

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6459

61st Legislature
2010 Regular Session

Passed by the Senate March 8, 2010
YEAS 38 NAYS 8

President of the Senate

Passed by the House March 2, 2010
YEAS 96 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6459** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6459

AS AMENDED BY THE HOUSE

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

By Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Hobbs, Berkey, Marr, and Schoesler)

READ FIRST TIME 02/05/10.

1 AN ACT Relating to the inspection of rental properties; amending
2 RCW 59.18.030 and 59.18.150; adding a new section to chapter 59.18 RCW;
3 and prescribing penalties.

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

5 **Sec. 1.** RCW 59.18.030 and 2008 c 278 s 12 are each amended to read
6 as follows:

7 As used in this chapter:

8 (1) "Distressed home" has the same meaning as in RCW 61.34.020.

9 (2) "Distressed home conveyance" has the same meaning as in RCW
10 61.34.020.

11 (3) "Distressed home purchaser" has the same meaning as in RCW
12 61.34.020.

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

18 (5) "In danger of foreclosure" means any of the following:

1 (a) The homeowner has defaulted on the mortgage and, under the
2 terms of the mortgage, the mortgagee has the right to accelerate full
3 payment of the mortgage and repossess, sell, or cause to be sold the
4 property;

5 (b) The homeowner is at least thirty days delinquent on any loan
6 that is secured by the property; or

7 (c) The homeowner has a good faith belief that he or she is likely
8 to default on the mortgage within the upcoming four months due to a
9 lack of funds, and the homeowner has reported this belief to:

10 (i) The mortgagee;

11 (ii) A person licensed or required to be licensed under chapter
12 19.134 RCW;

13 (iii) A person licensed or required to be licensed under chapter
14 19.146 RCW;

15 (iv) A person licensed or required to be licensed under chapter
16 18.85 RCW;

17 (v) An attorney-at-law;

18 (vi) A mortgage counselor or other credit counselor licensed or
19 certified by any federal, state, or local agency; or

20 (vii) Any other party to a distressed property conveyance.

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

24 (7) "Mortgage" is used in the general sense and includes all
25 instruments, including deeds of trust, that are used to secure an
26 obligation by an interest in real property.

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

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

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

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

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

1 (11) "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 (12) 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 (13) 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 (14) "Reasonable attorney's fees", where authorized in this
14 chapter, means an amount to be determined including the following
15 factors: The time and labor required, the novelty and difficulty of
16 the questions involved, the skill requisite to perform the legal
17 service properly, the fee customarily charged in the locality for
18 similar legal services, the amount involved and the results obtained,
19 and the experience, reputation and ability of the lawyer or lawyers
20 performing the services.

21 (15) "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 (16) "Gang-related activity" means any activity that occurs within
26 the gang or advances a gang purpose.

27 (17) "Certificate of inspection" means an unsworn statement,
28 declaration, verification, or certificate made in accordance with the
29 requirements of RCW 9A.72.085 by a qualified inspector that states that
30 the landlord has not failed to fulfill any substantial obligation
31 imposed under RCW 59.18.060 that endangers or impairs the health or
32 safety of a tenant, including (a) structural members that are of
33 insufficient size or strength to carry imposed loads with safety, (b)
34 exposure of the occupants to the weather, (c) plumbing and sanitation
35 defects that directly expose the occupants to the risk of illness or
36 injury, (d) not providing facilities adequate to supply heat and water
37 and hot water as reasonably required by the tenant, (e) providing
38 heating or ventilation systems that are not functional or are

1 hazardous, (f) defective, hazardous, or missing electrical wiring or
2 electrical service, (g) defective or hazardous exits that increase the
3 risk of injury to occupants, and (h) conditions that increase the risk
4 of fire.

5 (18) "Property" or "rental property" means all dwelling units on a
6 contiguous quantity of land managed by the same landlord as a single,
7 rental complex.

8 (19) "Qualified inspector" means a United States department of
9 housing and urban development certified inspector; a Washington state
10 licensed home inspector; an American society of home inspectors
11 certified inspector; a private inspector certified by the national
12 association of housing and redevelopment officials, the American
13 association of code enforcement, or other comparable professional
14 association as approved by the local municipality; a municipal code
15 enforcement officer; a Washington licensed structural engineer; or a
16 Washington licensed architect.

