

2 ESHB 1223 - S COMM AMD
3 By Committee on Law & Justice

4 ADOPTED 3/6/98

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 59.18.030 and 1973 1st ex.s. c 207 s 3 are each
8 amended to read as follows:

9 As used in this chapter:

10 (1) " Dwelling unit " is a structure or that part of a structure
11 which is used as a home, residence, or sleeping place by one person or
12 by two or more persons maintaining a common household, including but
13 not limited to single family residences and units of multiplexes,
14 apartment buildings, and mobile homes.

15 (2) " Landlord " means the owner, lessor, or sublessor of the
16 dwelling unit or the property of which it is a part, and in addition
17 means any person designated as representative of the landlord.

18 (3) " Person " means an individual, group of individuals,
19 corporation, government, or governmental agency, business trust,
20 estate, trust, partnership, or association, two or more persons having
21 a joint or common interest, or any other legal or commercial entity.

22 (4) " Owner " means one or more persons, jointly or severally, in
23 whom is vested:

- 24 (a) All or any part of the legal title to property; or
- 25 (b) All or part of the beneficial ownership, and a right to present
26 use and enjoyment of the property.

27 (5) " Premises " means a dwelling unit, appurtenances thereto,
28 grounds, and facilities held out for the use of tenants generally and
29 any other area or facility which is held out for use by the tenant.

30 (6) " Rental agreement " means all agreements which establish or
31 modify the terms, conditions, rules, regulations, or any other
32 provisions concerning the use and occupancy of a dwelling unit.

33 (7) A " single family residence " is a structure maintained and used
34 as a single dwelling unit. Notwithstanding that a dwelling unit shares
35 one or more walls with another dwelling unit, it shall be deemed a
36 single family residence if it has direct access to a street and shares

1 neither heating facilities nor hot water equipment, nor any other
2 essential facility or service, with any other dwelling unit.

3 (8) A "tenant" is any person who is entitled to occupy a dwelling
4 unit primarily for living or dwelling purposes under a rental
5 agreement.

6 (9) "Reasonable attorney's fees", where authorized in this chapter,
7 means an amount to be determined including the following factors: The
8 time and labor required, the novelty and difficulty of the questions
9 involved, the skill requisite to perform the legal service properly,
10 the fee customarily charged in the locality for similar legal services,
11 the amount involved and the results obtained, and the experience,
12 reputation and ability of the lawyer or lawyers performing the
13 services.

14 (10) "Gang" means a group that: (a) Consists of three or more
15 persons; (b) has identifiable leadership or an identifiable name, sign,
16 or symbol; and (c) on an ongoing basis, regularly conspires and acts in
17 concert mainly for criminal purposes.

18 (11) "Gang-related activity" means any activity that occurs within
19 the gang or advances a gang purpose.

20 **Sec. 2.** RCW 59.18.130 and 1992 c 38 s 2 are each amended to read
21 as follows:

22 Each tenant shall pay the rental amount at such times and in such
23 amounts as provided for in the rental agreement or as otherwise
24 provided by law and comply with all obligations imposed upon tenants by
25 applicable provisions of all municipal, county, and state codes,
26 statutes, ordinances, and regulations, and in addition shall:

27 (1) Keep that part of the premises which he or she occupies and
28 uses as clean and sanitary as the conditions of the premises permit;

29 (2) Properly dispose from his or her dwelling unit all rubbish,
30 garbage, and other organic or flammable waste, in a clean and sanitary
31 manner at reasonable and regular intervals, and assume all costs of
32 extermination and fumigation for infestation caused by the tenant;

33 (3) Properly use and operate all electrical, gas, heating, plumbing
34 and other fixtures and appliances supplied by the landlord;

35 (4) Not intentionally or negligently destroy, deface, damage,
36 impair, or remove any part of the structure or dwelling, with the
37 appurtenances thereto, including the facilities, equipment, furniture,
38 furnishings, and appliances, or permit any member of his or her family,

1 invitee, licensee, or any person acting under his or her control to do
2 so. Violations may be prosecuted under chapter 9A.48 RCW if the
3 destruction is intentional and malicious;

4 (5) Not permit a nuisance or common waste;

5 (6) Not engage in drug-related activity at the rental premises, or
6 allow a subtenant, sublessee, resident, or anyone else to engage in
7 drug-related activity at the rental premises with the knowledge or
8 consent of the tenant. "Drug-related activity" means that activity
9 which constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW;

10 (7) Maintain the smoke detection device in accordance with the
11 manufacturer's recommendations, including the replacement of batteries
12 where required for the proper operation of the smoke detection device,
13 as required in RCW 48.48.140(3);

