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HOUSE BILL 1736

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State of Washington

56th Legislature

1999 Regular Session

By Representatives Alexander, Sullivan and Schoesler

Read first time 02/03/1999. Referred to Committee on Economic Development, Housing & Trade.

1 AN ACT Relating to landlords and tenants; amending RCW 59.12.100,  
2 59.18.030, 59.18.040, 59.18.060, 59.18.257, 59.18.300, 59.18.310,  
3 59.18.315, 59.18.352, and 4.24.550; and adding a new section to chapter  
4 59.18 RCW.

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

6 **Sec. 1.** RCW 59.12.100 and 1927 c 123 s 4 are each amended to read  
7 as follows:

8 The plaintiff, the plaintiff's agent or attorney, or, at the  
9 plaintiff's discretion, the sheriff, shall, upon receiving the writ of  
10 restitution, forthwith serve a copy thereof upon the defendant, his  
11 agent or attorney, or a person in possession of the premises, and shall  
12 not execute the same for three days thereafter, nor until after the  
13 defendant has been served with summons in the action as hereinabove  
14 provided, and the defendant, or person in possession of the premises  
15 within three days after the service of the writ of restitution may  
16 execute to the plaintiff a bond to be filed with and approved by the  
17 clerk of the court in such sum as may be fixed by the judge, with  
18 sufficient surety to be approved by the clerk of (~~said~~) the court,  
19 conditioned that they will pay to the plaintiff such sum as the

1 plaintiff may recover for the use and occupation of the ((said))  
2 premises, or any rent found due, together with all damages the  
3 plaintiff may sustain by reason of the defendant occupying or keeping  
4 possession of ((said)) the premises, and also all the costs of the  
5 action. The plaintiff, his or her agent or attorneys, shall have  
6 notice of the time and place where the court or judge thereof shall fix  
7 the amount of the defendant's bond, and shall have notice and a  
8 reasonable opportunity to examine into the qualification and  
9 sufficiency of the sureties upon ((said)) the bond before ((said)) the  
10 bond shall be approved by the clerk. The writ may be served ((~~by the~~  
11 ~~sheriff~~)), in the event ((~~he shall be~~)) the person serving the writ is  
12 unable to find the defendant, an agent or attorney, or a person in  
13 possession of the premises, by affixing a copy of ((said)) the writ in  
14 a conspicuous place upon the premises.

15 **Sec. 2.** RCW 59.18.030 and 1998 c 276 s 1 are each amended to read  
16 as follows:

17 As used in this chapter:

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

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

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

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

32 (a) All or any part of the legal title to property; or

33 (b) All or part of the beneficial ownership, and a right to present  
34 use and enjoyment of the property.

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

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

4 (7) A "single family residence" is a structure maintained and used  
5 as a single dwelling unit. Notwithstanding that a dwelling unit shares  
6 one or more walls with another dwelling unit, it shall be deemed a  
7 single family residence if it has direct access to a street and shares  
8 neither heating facilities nor hot water equipment, nor any other  
9 essential facility or service, with any other dwelling unit.

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

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

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

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

27 (12) "Squatter" means a person occupying a dwelling unit who is not  
28 a tenant, and who is not authorized by an occupying tenant to occupy  
29 that dwelling unit.

30 **Sec. 3.** RCW 59.18.040 and 1989 c 342 s 3 are each amended to read  
31 as follows:

32 The following living arrangements are not intended to be governed  
33 by the provisions of this chapter, unless established primarily to  
34 avoid its application, in which event the provisions of this chapter  
35 shall control:

36 (1) Residence at an institution, whether public or private, where  
37 residence is merely incidental to detention or the provision of  
38 medical, religious, educational, recreational, or similar services,

1 including but not limited to correctional facilities, licensed nursing  
2 homes, monasteries and convents, and hospitals;

3 (2) Occupancy under a bona fide earnest money agreement to purchase  
4 or contract of sale of the dwelling unit or the property of which it is  
5 a part, where the tenant is, or stands in the place of, the purchaser;

6 (3) Residence in a hotel, motel, or other transient lodging whose  
7 operation is defined in RCW 19.48.010;

8 (4) Rental agreements entered into pursuant to the provisions of  
9 chapter 47.12 RCW where occupancy is by an owner-condemnee and where  
10 such agreement does not violate the public policy of this state of  
11 ensuring decent, safe, and sanitary housing and is so certified by the  
12 consumer protection division of the attorney general's office;

13 (5) Rental agreements for the use of any single family residence  
14 which are incidental to leases or rentals entered into in connection  
15 with a lease of land to be used primarily for agricultural purposes;

16 (6) Rental agreements providing housing for seasonal agricultural  
17 employees while provided in conjunction with such employment;

18 (7) Rental agreements with the state of Washington, department of  
19 natural resources, on public lands governed by Title 79 RCW;

20 (8) Occupancy by an employee of a landlord whose right to occupy is  
21 conditioned upon employment in or about the premises; or

22 (9) Occupancy by a squatter.

