
HOUSE BILL 2878

State of Washington

66th Legislature

2020 Regular Session

By Representatives Davis, Macri, Robinson, and Santos

Read first time 01/28/20. Referred to Committee on Civil Rights & Judiciary.

1 AN ACT Relating to addressing housing concerns for individuals
2 impacted by the criminal justice system; amending RCW 59.18.257;
3 reenacting and amending RCW 59.18.030; adding a new section to
4 chapter 59.18 RCW; creating new sections; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that increasing
7 housing access and promoting housing stability for all residents of
8 the state, including people impacted by the criminal justice system,
9 furthers the public health and welfare, results in better reentry
10 outcomes, reunifies families, and strengthens communities. The
11 legislature further finds that criminal record screening for rental
12 housing applicants and tenants has a disparate impact on people and
13 communities of color due to racial inequities in the criminal justice
14 system that are compounded by racial bias in the tenant application
15 and selection process. Therefore, it is the intent of the legislature
16 with this act to address housing discrimination against people
17 impacted by the criminal justice system, and that the provisions of
18 this act be liberally construed to serve its beneficial purposes.

19 NEW SECTION. **Sec. 2.** This act may be known and cited as the
20 housing justice act.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 59.18
2 RCW to read as follows:

3 (1) A landlord may not:

4 (a) Advertise, publicize, or implement any policy or practice
5 that automatically or categorically excludes from any rental housing
6 all individuals with any arrest record or conviction record;

7 (b) Require disclosure, inquire about, or take an adverse action
8 against a prospective tenant, tenant, or member of the tenant's
9 household, based on any arrest record or conviction record, except as
10 provided in (c) of this subsection and subject to the exclusions and
11 legal requirements in subsection (7) of this section;

12 (c) Carry out an adverse action based on registry information of
13 a prospective tenant, tenant, or member of the tenant's household,
14 unless the landlord has a legitimate business reason for taking such
15 action.

16 (2) (a) If a landlord takes an adverse action based on a
17 legitimate business reason, the landlord must provide written notice
18 by email, mail, or in person of the adverse action to the prospective
19 tenant or tenant and state the specific registry information that was
20 the basis for the adverse action.

21 (b) If a tenant screening report or comprehensive reusable tenant
22 screening report is used by a landlord as part of the screening
23 process, the landlord must provide the name and address of the
24 consumer reporting agency and the prospective occupant's or tenant's
25 rights to obtain a free copy of the tenant screening report in the
26 event of a denial or other adverse action and to dispute the accuracy
27 of information appearing in the tenant screening report. The
28 prospective tenant or tenant must be provided at least five business
29 days from the time of notice to dispute the accuracy and relevance of
30 the tenant screening report.

31 (c) Any refusal of tenancy under this subsection must be
32 communicated to the tenant pursuant to RCW 59.18.257.

33 (3) A landlord in violation of this section may be liable up to
34 four and one-half times the monthly rent of the real property at
35 issue, as well as court costs and reasonable attorneys' fees.

36 (4) It is a defense to an unlawful detainer action under chapter
37 59.12 RCW that the action to remove the tenant and recover possession
38 of the premises is in violation of this section.

39 (5) This section does not prohibit adverse housing decisions
40 based upon other lawful factors within the landlord's knowledge.

1 (6) This section does not affect, modify, or limit the authority
2 of a local government to adopt any rule, regulation, code, statute,
3 or ordinance that is more stringent than this section as applicable
4 to each local government's respective corporate limits or boundaries.
5 Otherwise, this section supersedes and preempts all other local
6 rules, regulations, codes, statutes, or ordinances regarding the
7 provision of rental housing to tenants or prospective tenants with a
8 conviction record or arrest record.

9 (7) This section does not apply to:

10 (a) The renting, subrenting, leasing, or subleasing of any
11 dwelling unit owned or managed by a public housing authority
12 organized under chapter 35.82 RCW;

13 (b) The renting, subrenting, leasing, or subleasing of a single-
14 family dwelling unit in which the owner or subleasing tenant or
15 subrenting tenant occupy part of the single-family dwelling unit;

16 (c) The renting, subrenting, leasing, or subleasing of an
17 accessory dwelling unit or detached accessory dwelling unit in which
18 the owner or person entitled to possession of the unit maintains a
19 permanent residence, home, or abode on the same lot.