14 (8) Not engage in any activity at the rental premises that is:

15 (a) Imminently hazardous to the physical safety of other persons on
16 the premises; and

17 (b)(i) Entails physical assaults upon another person which result
18 in an arrest; or

19 (ii) Entails the unlawful use of a firearm or other deadly weapon
20 as defined in RCW 9A.04.110 which results in an arrest, including
21 threatening another tenant or the landlord with a firearm or other
22 deadly weapon under RCW 59.18.352. Nothing in this subsection (8)
23 shall authorize the termination of tenancy and eviction of the victim
24 of a physical assault or the victim of the use or threatened use of a
25 firearm or other deadly weapon; ((and))

26 (9) Not engage in any gang-related activity at the premises, as
27 defined in RCW 59.18.030, or allow another to engage in such activity
28 at the premises, that renders people in at least two or more dwelling
29 units or residences insecure in life or the use of property or that
30 injures or endangers the safety or health of people in at least two or
31 more dwelling units or residences. In determining whether a tenant is
32 engaged in gang-related activity, a court should consider the totality
33 of the circumstances, including factors such as whether there have been
34 a significant number of complaints to the landlord about the tenant's
35 activities at the property, damages done by the tenant to the property,
36 including the property of other tenants or neighbors, harassment or
37 threats made by the tenant to other tenants or neighbors that have been
38 reported to law enforcement agencies, any police incident reports
39 involving the tenant, and the tenant's criminal history; and

1 (10) Upon termination and vacation, restore the premises to their
2 initial condition except for reasonable wear and tear or conditions
3 caused by failure of the landlord to comply with his or her obligations
4 under this chapter: PROVIDED, That the tenant shall not be charged for
5 normal cleaning if he or she has paid a nonrefundable cleaning fee.

6 **Sec. 3.** RCW 59.18.180 and 1992 c 38 s 3 are each amended to read
7 as follows:

8 (1) If the tenant fails to comply with any portion of RCW 59.18.130
9 or 59.18.140, and such noncompliance can substantially affect the
10 health and safety of the tenant or other tenants, or substantially
11 increase the hazards of fire or accident that can be remedied by
12 repair, replacement of a damaged item, or cleaning, the tenant shall
13 comply within thirty days after written notice by the landlord
14 specifying the noncompliance, or, in the case of emergency as promptly
15 as conditions require. If the tenant fails to remedy the noncompliance
16 within that period the landlord may enter the dwelling unit and cause
17 the work to be done and submit an itemized bill of the actual and
18 reasonable cost of repair, to be payable on the next date when periodic
19 rent is due, or on terms mutually agreed to by the landlord and tenant,
20 or immediately if the rental agreement has terminated. Any substantial
21 noncompliance by the tenant of RCW 59.18.130 or 59.18.140 shall
22 constitute a ground for commencing an action in unlawful detainer in
23 accordance with the provisions of chapter 59.12 RCW, and a landlord may
24 commence such action at any time after written notice pursuant to such
25 chapter. The tenant shall have a defense to an unlawful detainer
26 action filed solely on this ground if it is determined at the hearing
27 authorized under the provisions of chapter 59.12 RCW that the tenant is
28 in substantial compliance with the provisions of this section, or if
29 the tenant remedies the noncomplying condition within the thirty day
30 period provided for above or any shorter period determined at the
31 hearing to have been required because of an emergency: PROVIDED, That
32 if the defective condition is remedied after the commencement of an
33 unlawful detainer action, the tenant may be liable to the landlord for
34 statutory costs and reasonable attorney's fees.

35 (2) If drug-related activity is alleged to be a basis for
36 termination of tenancy under RCW 59.18.130(6), 59.12.030(5), or
37 59.20.140(5), the compliance provisions of this section do not apply
38 and the landlord may proceed directly to an unlawful detainer action.

1 (3) If activity on the premises that creates an imminent hazard to
2 the physical safety of other persons on the premises as defined in RCW
3 59.18.130(8) is alleged to be the basis for termination of the tenancy,
4 and the tenant is arrested as a result of this activity, then the
5 compliance provisions of this section do not apply and the landlord may
6 proceed directly to an unlawful detainer action against the tenant who
7 was arrested for this activity.

8 (4) If gang-related activity, as prohibited under RCW 59.18.130(9),
9 is alleged to be the basis for termination of the tenancy, then the
10 compliance provisions of this section do not apply and the landlord may
11 proceed directly to an unlawful detainer action in accordance with
12 chapter 59.12 RCW, and a landlord may commence such an action at any
13 time after written notice under chapter 59.12 RCW.