23 **Sec. 4.** RCW 59.18.060 and 1991 c 154 s 2 are each amended to read  
24 as follows:

25 The landlord will at all times during the tenancy keep the premises  
26 fit for human habitation, and shall in particular:

27 (1) Maintain the premises to substantially comply with any  
28 applicable code, statute, ordinance, or regulation governing their  
29 maintenance or operation, which the legislative body enacting the  
30 applicable code, statute, ordinance or regulation could enforce as to  
31 the premises rented if such condition substantially endangers or  
32 impairs the health or safety of the tenant;

33 (2) Maintain the roofs, floors, walls, chimneys, fireplaces,  
34 foundations, and all other structural components in reasonably good  
35 repair so as to be usable and capable of resisting any and all normal  
36 forces and loads to which they may be subjected;

37 (3) Keep any shared or common areas reasonably clean, sanitary, and  
38 safe from defects increasing the hazards of fire or accident;

1 (4) Provide a reasonable program for the control of infestation by  
2 insects, rodents, and other pests at the initiation of the tenancy and,  
3 except in the case of a single family residence, control infestation  
4 during tenancy except where such infestation is caused by the tenant;  
5 (5) Except where the condition is attributable to normal wear and  
6 tear, make repairs and arrangements necessary to put and keep the  
7 premises in as good condition as it by law or rental agreement should  
8 have been, at the commencement of the tenancy;  
9 (6) Provide reasonably adequate locks and furnish keys to the  
10 tenant;  
11 (7) Maintain all electrical, plumbing, heating, and other  
12 facilities and appliances supplied by him in reasonably good working  
13 order;  
14 (8) Maintain the dwelling unit in reasonably weathertight  
15 condition;  
16 (9) Except in the case of a single family residence, or on premises  
17 where tenants are responsible for their own waste and garbage  
18 collection, provide and maintain appropriate receptacles in common  
19 areas for the removal of ashes, rubbish, and garbage, incidental to the  
20 occupancy and arrange for the reasonable and regular removal of such  
21 waste;  
22 (10) Except where the building is not equipped for the purpose,  
23 provide facilities adequate to supply heat and water and hot water as  
24 reasonably required by the tenant;  
25 (11) Provide ((a)), in the rental agreement or by written notice to  
26 the tenant, that the dwelling unit is equipped with a smoke detection  
27 device as required in RCW 48.48.140. The rental agreement or notice  
28 shall inform the tenant of the tenant's responsibility to maintain the  
29 smoke detection device in proper operating condition and of penalties  
30 for failure to comply with the provisions of RCW 48.48.140(3). The  
31 notice must be signed by the landlord or the landlord's authorized  
32 agent and tenant with copies provided to both parties.  
33 (12) Designate to the tenant the name and address of the person who  
34 is the landlord by a statement on the rental agreement or by a notice  
35 conspicuously posted on the premises. The tenant shall be notified  
36 immediately of any changes by certified mail or by an updated posting.  
37 If the person designated in this section does not reside in the state  
38 where the premises are located, there shall also be designated a person  
39 who resides in the county who is authorized to act as an agent for the

1 purposes of service of notices and process, and if no designation is  
2 made of a person to act as agent, then the person to whom rental  
3 payments are to be made shall be considered such agent.

4 No duty shall devolve upon the landlord to repair a defective  
5 condition under this section, nor shall any defense or remedy be  
6 available to the tenant under this chapter, where the defective  
7 condition complained of was caused by the conduct of such tenant, his  
8 family, invitee, or other person acting under his control, or where a  
9 tenant unreasonably fails to allow the landlord access to the property  
10 for purposes of repair. When the duty imposed by subsection (1) of  
11 this section is incompatible with and greater than the duty imposed by  
12 any other provisions of this section, the landlord's duty shall be  
13 determined pursuant to subsection (1) of this section.