20 (8) For purposes of this section:

21 (a) "Adverse action" means:

22 (i) Refusing to engage in or negotiate a rental real estate
23 transaction;

24 (ii) Denying tenancy;

25 (iii) Representing that real property listed for rent or lease is
26 not available for inspection, rental, or lease when in fact it is so
27 available;

28 (iv) Failing or refusing to add a household member to an existing
29 lease;

30 (v) Expelling or evicting an occupant from real property or
31 otherwise making unavailable or denying a dwelling;

32 (vi) Applying different terms, conditions, or privileges to a
33 rental agreement including, but not limited to, the setting of rates
34 for rental or lease, establishment of damage deposits, or other
35 financial conditions for rental or lease, or in the furnishing of
36 facilities or services in connection with such transaction;

37 (vii) Refusing or intentionally failing to list real property for
38 rent or lease;

39 (viii) Refusing or intentionally failing to show real property
40 listed for rent or lease;

1 (ix) Refusing or intentionally failing to accept or transmit any
2 reasonable offer to lease, or rent real property;

3 (x) Terminating a lease; or

4 (xi) Threatening, penalizing, retaliating, or otherwise
5 discriminating against any person for any reason prohibited under
6 this section.

7 (b) "Arrest record" includes, but is not limited to, information
8 indicating that a person has been questioned, apprehended, taken into
9 custody or detention, held for investigation, arrested, charged with,
10 indicted, or tried for any felony, misdemeanor, or other offense
11 pursuant to any law enforcement or military authority.

12 (c) "Conviction record" includes, but is not limited to,
13 information indicating that a person has been convicted of a felony,
14 misdemeanor, or other offense including a civil ordinance violation
15 (forfeiture), placed on probation, fined, imprisoned, or paroled
16 pursuant to any law enforcement or military authority.

17 (d) A "legitimate business reason" exists when the policy or
18 practice is necessary to achieve a substantial, legitimate, and
19 nondiscriminatory interest, which is determined by the landlord by
20 demonstrating, through reliable evidence, a nexus between the policy
21 or practice and resident safety or protecting the property, or both,
22 in light of the following factors:

23 (i) The nature and severity of the conviction;

24 (ii) The number and types of convictions;

25 (iii) The time that has elapsed since the date of conviction;

26 (iv) The age of the individual at the time of conviction;

27 (v) Evidence of good tenant history before or after the
28 conviction occurred;

29 (vi) Any supplemental information related to the individual's
30 rehabilitation, good conduct, and additional facts or explanations if
31 provided by the individual. Such a review of conviction information
32 is limited to those convictions included in registry information.

33 (e) "Registry information" means information solely obtained from
34 a county, statewide, or national sex offender registry including, but
35 not limited to, the registrant's physical description, address, and
36 conviction description and dates.

37 (f) "Supplemental information" means any information produced by
38 the prospective tenant or tenant, or produced on the tenant's behalf,
39 with respect to the tenant's rehabilitation or good conduct
40 including, but not limited to:

- 1 (i) Written or oral statement from the prospective tenant or
2 tenant;
- 3 (ii) Written or oral statement from a current or previous
4 employer;
- 5 (iii) Written or oral statement from a current or previous
6 landlord;
- 7 (iv) Written or oral statement from a member of the judiciary or
8 law enforcement, parole or probation officer, or person who provides
9 similar services;
- 10 (v) Written or oral statement from a member of the clergy,
11 counselor, therapist, social worker, community or volunteer
12 organization, or person or institution who provides similar services;
- 13 (vi) Certificate of rehabilitation;
- 14 (vii) Certificate of completion or enrollment in an educational
15 or vocational training program, including apprenticeship programs; or
16 (viii) Certificate of completion or enrollment in a drug or
17 alcohol treatment program or in a rehabilitation program.

18 **Sec. 4.** RCW 59.18.030 and 2019 c 356 s 5, 2019 c 232 s 24, and
19 2019 c 23 s 1 are each reenacted and amended to read as follows:

20 As used in this chapter:

21 (1) "Active duty" means service authorized by the president of
22 the United States, the secretary of defense, or the governor for a
23 period of more than thirty consecutive days.