17 NEW SECTION. Sec. 2. A new section is added to chapter 59.18 RCW
18 to read as follows:

19 (1) Local municipalities may require that landlords provide a
20 certificate of inspection as a business license condition. A local
21 municipality does not need to have a business license or registration
22 program in order to require that landlords provide a certificate of
23 inspection. A certificate of inspection does not preclude or limit
24 inspections conducted pursuant to the tenant remedy as provided for in
25 RCW 59.18.115, at the request or consent of the tenant, or pursuant to
26 a warrant.

27 (2) A qualified inspector who is conducting an inspection under
28 this section may only investigate a rental property as needed to
29 provide a certificate of inspection.

30 (3) A local municipality may only require a certificate of
31 inspection on a rental property once every three years.

32 (4)(a) A rental property that has received a certificate of
33 occupancy within the last four years and has had no code violations
34 reported on the property during that period is exempt from inspection
35 under this section.

36 (b) A rental property inspected by a government agency or other
37 qualified inspector within the previous twenty-four months may provide

1 proof of that inspection which the local municipality may accept in
2 lieu of a certificate of inspection. If any additional inspections of
3 the rental property are conducted, a copy of the findings of these
4 inspections may also be required by the local municipality.

5 (5) A rental property owner may choose to inspect one hundred
6 percent of the units on the rental property and provide only the
7 certificate of inspection for all units to the local municipality.
8 However, if a rental property owner chooses to inspect only a sampling
9 of the units, the owner must send written notice of the inspection to
10 all units at the property. The notice must advise tenants that some of
11 the units at the property will be inspected and that the tenants whose
12 units need repairs or maintenance should send written notification to
13 the landlord as provided in RCW 59.18.070. The notice must also advise
14 tenants that if the landlord fails to adequately respond to the request
15 for repairs or maintenance, the tenants may contact local municipality
16 officials. A copy of the notice must be provided to the inspector upon
17 request on the day of inspection.

18 (6)(a) If a rental property has twenty or fewer dwelling units, no
19 more than four dwelling units at the rental property may be selected by
20 the local municipality to provide a certificate of inspection as long
21 as the initial inspection reveals that no conditions exist that
22 endanger or impair the health or safety of a tenant.

23 (b) If a rental property has twenty-one or more units, no more than
24 twenty percent of the units, rounded up to the next whole number, on
25 the rental property, and up to a maximum of fifty units at any one
26 property, may be selected by the local municipality to provide a
27 certificate of inspection as long as the initial inspection reveals
28 that no conditions exist that endanger or impair the health or safety
29 of a tenant.

30 (c) If a rental property is asked to provide a certificate of
31 inspection for a sample of units on the property and a selected unit
32 fails the initial inspection, the local municipality may require up to
33 one hundred percent of the units on the rental property to provide a
34 certificate of inspection.

35 (d) If a rental property has had conditions that endanger or impair
36 the health or safety of a tenant reported since the last required
37 inspection, the local municipality may require one hundred percent of

1 the units on the rental property to provide a certificate of
2 inspection.

3 (e) If a rental property owner chooses to hire a qualified
4 inspector other than a municipal housing code enforcement officer, and
5 a selected unit of the rental property fails the initial inspection,
6 both the results of the initial inspection and any certificate of
7 inspection must be provided to the local municipality.

8 (7)(a) The landlord shall provide written notification of his or
9 her intent to enter an individual unit for the purposes of providing a
10 local municipality with a certificate of inspection in accordance with
11 RCW 59.18.150(6). The written notice must indicate the date and
12 approximate time of the inspection and the company or person performing
13 the inspection, and that the tenant has the right to see the
14 inspector's identification before the inspector enters the individual
15 unit. A copy of this notice must be provided to the inspector upon
16 request on the day of inspection.

17 (b) A tenant who continues to deny access to his or her unit is
18 subject to RCW 59.18.150(8).

19 (8) If a rental property owner does not agree with the findings of
20 an inspection performed by a local municipality under this section, the
21 local municipality shall offer an appeals process.

22 (9) A penalty for noncompliance under this section may be assessed
23 by a local municipality. A local municipality may also notify the
24 landlord that until a certificate of inspection is provided, it is
25 unlawful to rent or to allow a tenant to continue to occupy the
26 dwelling unit.

27 (10) Any person who knowingly submits or assists in the submission
28 of a falsified certificate of inspection, or knowingly submits
29 falsified information upon which a certificate of inspection is issued,
30 is, in addition to the penalties provided for in subsection (9) of this
31 section, guilty of a gross misdemeanor and must be punished by a fine
32 of not more than five thousand dollars.