14 **Sec. 5.** RCW 59.18.257 and 1991 c 194 s 3 are each amended to read  
15 as follows:

16 (1) If a landlord uses a tenant screening service, then the  
17 landlord may only charge for the costs incurred for using the tenant  
18 screening service under this section. If a landlord conducts his or  
19 her own screening of tenants, then the landlord may charge his or her  
20 actual costs in obtaining the background information, but the amount  
21 may not exceed the customary costs charged by a screening service in  
22 the general area. The landlord's actual costs include costs incurred  
23 for long distance phone calls and for time spent calling landlords,  
24 employers, and financial institutions.

25 (2) A landlord may not charge a prospective tenant for the cost of  
26 obtaining background information under this section unless the landlord  
27 first notifies the prospective tenant in writing of what a tenant  
28 screening entails, the prospective tenant's rights to dispute the  
29 accuracy of information provided by the tenant screening service or  
30 provided by the entities listed on the tenant application who will be  
31 contacted for information concerning the tenant, and the name and  
32 address of the tenant screening service used by the landlord.

33 (3) Nothing in this section requires a landlord to disclose  
34 information to a prospective tenant that was obtained from a tenant  
35 screening service or from entities listed on the tenant application  
36 which is not required under the federal fair credit reporting act, 15  
37 U.S.C. Sec. 1681 et seq.

1       (4) If a prospective tenant omits or falsifies material information  
2 on a rental application that, if known, would have disqualified the  
3 prospective tenant from consideration for tenancy, the landlord may  
4 recover from the prospective tenant a fee not to exceed the actual cost  
5 to the landlord of obtaining the background information.

6       (5) Any landlord or tenant who violates this section may be liable  
7 to the ((prospective tenant)) other party for an amount not to exceed  
8 one hundred dollars. The prevailing party may also recover court costs  
9 and reasonable attorneys' fees.

10       **Sec. 6.** RCW 59.18.300 and 1973 1st ex.s. c 207 s 30 are each  
11 amended to read as follows:

12       It shall be unlawful for a landlord to intentionally cause  
13 termination of any of his or her tenant's utility services, including  
14 water, heat, electricity, or gas, except for an interruption of utility  
15 services for a reasonable time in order to make necessary repairs. Any  
16 landlord who violates this section may be liable to such tenant for  
17 ((his)) the actual damages sustained by him or her, and up to one  
18 hundred dollars for each day or part thereof the tenant is ((thereby))  
19 deprived of any utility service, and the prevailing party may recover  
20 ((his)) the costs of suit or arbitration and a reasonable attorney's  
21 fee. It shall be unlawful for a tenant to unreasonably use or waste  
22 utility services or cause unnecessary or unauthorized utility charges,  
23 or to intentionally cause the loss of utility services provided by the  
24 landlord, including water, heat, electricity or gas, excepting as  
25 resulting from the normal occupancy of the premises. Any tenant who  
26 violates this section shall be liable to the landlord for all accrued  
27 unnecessary or unauthorized utility charges and penalties, collection  
28 fees, court costs, and reasonable attorneys' fees.

29       **Sec. 7.** RCW 59.18.310 and 1991 c 220 s 1 are each amended to read  
30 as follows:

31       If the tenant defaults in the payment of rent and reasonably  
32 indicates by words or actions the intention not to resume tenancy, the  
33 tenant shall be liable for the following for such abandonment:  
34 PROVIDED, That upon learning of such abandonment of the premises the  
35 landlord shall make a reasonable effort to mitigate the damages  
36 resulting from such abandonment:

1 (1) When the tenancy is month-to-month, the tenant shall be liable  
2 for the rent for the thirty days following either the date the landlord  
3 learns of the abandonment, or the date the next regular rental payment  
4 would have become due, whichever first occurs.

5 (2) When the tenancy is for a term greater than month-to-month, the  
6 tenant shall be liable for the lesser of the following:

7 (a) The entire rent due for the remainder of the term; or

8 (b) All rent accrued during the period reasonably necessary to  
9 rerepent the premises at a fair rental, plus the difference between such  
10 fair rental and the rent agreed to in the prior agreement, plus actual  
11 costs incurred by the landlord in rerepenting the premises together with  
12 statutory court costs and reasonable attorney's fees.