24 (2) "Certificate of inspection" means an unsworn statement,
25 declaration, verification, or certificate made in accordance with the
26 requirements of chapter 5.50 RCW by a qualified inspector that states
27 that the landlord has not failed to fulfill any substantial
28 obligation imposed under RCW 59.18.060 that endangers or impairs the
29 health or safety of a tenant, including (a) structural members that
30 are of insufficient size or strength to carry imposed loads with
31 safety, (b) exposure of the occupants to the weather, (c) plumbing
32 and sanitation defects that directly expose the occupants to the risk
33 of illness or injury, (d) not providing facilities adequate to supply
34 heat and water and hot water as reasonably required by the tenant,
35 (e) providing heating or ventilation systems that are not functional
36 or are hazardous, (f) defective, hazardous, or missing electrical
37 wiring or electrical service, (g) defective or hazardous exits that
38 increase the risk of injury to occupants, and (h) conditions that
39 increase the risk of fire.

1 (3) "Commercially reasonable manner," with respect to a sale of a
2 deceased tenant's personal property, means a sale where every aspect
3 of the sale, including the method, manner, time, place, and other
4 terms, must be commercially reasonable. If commercially reasonable, a
5 landlord may sell the tenant's property by public or private
6 proceedings, by one or more contracts, as a unit or in parcels, and
7 at any time and place and on any terms.

8 (4) "Comprehensive reusable tenant screening report" means a
9 tenant screening report prepared by a consumer reporting agency at
10 the direction of and paid for by the prospective tenant and made
11 available directly to a prospective landlord at no charge, which
12 contains all of the following: (a) A consumer credit report prepared
13 by a consumer reporting agency within the past thirty days; (b)
14 except as limited in section 3 of this act, the prospective tenant's
15 criminal history; (c) the prospective tenant's eviction history; (d)
16 an employment verification; and (e) the prospective tenant's address
17 and rental history.

18 (5) "Criminal history" means a report containing or summarizing
19 (a) the prospective tenant's criminal convictions and pending cases,
20 the final disposition of which antedates the report by no more than
21 seven years, and (b) the results of a sex offender registry and
22 United States department of the treasury's office of foreign assets
23 control search, all based on at least seven years of address history
24 and alias information provided by the prospective tenant or available
25 in the consumer credit report.

26 (6) "Designated person" means a person designated by the tenant
27 under RCW 59.18.590.

28 (7) "Distressed home" has the same meaning as in RCW 61.34.020.

29 (8) "Distressed home conveyance" has the same meaning as in RCW
30 61.34.020.

31 (9) "Distressed home purchaser" has the same meaning as in RCW
32 61.34.020.

33 (10) "Dwelling unit" is a structure or that part of a structure
34 which is used as a home, residence, or sleeping place by one person
35 or by two or more persons maintaining a common household, including
36 but not limited to single-family residences and units of multiplexes,
37 apartment buildings, and mobile homes.

38 (11) "Eviction history" means a report containing or summarizing
39 the contents of any records of unlawful detainer actions concerning
40 the prospective tenant that are reportable in accordance with state

1 law, are lawful for landlords to consider, and are obtained after a
2 search based on at least seven years of address history and alias
3 information provided by the prospective tenant or available in the
4 consumer credit report.

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

9 (13) "Gang-related activity" means any activity that occurs
10 within the gang or advances a gang purpose.

11 (14) "In danger of foreclosure" means any of the following:

12 (a) The homeowner has defaulted on the mortgage and, under the
13 terms of the mortgage, the mortgagee has the right to accelerate full
14 payment of the mortgage and repossess, sell, or cause to be sold the
15 property;

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

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

21 (i) The mortgagee;

22 (ii) A person licensed or required to be licensed under chapter
23 19.134 RCW;

24 (iii) A person licensed or required to be licensed under chapter
25 19.146 RCW;

26 (iv) A person licensed or required to be licensed under chapter
27 18.85 RCW;

28 (v) An attorney-at-law;

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

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

32 (15) "Landlord" means the owner, lessor, or sublessor of the
33 dwelling unit or the property of which it is a part, and in addition
34 means any person designated as representative of the owner, lessor,
35 or sublessor including, but not limited to, an agent, a resident
36 manager, or a designated property manager.

37 (16) "Mortgage" is used in the general sense and includes all
38 instruments, including deeds of trust, that are used to secure an
39 obligation by an interest in real property.