33 (11) As of the effective date of this section, a local municipality
34 may not enact an ordinance requiring a certificate of inspection unless
35 the ordinance complies with this section. This prohibition does not
36 preclude any amendments made to ordinances adopted before the effective
37 date of this section.

1 **Sec. 3.** RCW 59.18.150 and 2002 c 263 s 1 are each amended to read
2 as follows:

3 (1) The tenant shall not unreasonably withhold consent to the
4 landlord to enter into the dwelling unit in order to inspect the
5 premises, make necessary or agreed repairs, alterations, or
6 improvements, supply necessary or agreed services, or exhibit the
7 dwelling unit to prospective or actual purchasers, mortgagees, tenants,
8 workers, or contractors.

9 (2) Upon written notice of intent to seek a search warrant, when a
10 tenant or landlord denies a fire official the right to search a
11 dwelling unit, a fire official may immediately seek a search warrant
12 and, upon a showing of probable cause specific to the dwelling unit
13 sought to be searched that criminal fire code violations exist in the
14 dwelling unit, a court of competent jurisdiction shall issue a warrant
15 allowing a search of the dwelling unit.

16 Upon written notice of intent to seek a search warrant, when a
17 landlord denies a fire official the right to search the common areas of
18 the rental building other than the dwelling unit, a fire official may
19 immediately seek a search warrant and, upon a showing of probable cause
20 specific to the common area sought to be searched that a criminal fire
21 code violation exists in those areas, a court of competent jurisdiction
22 shall issue a warrant allowing a search of the common areas in which
23 the violation is alleged.

24 The superior court and courts of limited jurisdiction organized
25 under Titles 3, 35, and 35A RCW have jurisdiction to issue such search
26 warrants. Evidence obtained pursuant to any such search may be used in
27 a civil or administrative enforcement action.

28 (3) As used in this section:

29 (a) "Common areas" means a common area or those areas that contain
30 electrical, plumbing, and mechanical equipment and facilities used for
31 the operation of the rental building.

32 (b) "Fire official" means any fire official authorized to enforce
33 the state or local fire code.

34 (4)(a) A search warrant may be issued by a judge of a superior
35 court or a court of limited jurisdiction under Titles 3, 35, and 35A
36 RCW to a code enforcement official of the state or of any county, city,
37 or other political subdivision for the purpose of allowing the

1 inspection of any specified dwelling unit and premises to determine the
2 presence of an unsafe building condition or a violation of any building
3 regulation, statute, or ordinance.

4 (b) A search warrant must only be issued upon application of a
5 designated officer or employee of a county or city prosecuting or
6 regulatory authority supported by an affidavit or declaration made
7 under oath or upon sworn testimony before the judge, establishing
8 probable cause that a violation of a state or local law, regulation, or
9 ordinance regarding rental housing exists and endangers the health or
10 safety of the tenant or adjoining neighbors. In addition, the
11 affidavit must contain a statement that consent to inspect has been
12 sought from the owner and the tenant but could not be obtained because
13 the owner or the tenant either refused or failed to respond within five
14 days, or a statement setting forth facts or circumstances reasonably
15 justifying the failure to seek such consent. A landlord may not take
16 or threaten to take reprisals or retaliatory action as defined in RCW
17 59.18.240 against a tenant who gives consent to a code enforcement
18 official of the state or of any county, city, or other political
19 subdivision to inspect his or her dwelling unit to determine the
20 presence of an unsafe building condition or a violation of any building
21 regulation, statute, or ordinance.

22 (c) In determining probable cause, the judge is not limited to
23 evidence of specific knowledge, but may also consider any of the
24 following:

- 25 (i) The age and general condition of the premises;
26 (ii) Previous violations or hazards found present in the premises;
27 (iii) The type of premises;
28 (iv) The purposes for which the premises are used; or
29 (v) The presence of hazards or violations in and the general
30 condition of premises near the premises sought to be inspected.

31 (d) Before issuing an inspection warrant, the judge shall find that
32 the applicant has: (i) Provided written notice of the date,
33 approximate time, and court in which the applicant will be seeking the
34 warrant to the owner and, if the applicant reasonably believes the
35 dwelling unit or rental property to be inspected is in the lawful
36 possession of a tenant, to the tenant; and (ii) posted a copy of the
37 notice on the exterior of the dwelling unit or rental property to be

1 inspected. The judge shall also allow the owner and any tenant who
2 appears during consideration of the application for the warrant to
3 defend against or in support of the issuance of the warrant.

