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SENATE BILL 6321

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State of Washington

62nd Legislature

2012 Regular Session

By Senators Kohl-Welles, Regala, Chase, Harper, Nelson, Keiser, Frockt, and Kline

Read first time 01/17/12. Referred to Committee on Judiciary.

1 AN ACT Relating to facilitating the sealing of certain unlawful  
2 detainer and protection order records to protect housing opportunities;  
3 adding a new section to chapter 59.18 RCW; creating a new section; and  
4 prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that unfettered public  
7 access to civil court records materially diminishes the ability of some  
8 rental applicants to obtain rental housing in this state. This often  
9 affects individuals who have sought orders of protection against  
10 domestic violence, sexual assault, or stalking, who have been unjustly  
11 sued for eviction, or who have acquired civil court records that are  
12 not predictive of their suitability for residential tenancies. These  
13 records are commonly searched and compiled by tenant screening  
14 companies and reported to residential landlords who frequently deny  
15 housing to applicants about whom the records pertain, often with little  
16 or no regard for the circumstances, merits, or dispositions of the  
17 civil litigation. Such use of court records is contrary to the public  
18 policy of this state. Such use of court records also does not  
19 contribute to public oversight of the administration of justice, and

1 tends to undermine the legitimacy of our civil courts by systematically  
2 deterring people from appearing in court, even when they have  
3 meritorious claims or defenses.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 59.18 RCW  
5 to read as follows:

6 (1) In any hearing concerning the proposed redaction or sealing of  
7 court records, a person's ability to obtain rental housing in the  
8 future constitutes a compelling privacy and safety concern that may be  
9 weighed against the public's interest in access to the records where  
10 the person for whom the court records are proposed to be redacted or  
11 sealed is neither a homeowner nor an incarcerated person.

12 (2) In any hearing concerning the proposed redaction or sealing of  
13 an unlawful detainer court record, a person's ability to obtain rental  
14 housing in the future is presumed to outweigh the public's interest in  
15 access to the record if:

16 (a) The court entered a final order in the unlawful detainer  
17 action, and the person was not found guilty of unlawful detainer or  
18 otherwise in unlawful possession of the disputed premises;

19 (b) The person occupied the real property as a tenant prior to a  
20 foreclosure sale concerning the same premises, and the action was filed  
21 less than ninety days after the foreclosure sale;

22 (c) Notwithstanding any other findings or orders in the unlawful  
23 detainer action, the person prevailed on an affirmative defense,  
24 counterclaim, or setoff asserted in the action, such as a claim for  
25 breach of an implied warranty of habitability or breach of the covenant  
26 of quiet enjoyment; or

27 (d) A judgment entered solely for nonpayment of rent was entered  
28 but was fully cured, and the tenancy was reinstated pursuant to RCW  
29 59.12.170, 59.12.190, or 59.18.410, or any other law.

30 (3) The presumption arising under subsection (2) of this section  
31 may be rebutted by evidence establishing that the public's interest in  
32 access to the court records outweighs the person's interest in  
33 obtaining future rental housing, and that public access to the records  
34 will not materially chill tenants with meritorious defenses from  
35 appearing and defending in unlawful detainer actions.

36 (4) In any hearing concerning the proposed redaction or sealing of

1 a qualified victim protection record, a person's ability to obtain  
2 rental housing in the future is presumed to outweigh the public's  
3 interest in access to the record. For the purposes of this section:

4 (a) "Qualified victim protection records" means:

5 (i) Records or information concerning any judicial or  
6 administrative proceeding in which the person about whom the records or  
7 information pertains sought to obtain an order of protection from  
8 domestic violence, sexual assault, stalking, harassment, or other  
9 violent crime, including any petition or action for a protection order  
10 under chapter 9A.46, 10.14, 10.99, 26.09, 26.26, or 26.50 RCW, or any  
11 other law;

12 (ii) Records or information concerning any judicial or  
13 administrative proceeding in which the person about whom the records or  
14 information pertains exercised or attempted to exercise a right or  
15 obtain a benefit available specifically or exclusively to victims of  
16 violence, such as, but not limited to, the early termination of a  
17 rental agreement under RCW 59.18.575;

18 (iii) Records or information indicating that the person about whom  
19 the records or information pertains asserted that a claim or defense  
20 was available to the person in a judicial or administrative proceeding  
21 by reason of the person's status as a victim of violence, such as in a  
22 proceeding under chapter 49.60 RCW; and

23 (iv) Any other records or information indicating that the person  
24 about whom the records or information pertains is a victim of domestic  
25 violence, sexual assault, or stalking, or is protected by a court  
26 order.

27 (b) "Qualified victim protection records" does not include records  
28 or information tending to indicate that the person about whom the  
29 records or information pertains was a perpetrator of sexual assault,  
30 harassment, or violent crime.

31 (5) The presumption arising under subsection (4) of this section  
32 may be rebutted by evidence establishing that the public's interest in  
33 access to the court records outweighs the person's interest in  
34 obtaining future rental housing, that public access to the records will  
35 not materially chill victims of domestic violence, sexual assault, or  
36 stalking from seeking orders of protection, and that access to the  
37 records will not materially chill victims of domestic violence from  
38 leaving abusive partners.

1 (6) A person for whose benefit an order to seal or redact court  
2 records has been entered under this section, when engaged in an effort  
3 to secure possession of residential rental property:

4 (a) Has no duty to disclose the action to any prospective landlord  
5 or provider of any services in connection with housing on any written  
6 or nonwritten application; and

7 (b) May not be penalized in any manner, or denied any right or  
8 privilege, for making to any prospective landlord or provider of any  
9 services in connection with housing a statement denying the existence  
10 of the action or denying knowledge of its existence.

11 (7)(a) A tenant screening service shall not unreasonably make a  
12 tenant screening report that contains information the court has sealed  
13 or redacted under this section. Such a report is presumed to be  
14 unreasonable if the screening service provided the report based on  
15 records the screening service obtained from the court more than thirty  
16 days before the date of the report.

17 (b) A screening service that violates this section is liable to the  
18 prospective tenant in the amount of his or her actual damages and costs  
19 of the action together with reasonable attorneys' fees as determined by  
20 the court and, in the case of a willful violation, for a monetary  
21 penalty in the amount of one thousand dollars. A report is presumed to  
22 be willful if the report contains qualified victim protection records.

23 (8)(a) A person having notice of an order to seal or redact  
24 unlawful detainer case records or qualified victim protection records  
25 shall not, either directly or through any agent, disclose the existence  
26 of the action, or other information expected to enable discovery of the  
27 action, to any tenant screening service or prospective landlord seeking  
28 information about the person for whose benefit the order was entered.

29 (b) The duty imposed under this subsection cannot be waived by the  
30 person for whose benefit the order to seal was entered, and any  
31 purported or attempted waiver, whether written or nonwritten, is void  
32 and has no effect.

33 (c) A person who willfully violates this subsection is liable to  
34 the person for whose benefit the order was entered in the amount of  
35 such person's actual damages and costs of suit, together with  
36 reasonable attorneys' fees as determined by the court, and a monetary  
37 penalty of one thousand dollars for each willful violation. A

1 violation of this subsection is considered willful only if the person  
2 committing the violation had actual knowledge of the order to seal or  
3 redact.

4 (9) This section does not limit or impair the right of any party to  
5 a civil action from pursuing, or of a court from ordering, the sealing  
6 or redaction of court records under any other provision of law.

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