1 (17) "Orders" means written official military orders, or any
2 written notification, certification, or verification from the service
3 member's commanding officer, with respect to the service member's
4 current or future military status.

5 (18) "Owner" means one or more persons, jointly or severally, in
6 whom is vested:

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

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

10 (19) "Permanent change of station" means: (a) Transfer to a unit
11 located at another port or duty station; (b) change in a unit's home
12 port or permanent duty station; (c) call to active duty for a period
13 not less than ninety days; (d) separation; or (e) retirement.

14 (20) "Person" means an individual, group of individuals,
15 corporation, government, or governmental agency, business trust,
16 estate, trust, partnership, or association, two or more persons
17 having a joint or common interest, or any other legal or commercial
18 entity.

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

22 (22) "Property" or "rental property" means all dwelling units on
23 a contiguous quantity of land managed by the same landlord as a
24 single, rental complex.

25 (23) "Prospective landlord" means a landlord or a person who
26 advertises, solicits, offers, or otherwise holds a dwelling unit out
27 as available for rent.

28 (24) "Prospective tenant" means a tenant or a person who has
29 applied for residential housing that is governed under this chapter.

30 (25) "Qualified inspector" means a United States department of
31 housing and urban development certified inspector; a Washington state
32 licensed home inspector; an American society of home inspectors
33 certified inspector; a private inspector certified by the national
34 association of housing and redevelopment officials, the American
35 association of code enforcement, or other comparable professional
36 association as approved by the local municipality; a municipal code
37 enforcement officer; a Washington licensed structural engineer; or a
38 Washington licensed architect.

39 (26) "Reasonable attorneys' fees," where authorized in this
40 chapter, means an amount to be determined including the following

1 factors: The time and labor required, the novelty and difficulty of
2 the questions involved, the skill requisite to perform the legal
3 service properly, the fee customarily charged in the locality for
4 similar legal services, the amount involved and the results obtained,
5 and the experience, reputation and ability of the lawyer or lawyers
6 performing the services.

7 (27) "Reasonable manner," with respect to disposing of a deceased
8 tenant's personal property, means to dispose of the property by
9 donation to a not-for-profit charitable organization, by removal of
10 the property by a trash hauler or recycler, or by any other method
11 that is reasonable under the circumstances.

12 (28) "Rent" or "rental amount" means recurring and periodic
13 charges identified in the rental agreement for the use and occupancy
14 of the premises, which may include charges for utilities. Except as
15 provided in RCW 59.18.283(3), these terms do not include nonrecurring
16 charges for costs incurred due to late payment, damages, deposits,
17 legal costs, or other fees, including attorneys' fees.

18 (29) "Rental agreement" means all agreements which establish or
19 modify the terms, conditions, rules, regulations, or any other
20 provisions concerning the use and occupancy of a dwelling unit.

21 (30) "Service member" means an active member of the United States
22 armed forces, a member of a military reserve component, or a member
23 of the national guard who is either stationed in or a resident of
24 Washington state.

25 (31) A "single-family residence" is a structure maintained and
26 used as a single dwelling unit. Notwithstanding that a dwelling unit
27 shares one or more walls with another dwelling unit, it shall be
28 deemed a single-family residence if it has direct access to a street
29 and shares neither heating facilities nor hot water equipment, nor
30 any other essential facility or service, with any other dwelling
31 unit.

32 (32) A "tenant" is any person who is entitled to occupy a
33 dwelling unit primarily for living or dwelling purposes under a
34 rental agreement.

35 (33) "Tenant representative" means:

36 (a) A personal representative of a deceased tenant's estate if
37 known to the landlord;

38 (b) If the landlord has no knowledge that a personal
39 representative has been appointed for the deceased tenant's estate, a
40 person claiming to be a successor of the deceased tenant who has

1 provided the landlord with proof of death and an affidavit made by
2 the person that meets the requirements of RCW 11.62.010(2);

3 (c) In the absence of a personal representative under (a) of this
4 subsection or a person claiming to be a successor under (b) of this
5 subsection, a designated person; or

6 (d) In the absence of a personal representative under (a) of this
7 subsection, a person claiming to be a successor under (b) of this
8 subsection, or a designated person under (c) of this subsection, any
9 person who provides the landlord with reasonable evidence that he or
10 she is a successor of the deceased tenant as defined in RCW
11 11.62.005. The landlord has no obligation to identify all of the
12 deceased tenant's successors.

