

SENATE BILL REPORT

SB 6321

As Reported by Senate Committee On:
Judiciary, February 2, 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, 2/01/12, 2/02/12 [DPS, w/oRec].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6321 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Harper, Vice Chair; Hargrove, Kohl-Welles and Regala.

Minority Report: That it be referred without recommendation.

Signed by Senators Carrell and Padden.

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

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to the tenant or applicant in a civil action for damages. The prevailing party can recover court costs and attorneys' fees.

Summary of Bill (Recommended Substitute): Landlords are prohibited from refusing to enter into or renew a rental agreement with a person who: (1) prevailed in an unlawful detainer action; (2) occupied real property prior to a foreclosure sale and the action was filed less than 90 days after the foreclosure; (3) prevailed on an affirmative defense or counterclaim, such as a claim for breach of an implied warranty of habitability; or (4) had tenancy reinstated after a judgment was entered solely for nonpayment of rent which was subsequently fully cured. Landlords who refuse to enter into a rental agreement may be liable to tenants for damages, court costs, and reasonable attorneys' fees. Landlords may make adverse housing decisions based upon lawful factors within the landlord's knowledge.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Substitute): Landlords are prohibited from refusing to enter into or renew a rental agreement with a person who: (1) prevailed in an unlawful detainer action; (2) occupied real property prior to a foreclosure sale and the action was filed less than 90 days after the foreclosure; (3) prevailed on an affirmative defense or counterclaim, such as a claim for breach of an implied warranty of habitability; or (4) had tenancy reinstated after a judgment was entered solely for nonpayment of rent which was subsequently fully cured. Landlords who refuse to enter into a rental agreement may be liable to tenants for damages, court costs, and reasonable attorneys' fees. Landlords may make adverse housing decisions based upon lawful factors within the landlord's knowledge.

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 on Original Bill: 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 General 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.