4 (e) All warrants must include at least the following:

5 (i) The name of the agency and building official requesting the
6 warrant and authorized to conduct an inspection pursuant to the
7 warrant;

8 (ii) A reasonable description of the premises and items to be
9 inspected; and

10 (iii) A brief description of the purposes of the inspection.

11 (f) An inspection warrant is effective for the time specified in
12 the warrant, but not for a period of more than ten days unless it is
13 extended or renewed by the judge who signed and issued the original
14 warrant upon satisfying himself or herself that the extension or
15 renewal is in the public interest. The inspection warrant must be
16 executed and returned to the judge by whom it was issued within the
17 time specified in the warrant or within the extended or renewed time.
18 After the expiration of the time specified in the warrant, the warrant,
19 unless executed, is void.

20 (g) An inspection pursuant to a warrant must not be made:

21 (i) Between 7:00 p.m. of any day and 8:00 a.m. of the succeeding
22 day, on Saturday or Sunday, or on any legal holiday, unless the owner
23 or, if occupied, the tenant specifies a preference for inspection
24 during such hours or on such a day;

25 (ii) Without the presence of an owner or occupant over the age of
26 eighteen years or a person designated by the owner or occupant unless
27 specifically authorized by a judge upon a showing that the authority is
28 reasonably necessary to effectuate the purpose of the search warrant;
29 or

30 (iii) By means of forcible entry, except that a judge may expressly
31 authorize a forcible entry when:

32 (A) Facts are shown that are sufficient to create a reasonable
33 suspicion of a violation of a state or local law or rule relating to
34 municipal or county building, fire, safety, environmental, animal
35 control, land use, plumbing, electrical, health, minimum housing, or
36 zoning standards that, if the violation existed, would be an immediate
37 threat to the health or safety of the tenant; or

1 (B) Facts are shown establishing that reasonable attempts to serve
2 a previous warrant have been unsuccessful.

3 (h) Immediate execution of a warrant is prohibited, except when
4 necessary to prevent loss of life or property.

5 (i) Any person who willfully refuses to permit inspection,
6 obstructs inspection, or aids in the obstruction of an inspection of
7 property authorized by warrant issued pursuant to this section is
8 subject to remedial and punitive sanctions for contempt of court under
9 chapter 7.21 RCW. Such conduct may also be subject to a civil penalty
10 imposed by local ordinance that takes into consideration the facts and
11 circumstances and the severity of the violation.

12 (5) The landlord may enter the dwelling unit without consent of the
13 tenant in case of emergency or abandonment.

14 ~~((+5))~~ (6) The landlord shall not abuse the right of access or use
15 it to harass the tenant. Except in the case of emergency or if it is
16 impracticable to do so, the landlord shall give the tenant at least two
17 days' notice of his or her intent to enter and shall enter only at
18 reasonable times. The tenant shall not unreasonably withhold consent
19 to the landlord to enter the dwelling unit at a specified time where
20 the landlord has given at least one day's notice of intent to enter to
21 exhibit the dwelling unit to prospective or actual purchasers or
22 tenants. A landlord shall not unreasonably interfere with a tenant's
23 enjoyment of the rented dwelling unit by excessively exhibiting the
24 dwelling unit.

25 ~~((+6))~~ (7) The landlord has no other right of access except by
26 court order, arbitrator or by consent of the tenant.

27 ~~((+7))~~ (8) A landlord or tenant who continues to violate the
28 rights of the tenant or landlord with respect to the duties imposed on
29 the other as set forth in this section after being served with one
30 written notification alleging in good faith violations of this section
31 listing the date and time of the violation shall be liable for up to
32 one hundred dollars for each violation after receipt of the notice.
33 The prevailing landlord or tenant may recover costs of the suit or
34 arbitration under this section, and may also recover reasonable
35 attorneys' fees.

36 ~~((+8))~~ (9) Nothing in this section is intended to (a) abrogate or
37 modify in any way any common law right or privilege or (b) affect the

1 common law as it relates to a local municipality's right of entry under
2 emergency or exigent circumstances.

3 NEW SECTION. **Sec. 4.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

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