13 In the event of such abandonment of tenancy and an accompanying  
14 default in the payment of rent by the tenant, the landlord may  
15 immediately enter and take possession of any property of the tenant  
16 found on the premises and may store the same in any reasonably secure  
17 place. A landlord shall make reasonable efforts to provide the tenant  
18 with a notice containing the name and address of the landlord and the  
19 place where the property is stored and informing the tenant that a sale  
20 or disposition of the property shall take place pursuant to this  
21 section, and the date of the sale or disposal, and further informing  
22 the tenant of the right under RCW 59.18.230 to have the property  
23 returned prior to its sale or disposal. The landlord's efforts at  
24 notice under this subsection shall be satisfied by the mailing by first  
25 class mail, postage prepaid, of such notice to the tenant's last known  
26 address and to any other address provided in writing by the tenant or  
27 actually known to the landlord where the tenant might receive the  
28 notice. The landlord shall return the property to the tenant after the  
29 tenant has paid the actual or reasonable drayage and storage costs  
30 whichever is less if the tenant makes a written request for the return  
31 of the property before the landlord has sold or disposed of the  
32 property. After forty-five days from the date the notice of such sale  
33 or disposal is mailed or personally delivered to the tenant, the  
34 landlord may sell or dispose of such property, including personal  
35 papers, family pictures, and keepsakes. The landlord may apply any  
36 income derived therefrom against moneys due the landlord, including  
37 actual or reasonable costs whichever is less of drayage and storage of  
38 the property. If the property has a cumulative value of two hundred  
39 fifty dollars or less, the landlord may sell or dispose of the property

1 in the manner provided in this section, except for personal papers,  
2 family pictures, and keepsakes, after seven days from the date the  
3 notice of sale or disposal is mailed or personally delivered to the  
4 tenant: PROVIDED, That the landlord shall make reasonable efforts, as  
5 defined in this section, to notify the tenant. Any excess income  
6 derived from the sale of such property under this section shall be held  
7 by the landlord for the benefit of the tenant for a period of one year  
8 from the date of sale, and if no claim is made or action commenced by  
9 the tenant for the recovery thereof prior to the expiration of that  
10 period of time, the balance shall be the property of the landlord,  
11 including any interest paid on the income.

12 **Sec. 8.** RCW 59.18.315 and 1983 c 264 s 11 are each amended to read  
13 as follows:

14 (1) The landlord, at his or her discretion, may require by  
15 provision in the rental agreement that all disputes regarding property  
16 damage, deposits, or tenant requested repairs be submitted to mediation  
17 by an independent third party. If, within sixty days after notice of  
18 a dispute covered under this subsection, either party fails to  
19 participate in good faith mediation, the other party may seek legal  
20 action.

21 (2) The landlord and tenant may agree in writing to submit any  
22 other dispute arising under the provisions of this chapter or under the  
23 terms, conditions, or performance of the rental agreement, to mediation  
24 by an independent third party. The parties may agree to submit any  
25 dispute to mediation before exercising their right to arbitration under  
26 RCW 59.18.320.

27 **Sec. 9.** RCW 59.18.352 and 1992 c 38 s 5 are each amended to read  
28 as follows:

29 If a tenant notifies the landlord that he or she, or another tenant  
30 who shares that particular dwelling unit has been threatened by another  
31 tenant, and:

32 (1) The threat was made with a firearm or other deadly weapon as  
33 defined in RCW 9A.04.110; and

34 (2) The tenant who made the threat is arrested as a result of the  
35 threatening behavior; and

1 (3) The landlord fails to file an unlawful detainer action against  
2 the tenant who threatened another tenant within seven calendar days  
3 after receiving notice of the arrest from a law enforcement agency;  
4 then the tenant who was threatened may terminate the rental agreement  
5 and quit the premises upon written notice to the landlord within thirty  
6 days after the threat was made without further obligation under the  
7 rental agreement.

8 A tenant who terminates a rental agreement under this section is  
9 discharged from payment of rent for any period following the quitting  
10 date, and is entitled to a pro rata refund of any prepaid rent, and  
11 shall receive a full and specific statement of the basis for retaining  
12 any of the deposit together with any refund due in accordance with RCW  
13 59.18.280.

14 Nothing in this section shall be construed to require a landlord to  
15 terminate a rental agreement or file an unlawful detainer action.

16 NEW SECTION. **Sec. 10.** A new section is added to chapter 59.18 RCW  
17 to read as follows:

18 A landlord may, upon notification by a local law enforcement agency  
19 under RCW 4.24.550 that a tenant or prospective tenant is a high risk  
20 sex offender, evict the tenant after serving the tenant with a three-  
21 day notice to vacate or, in the case of a prospective tenant, refuse  
22 tenancy to the prospective tenant. A landlord is immune from liability  
23 for damages caused by any such tenant.