14 (5) A landlord may not be held liable in any cause of action for
15 bringing an unlawful detainer action against a tenant for drug-related
16 activity ((~~or~~)), for creating an imminent hazard to the physical safety
17 of others, or for engaging in gang-related activity that renders people
18 in at least two or more dwelling units or residences insecure in life
19 or the use of property or that injures or endangers the safety or
20 health of people in at least two or more dwelling units or residences
21 under this section, if the unlawful detainer action was brought in good
22 faith. Nothing in this section shall affect a landlord's liability
23 under RCW 59.18.380 to pay all damages sustained by the tenant should
24 the writ of restitution be wrongfully sued out.

25 NEW SECTION. Sec. 4. A new section is added to chapter 59.18 RCW
26 to read as follows:

27 The legislature finds and declares that the ability to feel safe
28 and secure in one's own home and in one's own community is of primary
29 importance. The legislature recognizes that certain gang-related
30 activity can affect the safety of a considerable number of people in
31 the rental premises and dwelling units. Therefore, such activity,
32 although it may be occurring within an individual's home or the
33 surrounding areas of an individual's home, becomes the community's
34 concern.

35 The legislature intends that the remedy provided in section 5 of
36 this act be used solely to protect the health and safety of the
37 community. The remedy is not a means for private citizens to bring
38 malicious or unfounded actions against fellow tenants or residential

1 neighbors for personal reasons. In determining whether the tenant's
2 activity is the type prohibited under RCW 59.18.130(9), the court
3 should consider the totality of the circumstances, including factors
4 such as whether there have been numerous complaints to the landlord,
5 damage to property, police or incident reports, reports of disturbance,
6 and arrests. An absence of any or all of these factors does not
7 necessarily mean gang activity is not occurring. In determining
8 whether the tenant is engaging in gang-related activity, the court
9 should consider the purpose and intent of section 5 of this act. The
10 legislature intends to give people in the community a tool that will
11 help them restore the health and vibrance of their community.

12 NEW SECTION. **Sec. 5.** A new section is added to chapter 59.18 RCW
13 to read as follows:

14 (1)(a) Any person whose life, safety, health, or use of property is
15 being injured or endangered by a tenant's gang-related activity, who
16 has legal standing and resides, works in, or owns property in the same
17 multifamily building, apartment complex, or within a one-block radius
18 may serve the landlord with a ten-day notice and demand that the
19 landlord commence an unlawful detainer action against the tenant. The
20 notice and demand must set forth, in reasonable detail, facts and
21 circumstances that lead the person to believe gang-related activity is
22 occurring. The notice and demand shall be served by delivering a copy
23 personally to the landlord or the landlord's agent. If the person is
24 unable to personally serve the landlord after exercising due diligence,
25 the person may deposit the notice and demand in the mail, postage
26 prepaid, to the landlord's or the landlord's agent's last known
27 address.

28 (b) A copy of the notice and demand must also be served upon the
29 tenant engaging in the gang-related activity by delivering a copy
30 personally to the tenant. However, if the person is prevented from
31 personally serving the tenant due to threats or violence, or if
32 personal service is not reasonable under the circumstances, the person
33 may deposit the notice and demand in the mail, postage prepaid, to the
34 tenant's address, or leave a copy of the notice and demand in a
35 conspicuous location at the tenant's residence.

36 (2)(a) Within ten days from the time the notice and demand is
37 served, the landlord has a duty to take reasonable steps to investigate
38 the tenant's alleged noncompliance with RCW 59.18.130(9). The landlord

1 must notify the person who brought the notice and demand that an
2 investigation is occurring. The landlord has ten days from the time he
3 or she notifies the person in which to conduct a reasonable
4 investigation.

5 (b) If, after reasonable investigation, the landlord finds that the
6 tenant is not in compliance with RCW 59.18.130(9), the landlord may
7 proceed directly to an unlawful detainer action or take reasonable
8 steps to ensure the tenant discontinues the prohibited activity and
9 complies with RCW 59.18.130(9). The landlord shall notify the person
10 who served the notice and demand of whatever action the landlord takes.

11 (c) If, after reasonable investigation, the landlord finds that the
12 tenant is in compliance with RCW 59.18.130(9), the landlord shall
13 notify the person who served the notice and demand of the landlord's
14 findings.

15 (3) The person who served the notice and demand may petition the
16 appropriate court to have the tenancy terminated and the tenant removed
17 from the premises if: (a) Within ten days of service of the notice and
18 demand, the tenant fails to discontinue the gang-related activity and
19 the landlord fails to conduct a reasonable investigation; or (b) the
20 landlord notifies the person that the landlord conducted a reasonable
21 investigation and found that the tenant was not engaged in gang-related
22 activity as prohibited under RCW 59.18.130(9); or (c) the landlord took
23 reasonable steps to have the tenant comply with RCW 59.18.130(9), but
24 the tenant has failed to comply within a reasonable time.