13 (34) "Tenant screening" means using a consumer report or other
14 information about a prospective tenant subject to section 3 of this
15 act in deciding whether to make or accept an offer for residential
16 rental property to or from a prospective tenant.

17 (35) "Tenant screening report" means a consumer report as defined
18 in RCW 19.182.010 and any other information collected by a tenant
19 screening service except as limited under section 3 of this act.

20 **Sec. 5.** RCW 59.18.257 and 2016 c 66 s 2 are each amended to read
21 as follows:

22 (1)(a) Prior to obtaining any information about a prospective
23 tenant and subject to section 3 of this act, the prospective landlord
24 shall first notify the prospective tenant in writing, or by posting,
25 of the following:

26 (i) What types of information will be accessed to conduct the
27 tenant screening;

28 (ii) What criteria may result in denial of the application;

29 (iii) If a consumer report is used, the name and address of the
30 consumer reporting agency and the prospective tenant's rights to
31 obtain a free copy of the consumer report in the event of a denial or
32 other adverse action, and to dispute the accuracy of information
33 appearing in the consumer report; and

34 (iv) Whether or not the landlord will accept a comprehensive
35 reusable tenant screening report made available to the landlord by a
36 consumer reporting agency. If the landlord indicates its willingness
37 to accept a comprehensive reusable tenant screening report, the
38 landlord may access the landlord's own tenant screening report

1 regarding a prospective tenant as long as the prospective tenant is
2 not charged for the landlord's own tenant screening report.

3 (b) (i) The landlord may charge a prospective tenant for costs
4 incurred in obtaining a tenant screening report only if the
5 prospective landlord provides the information as required in (a) of
6 this subsection.

7 (ii) If a prospective landlord conducts his or her own screening
8 of tenants, the prospective landlord may charge his or her actual
9 costs in obtaining the background information only if the prospective
10 landlord provides the information as required in (a) of this
11 subsection. The amount charged may not exceed the customary costs
12 charged by a screening service in the general area. The prospective
13 landlord's actual costs include costs incurred for long distance
14 phone calls and for time spent calling landlords, employers, and
15 financial institutions.

16 (c) If a prospective landlord takes an adverse action, the
17 prospective landlord shall provide a written notice of the adverse
18 action to the prospective tenant that states the reasons for the
19 adverse action. The adverse action notice must contain the following
20 information in a substantially similar format, including additional
21 information as may be required under chapter 19.182 RCW:

22 "ADVERSE ACTION NOTICE

23 Name

24 Address

25 City/State/Zip Code

26 This notice is to inform you that your application has been:

27 Rejected

28 Approved with conditions:

29 Residency requires an increased deposit

30 Residency requires a qualified guarantor

31 Residency requires last month's rent

32 Residency requires an increased monthly rent of \$.....

33 Other:

34 Adverse action on your application was based on the following:

35 Information contained in a consumer report (The prospective
36 landlord must include the name, address, and phone number of the
37 consumer reporting agency that furnished the consumer report that
38 contributed to the adverse action.)

1 The consumer credit report did not contain sufficient
2 information
3 Information received from previous rental history or reference
4 Information received in a criminal history record that relates
5 to a legitimate business reason as described in section 3 of this act
6 of the landlord (as described in this notice)
7 Information received in a civil record
8 Information received from an employment verification
9 Dated this day of,(year)
10 Agent/Owner Signature"

11 (2) Any landlord who maintains a web site advertising the rental
12 of a dwelling unit or as a source of information for current or
13 prospective tenants must include a statement on the property's home
14 page stating whether or not the landlord will accept a comprehensive
15 reusable tenant screening report made available to the landlord by a
16 consumer reporting agency. If the landlord indicates its willingness
17 to accept a comprehensive reusable tenant screening report, the
18 landlord may access the landlord's own tenant screening report
19 regarding a prospective tenant as long as the prospective tenant is
20 not charged for the landlord's own tenant screening report.

21 (3) Any landlord or prospective landlord who violates subsection
22 (1) of this section may be liable to the prospective tenant for an
23 amount not to exceed one hundred dollars. The prevailing party may
24 also recover court costs and reasonable attorneys' fees.

25 (4) This section does not limit a prospective tenant's rights or
26 the duties of a screening service as otherwise provided in chapter
27 19.182 RCW.

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