24 **Sec. 11.** RCW 4.24.550 and 1998 c 220 s 6 are each amended to read  
25 as follows:

26 (1) Public agencies are authorized to release information to the  
27 public regarding sex offenders and kidnapping offenders when the agency  
28 determines that disclosure of the information is relevant and necessary  
29 to protect the public and counteract the danger created by the  
30 particular offender. This authorization applies to information  
31 regarding: (a) Any person adjudicated or convicted of a sex offense as  
32 defined in RCW 9A.44.130 or a kidnapping offense as defined by RCW  
33 9A.44.130; (b) any person under the jurisdiction of the indeterminate  
34 sentence review board as the result of a sex offense or kidnapping  
35 offense; (c) any person committed as a sexually violent predator under  
36 chapter 71.09 RCW or as a sexual psychopath under chapter 71.06 RCW;  
37 (d) any person found not guilty of a sex offense or kidnapping offense

1 by reason of insanity under chapter 10.77 RCW; and (e) any person found  
2 incompetent to stand trial for a sex offense or kidnapping offense and  
3 subsequently committed under chapter 71.05 or 71.34 RCW.

4 (2) The extent of the public disclosure of relevant and necessary  
5 information shall be rationally related to: (a) The level of risk  
6 posed by the offender to the community; (b) the locations where the  
7 offender resides, expects to reside, or is regularly found; and (c) the  
8 needs of the affected community members for information to enhance  
9 their individual and collective safety.

10 (3) Local law enforcement agencies shall consider the following  
11 guidelines in determining the extent of a public disclosure made under  
12 this section: (a) For offenders classified as risk level I, the agency  
13 shall share information with other appropriate law enforcement agencies  
14 and may disclose, upon request, relevant, necessary, and accurate  
15 information to any victim or witness to the offense and to any  
16 individual community member who lives near the residence where the  
17 offender resides, expects to reside, or is regularly found; (b) for  
18 offenders classified as risk level II, the agency may also disclose  
19 relevant, necessary, and accurate information to public and private  
20 schools, child day care centers, family day care providers, businesses  
21 and organizations that serve primarily children, women, or vulnerable  
22 adults, and neighbors and community groups near the residence where the  
23 offender resides, expects to reside, or is regularly found; and (c) for  
24 offenders classified as risk level III, the agency may also disclose  
25 relevant, necessary, and accurate information to the public at large.

26 (4) Local law enforcement agencies that disseminate information  
27 pursuant to this section shall: (a) Review available risk level  
28 classifications made by the department of corrections, the department  
29 of social and health services, and the indeterminate sentence review  
30 board; (b) assign risk level classifications to all offenders about  
31 whom information will be disseminated; and (c) make a good faith effort  
32 to notify the public and residents at least fourteen days before the  
33 offender is released from confinement or, where an offender moves from  
34 another jurisdiction, as soon as possible after the agency learns of  
35 the offender's move, except that in no case may this notification  
36 provision be construed to require an extension of an offender's release  
37 date. The juvenile court shall provide local law enforcement officials  
38 with all relevant information on offenders allowed to remain in the  
39 community in a timely manner. Each county sheriff shall maintain a

1 current public posting of all registered sex offenders residing in that  
2 county who are classified as risk level III.

3 (5) An appointed or elected public official, public employee, or  
4 public agency as defined in RCW 4.24.470 is immune from civil liability  
5 for damages for any discretionary risk level classification decisions  
6 or release of relevant and necessary information, unless it is shown  
7 that the official, employee, or agency acted with gross negligence or  
8 in bad faith. The immunity in this section applies to risk level  
9 classification decisions and the release of relevant and necessary  
10 information regarding any individual for whom disclosure is authorized.  
11 The decision of a local law enforcement agency or official to classify  
12 an offender to a risk level other than the one assigned by the  
13 department of corrections, the department of social and health  
14 services, or the indeterminate sentence review board, or the release of  
15 any relevant and necessary information based on that different  
16 classification shall not, by itself, be considered gross negligence or  
17 bad faith. The immunity provided under this section applies to the  
18 release of relevant and necessary information to other public  
19 officials, public employees, or public agencies, and to the general  
20 public.

21 (6) Except as may otherwise be provided by law, nothing in this  
22 section shall impose any liability upon a public official, public  
23 employee, or public agency for failing to release information  
24 authorized under this section.

25 (7) Nothing in this section implies that information regarding  
26 persons designated in subsection (1) of this section is confidential  
27 except as may otherwise be provided by law.

28 (8) When a local law enforcement agency or official classifies an  
29 offender differently than the offender is classified by the department  
30 of corrections, the department of social and health services, or the  
31 indeterminate sentence review board, the law enforcement agency or  
32 official shall notify the appropriate department or the board and  
33 submit its reasons supporting the change in classification.

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