

SENATE BILL REPORT

SB 6321

As of February 1, 2012

Title: An act relating to facilitating the sealing of certain unlawful detainer and protection order records to protect housing opportunities.

Brief Description: Facilitating the sealing of certain unlawful detainer and protection order records to protect housing opportunities.

Sponsors: Senators Kohl-Welles, Regala, Chase, Harper, Nelson, Keiser, Frockt and Kline.

Brief History:

Committee Activity: Judiciary: 1/31/12.

SENATE COMMITTEE ON JUDICIARY

Staff: Juliana Roe (786-7438)

Background: The Residential Landlord-Tenant Act (RLTA) regulates the creation of residential tenancies and the relationship between landlords and tenants of residential dwelling units. Landlords may engage in tenant screening to evaluate potential tenants, either by conducting their own searches of public records or by using companies that provide consumer reports for use in tenant screening.

Under the RLTA, a landlord cannot terminate a tenancy, fail to renew a tenancy, or refuse to enter into a rental agreement based on the tenant's, applicant's, or household member's status as a victim of domestic violence (DV), sexual assault, or stalking or based on the tenant or applicant having terminated a rental agreement due to the fact that the tenants or applicant was a victim of an act that constitutes a crime of DV, sexual assault, unlawful harassment, or stalking. A landlord's refusal to enter into a rental agreement with this person may be liable to the tenant or applicant in a civil action for damages. The prevailing party can recover court costs and attorneys' fees.

Summary of Bill: A person's ability to obtain rental housing in the future constitutes a compelling privacy and safety concern that can be weighed against the public's interest in access to the records in any hearing concerning the proposed redaction or sealing of court records if the person is neither a homeowner nor an incarcerated person. In these hearings, a person's ability to obtain rental housing in the future is presumed to outweigh the public's interest in access to the records if:

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- the person was found not guilty of an unlawful detainer or otherwise in unlawful possession of the disputed premises;
- the person occupied the real property as a tenant prior to foreclosure and the action was filed less than 90 days after the foreclosure sale;
- the person prevailed on an affirmative defense, counterclaim, or setoff asserted in the action, such as a claim for breach of implied warranty of habitability; or
- a judgment was entered for nonpayment of rent that was subsequently fully cured and tenancy reinstated.

The presumption can be rebutted by evidence that establishes that the public's interest in access to the records outweighs the person's interest in obtaining future rental housing and that access will not materially chill tenants with meritorious defenses from appearing and defending in unlawful detainer actions.

In hearings concerning the proposed redaction or sealing of a qualified victim protection order, a person's ability to obtain rental housing in the future is presumed to outweigh the public's interest in access to the record. Qualified victim protection record means information:

- concerning a judicial or administrative proceeding in which the person about whom the record pertains sought to obtain a no-contact order or protection order from DV, sexual assault, stalking, harassment, or other violent crime;
- concerning a judicial or administrative proceeding in which the person about whom the information pertains exercised or attempted to exercise a right or obtain a benefit available specifically or exclusively to victims of violence, such as early termination of a rental agreement;
- indicating a claim or defense was available to the person in a judicial or administrative proceeding by reason of the person's status as a victim of violence; and
- indicating that the person is a victim of DV, sexual assault, or stalking or is protected by a court order.

These orders do not include information that indicates that the person was a perpetrator of sexual assault, harassment, or a violent crime. The presumption can be rebutted by evidence that establishes that the public's interest in access to the records outweighs the person's interest in obtaining future rental housing, that access will not materially chill victims of DV, sexual assault, or stalking from seeking orders of protection, and that access to the records will not materially chill victims of DV from leaving abusive partners.

A person who seeks to secure residential rental property has no duty to disclose the fact that an order was sealed or redacted by a court and cannot be penalized for denying that an order exists.

Tenant screening services cannot unreasonably make a tenant screening report containing information the court has sealed or redacted. Such reports are unreasonable if the report was provided based on records obtained from the court more than 30 days before the date of the report. A screening service that violates this is liable to the prospective tenant for actual damages, costs, attorneys' fees, and a \$1,000 penalty for a willful violation. A report is willful if it contains qualified victim protection records.

A person who has notice of an order to seal or redact unlawful detainer case records or qualified victim protection orders cannot disclose the existence of the action to any tenant screening service or prospective landlord. A person who willfully discloses this information is liable to the prospective tenant for actual damages, costs, reasonably attorneys' fees, and a \$1,000 penalty. A violation is willful if the person has actual knowledge of the order to seal or redact.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Tenant screening services can be important to property owners and landlords but there is a compelling reason for us to consider this bill that will provide some protections for those individuals who have had difficult times securing housing. This bill would provide the means for the sealing of records in cases like DV, stalking, and sexual assault. It is worthwhile to have a process in which a person can have his or her record sealed.

When we speak with a tenant, we inform the tenant that if a landlord tries to evict the tenant for unlawful detainer, even if the tenant prevails, that information will remain on the tenant's record forever. This bill does not prevent access to all eviction records, it just protects those who have prevailed in an unlawful detainer action or were a victim of foreclosure. We live in an information age. There needs to be regulations surrounding the process in which a tenant has a right to redact or seal a record. This is good public policy to have. There are persons with certain types of criminal records who can expunge or vacate criminal records. It is easier to remove a criminal record than it is for a person who has prevailed in an unlawful detainer action.

Tenant screening reports determine whether a person can obtain housing. The information in these reports should be fair and accurate. Currently, the reports can include inaccurate information. The reports can also contain information as to whether the person has been involved in an action, but does not include the outcome of the action. The tenant is treated as a guilty party for years to come. The current framework creates a chilling effect on the process. DV protection orders can be listed in the reports. It is unthinkable that this information should be considered to determine whether someone would be a good tenant.

Protection orders show up on tenant screening reports. A landlord did not want to rent to an individual who was the protected person in a protection order because the landlord didn't want trouble from the protected person. This information should not be available to a landlord. This bill should be enacted because it is important to have stability in a person's life. It will make it easier for people to obtain housing and raise their children.

CON: One concern we have about this bill is the cost. This legislation has an impact on the Office of the Superior Court clerks. It would add an additional 20 minutes for each case in

processing. There were 24,844 cases with qualified victim protection orders filed in superior court alone last year. Administrative Office of the Courts estimates that the annual expenditure impact will be \$116,836 to the state, \$680,586 to the counties and \$143,364 to the cities annually, not including local capital cost.

Another concern involves Genera Rule (GR) 15 which states that the index of cases shall be open to the public. This bill attempts to remove these particular cases from the index.

Landlords try to keep their buildings full, safe, and nice. The best way to accomplish this is to see peoples' past behavior. There should not be an absolute presumption in favor of sealing records when there has not been a hearing about good faith under the circumstances of that particular case. GR 15 provides that any civil litigant can ask to have a file sealed under current law. All the person has to do is convince the court that there is a legitimate reason to seal the record. This bill just turns the presumption on its head.

Another issue that we face is that in an eviction action, for example, if the tenant moves out during the eviction process, the court loses jurisdiction and the case is just dismissed. This is because if there is no longer anyone unlawfully detaining the property, there is no one to move from the property. That doesn't mean it was a good resolution.

Persons Testifying: PRO: Sen. Kohl-Welles, prime sponsor; Jonathan Grant, Tenants Union of WA; Michele Thomas, WA Low Income Housing Alliance.

CON: Walt Olsen, Manufactured Housing Communities of WA; James McMahan, WA Assn. of County Officials; Joe Puckett, WA Multifamily Housing Assn.; Rowland Thompson, Allied Daily Newspapers.