty of perjury, I (landlord name) certify that I am allowed under Washington State law to raise your rent by (percent), which is more than the maximum increase allowed by state law, because I did not raise your rent in (list year or years) and I participated in the banked capacity program administered by the Washington State Department of Commerce.

Information about the banked capacity program is available on the Washington State Department of Commerce's website, including a method to verify my participation in the program and the amount of total banked capacity for your dwelling unit or mobile home lot.

Your rent increase effective (date) will be (percent) which totals an additional $(dollar amount) per month, for a new total rent of $(dollar amount) per month.

**ATTENTION**: (tenant names) at (tenant address)

**LANDLORD SIGNIFICANT HARDSHIP EXEMPTION RENT INCREASE NOTICE TO TENANTS**

Under penalty of perjury, I (landlord name) certify that I am allowed under Washington State law to raise your rent by (percent), which is more than the maximum increase allowed by state law, because I was granted an individual significant hardship exemption by the Washington State Department of Commerce. The letter from the Washington State Department of Commerce granting this exemption is attached to this notice. (attach letter)

Your rent increase effective (date) will be (percent), which totals an additional $(dollar amount) per month, for a new total rent of $(dollar amount) per month.

**ATTENTION**: (tenant names) at (tenant address)

**LANDLORD EXEMPTION NOTICE TO TENANTS**

Under penalty of perjury, I (landlord name) certify that I am allowed under Washington State law to raise your rent by (percent), which is more than the maximum increase allowed by state law, because I am claiming the following exemption (check one of the following):

\_\_ The first certificate of occupancy for the dwelling unit was issued 10 or less years before the date of this rent increase notice, (insert date), so the rent cap does not apply. This exemption does not apply to manufactured/mobile homes. (Include facts or attach documents supporting the exemption.)

\_\_ Your tenancy is in a federally funded property owned or operated by a public housing authority under chapter 35.82 RCW, or a property that is funded through a housing assistance program under chapter 43.185 RCW, so the rent cap does not apply. (Include facts or attach documents supporting the exemption.)

\_\_ The landlord has paid for improvements to your dwelling unit, mobile home lot, or common areas, for which the costs—or your proportional share of the costs—were greater than an amount equal to four months' rent, and the improvements were made during the 12 months immediately preceding this notice. In this case, the landlord may increase rent by up to seven percent, or four percent plus the maximum annual rent increase percentage allowed for the calendar year, whichever is greater. (Include facts or attach documents supporting the exemption.)

Your rent increase effective (date) will be (percent), which totals an additional $(dollar amount) per month, for a new total rent of $(dollar amount) per month."

(2) Notice under this section must comply with the requirements in RCW 59.18.140 and be served in accordance with RCW 59.12.040.

NEW SECTION. **Sec.**  A new section is added to chapter 59.20 RCW to read as follows:

(1) Except as authorized by an exemption described in section 3 of this act and as provided in RCW 59.20.060(2)(c), a landlord may not increase the rent for a month-to-month tenancy or a tenancy with a term greater than month-to-month:

(a) During the first 12 months after the tenancy begins; and

(b) During any 12-month period, in an amount greater than the rate of inflation as measured by the consumer price index or three percent, whichever is greater, up to a maximum of seven percent above the existing rent. The maximum annual rent increase percentage allowed for each calendar year is calculated and published by the department as required in section 4 of this act.

(2) If a landlord increases the rent above the amount allowed in subsection (1) of this section, the landlord must include facts supporting the exemption claimed under section 2 of this act in the written notice of the rent increase. Notice must comply with section 4 of this act, RCW 59.20.090(2), and be served in accordance with RCW 59.12.040.

(3) A tenant who is charged rent in violation of this section and pays rent in excess of amounts permitted by this section has a cause of action against the landlord to recover actual damages in the amount of the excess rent paid, mandatory punitive damages equal to three months of the unlawful higher rent that the tenant paid, and reasonable attorneys' fees and costs incurred in bringing the action.

NEW SECTION. **Sec.**  A new section is added to chapter 59.20 RCW to read as follows:

A landlord may increase rent in an amount greater than allowed under section 2 of this act only as authorized by the exemptions described in this section or as provided in RCW 59.20.060(2)(c).

(1) For a tenancy in a federally funded property owned or operated by a public housing authority under chapter 35.82 RCW, or a tenancy in a property that is funded through a housing assistance program under chapter 43.185 RCW, rent increases during the tenancy are not limited by section 2 of this act.

(2)(a) During any 12-month period after the first 12 months of a tenancy, a landlord may increase rent for the mobile home lot by up to seven percent, or by four percent plus the maximum annual rent increase percentage allowed for the calendar year, whichever is greater, if:

(i) A landlord has paid for improvements to the mobile home lot or the common areas of the mobile home park that the tenant has unrestricted access to, for which the costs or the tenant's proportional share of the costs were greater than an amount equal to four months' rent; and

(ii) The improvements were made during the 12 months immediately preceding the month in which the landlord gives the tenant written notice of the rent increase.

(b) For the purposes of this subsection, "improvements to the dwelling unit" do not include basic maintenance.

(3) If a landlord is experiencing significant hardship in complying with the maximum annual rent increase percentage for the current calendar year due to a disparity between the local costs for providing housing and the statewide costs for providing housing, the landlord may request that the department issue a significant hardship exemption as described in section 3 of this act.

(4) If a landlord participates in the banked capacity program administered by the department as described in section 3 of this act, the landlord may increase the rent above the maximum annual rent increase percentage by an additional three percent for each year that the landlord has banked capacity.

NEW SECTION. **Sec.**  A new section is added to chapter 59.20 RCW to read as follows:

(1) A landlord must provide annual notice to current and prospective tenants of rent increases, possible future rent increases, and banked capacity in substantially the same form as provided in section 5(1) of this act.

(2) Notice under this section must comply with the requirements in RCW 59.20.090(2) and be served in accordance with RCW 59.12.040.

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 ---**