25 (4) If the court finds that the tenant was not in compliance with
26 RCW 59.18.130(9), the court shall enter an order terminating the
27 tenancy and requiring the tenant to vacate the premises. The court
28 shall not issue the order terminating the tenancy unless it has found
29 that the allegations of gang-related activity are corroborated by a
30 source other than the person who has petitioned the court.

31 (5) The prevailing party shall recover reasonable attorneys' fees
32 and costs. The court may impose sanctions, in addition to attorneys'
33 fees, on a person who has brought an action under this chapter against
34 the same tenant on more than one occasion, if the court finds the
35 petition was brought with the intent to harass. However, the court
36 must order the landlord to pay costs and reasonable attorneys' fees to
37 the person petitioning for termination of the tenancy if the court
38 finds that the landlord failed to comply with the duty to investigate,
39 regardless of which party prevails.

1 **Sec. 6.** RCW 59.12.030 and 1983 c 264 s 1 are each amended to read
2 as follows:

3 A tenant of real property for a term less than life is guilty of
4 unlawful detainer either:

5 (1) When he or she holds over or continues in possession, in person
6 or by subtenant, of the property or any part thereof after the
7 expiration of the term for which it is let to him or her. When real
8 property is leased for a specified term or period by express or implied
9 contract, whether written or oral, the tenancy shall be terminated
10 without notice at the expiration of the specified term or period;

11 (2) When he or she, having leased property for an indefinite time
12 with monthly or other periodic rent reserved, continues in possession
13 thereof, in person or by subtenant, after the end of any such month or
14 period, when the landlord, more than twenty days prior to the end of
15 such month or period, has served notice (in manner in RCW 59.12.040
16 provided) requiring him or her to quit the premises at the expiration
17 of such month or period;

18 (3) When he or she continues in possession in person or by
19 subtenant after a default in the payment of rent, and after notice in
20 writing requiring in the alternative the payment of the rent or the
21 surrender of the detained premises, served (in manner in RCW 59.12.040
22 provided) in behalf of the person entitled to the rent upon the person
23 owing it, has remained uncomplied with for the period of three days
24 after service thereof. The notice may be served at any time after the
25 rent becomes due;

26 (4) When he or she continues in possession in person or by
27 subtenant after a neglect or failure to keep or perform any other
28 condition or covenant of the lease or agreement under which the
29 property is held, including any covenant not to assign or sublet, than
30 one for the payment of rent, and after notice in writing requiring in
31 the alternative the performance of such condition or covenant or the
32 surrender of the property, served (in manner in RCW 59.12.040 provided)
33 upon him or her, and if there is a subtenant in actual possession of
34 the premises, also upon such subtenant, shall remain uncomplied with
35 for ten days after service thereof. Within ten days after the service
36 of such notice the tenant, or any subtenant in actual occupation of the
37 premises, or any mortgagee of the term, or other person interested in
38 its continuance, may perform such condition or covenant and thereby
39 save the lease from such forfeiture;

1 (5) When he or she commits or permits waste upon the demised
2 premises, or when he or she sets up or carries on thereon any unlawful
3 business, or when he or she erects, suffers, permits, or maintains on
4 or about the premises any nuisance, and remains in possession after the
5 service (in manner in RCW 59.12.040 provided) upon him or her of three
6 days' notice to quit; ((or))

7 (6) A person who, without the permission of the owner and without
8 having color of title thereto, enters upon land of another and who
9 fails or refuses to remove therefrom after three days' notice, in
10 writing and served upon him or her in the manner provided in RCW
11 59.12.040. Such person may also be subject to the criminal provisions
12 of chapter 9A.52 RCW; or

13 (7) When he or she commits or permits any gang-related activity at
14 the premises as prohibited by RCW 59.18.130."

15 **ESHB 1223** - S COMM AMD
16 By Committee on Law & Justice

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18 On page 1, line 1 of the title, after "relations;" strike the
19 remainder of the title and insert "amending RCW 59.18.030, 59.18.130,
20 59.18.180, and 59.12.030; and adding new sections to chapter 59.18
21 RCW."

22 EFFECT: (1) Changes the definition of gangs; (2) requires the
23 private action to be brought by an individual with legal standing and
24 living in the same multi-family unit, apartment complex or within a one
25 block radius; (3) requires the court to find independent corroboration
26 before issuing the order terminating the tenancy; (4) requires landlord
27 serve 3-day notice on tenant before commencing unlawful detainer action
28 based on gang-related activity.

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