

2SSB 5160 - S AMD 235  
By Senator Kuderer

NOT ADOPTED 03/04/2021

1 On page 21, after line 12, insert the following:

2 "Sec. 15. RCW 59.18.410 and 2020 c 315 s 5 are each amended to  
3 read as follows:

4 (1) If at trial the verdict of the jury or, if the case is tried  
5 without a jury, the finding of the court is in favor of the landlord  
6 and against the tenant, judgment shall be entered for the restitution  
7 of the premises; and if the proceeding is for unlawful detainer after  
8 neglect or failure to perform any condition or covenant of a lease or  
9 agreement under which the property is held, or after default in the  
10 payment of rent, the judgment shall also declare the forfeiture of  
11 the lease, agreement, or tenancy. The jury, or the court, if the  
12 proceedings are tried without a jury, shall also assess the damages  
13 arising out of the tenancy occasioned to the landlord by any forcible  
14 entry, or by any forcible or unlawful detainer, alleged in the  
15 complaint and proved at trial, and, if the alleged unlawful detainer  
16 is based on default in the payment of rent, find the amount of any  
17 rent due, and the judgment shall be rendered against the tenant  
18 liable for the forcible entry, forcible detainer, or unlawful  
19 detainer for the amount of damages thus assessed, for the rent, if  
20 any, found due, and late fees if such fees are due under the lease  
21 and do not exceed seventy-five dollars in total. The court may award  
22 statutory costs. The court may also award reasonable attorneys' fees  
23 as provided in RCW 59.18.290.

24 (2) When the tenant is liable for unlawful detainer after a  
25 default in the payment of rent, execution upon the judgment shall not  
26 occur until the expiration of five court days after the entry of the  
27 judgment. Before entry of a judgment or until five court days have  
28 expired after entry of the judgment, the tenant or any subtenant, or  
29 any mortgagee of the term, or other party interested in the  
30 continuance of the tenancy, may pay into court or to the landlord the  
31 amount of the rent due, any court costs incurred at the time of  
32 payment, late fees if such fees are due under the lease and do not

1 exceed seventy-five dollars in total, and attorneys' fees if awarded,  
2 in which event any judgment entered shall be satisfied and the tenant  
3 restored to his or her tenancy. If the tenant seeks to restore his or  
4 her tenancy after entry of a judgment, the tenant may tender the  
5 amount stated within the judgment as long as that amount does not  
6 exceed the amount authorized under subsection (1) of this section. If  
7 a tenant seeks to restore his or her tenancy and pay the amount set  
8 forth in this subsection with funds acquired through an emergency  
9 rental assistance program provided by a governmental or nonprofit  
10 entity, the tenant shall provide a copy of the pledge of emergency  
11 rental assistance provided from the appropriate governmental or  
12 nonprofit entity and have an opportunity to exercise such rights  
13 under this subsection, which may include a stay of judgment and  
14 provision by the landlord of documentation necessary for processing  
15 the assistance. The landlord shall accept any pledge of emergency  
16 rental assistance funds provided to the tenant from a governmental or  
17 nonprofit entity before the expiration of any pay or vacate notice  
18 for nonpayment of rent for the full amount of the rent owing under  
19 the rental agreement. The landlord shall accept any written pledge of  
20 emergency rental assistance funds provided to the tenant from a  
21 governmental or nonprofit entity after the expiration of the pay or  
22 vacate notice if the pledge will contribute to the total payment of  
23 both the amount of rent due, including any current rent, and other  
24 amounts if required under this subsection. The landlord shall suspend  
25 any court action for seven court days after providing necessary  
26 payment information to the nonprofit or governmental entity to allow  
27 for payment of the emergency rental assistance funds. By accepting  
28 such pledge of emergency rental assistance, the landlord is not  
29 required to enter into any additional conditions not related to the  
30 provision of necessary payment information and documentation. If a  
31 judgment has been satisfied, the landlord shall file a satisfaction  
32 of judgment with the court. A tenant seeking to exercise rights under  
33 this subsection shall pay an additional fifty dollars for each time  
34 the tenant was reinstated after judgment pursuant to this subsection  
35 within the previous twelve months prior to payment. If payment of the  
36 amount specified in this subsection is not made within five court  
37 days after the entry of the judgment, the judgment may be enforced  
38 for its full amount and for the possession of the premises.

39 (3) (a) Following the entry of a judgment in favor of the landlord  
40 and against the tenant for the restitution of the premises and

1 forfeiture of the tenancy due to nonpayment of rent, the court, at  
2 the time of the show cause hearing or trial, or upon subsequent  
3 motion of the tenant but before the execution of the writ of  
4 restitution, may stay the writ of restitution upon good cause and on  
5 such terms that the court deems fair and just for both parties. In  
6 making this decision, the court shall consider evidence of the  
7 following factors:

8 (i) The tenant's willful or intentional default or intentional  
9 failure to pay rent;

10 (ii) Whether nonpayment of the rent was caused by exigent  
11 circumstances that were beyond the tenant's control and that are not  
12 likely to recur;

13 (iii) The tenant's ability to timely pay the judgment;

14 (iv) The tenant's payment history;

15 (v) Whether the tenant is otherwise in substantial compliance  
16 with the rental agreement;

17 (vi) Hardship on the tenant if evicted; and

18 (vii) Conduct related to other notices served within the last six  
19 months.

20 (b) The burden of proof for such relief under this subsection (3)  
21 shall be on the tenant. If the tenant seeks relief pursuant to this  
22 subsection (3) at the time of the show cause hearing, the court shall  
23 hear the matter at the time of the show cause hearing or as  
24 expeditiously as possible so as to avoid unnecessary delay or  
25 hardship on the parties.

26 (c) In any order issued pursuant to this subsection (3):

27 (i) The court shall not stay the writ of restitution more than  
28 ninety days from the date of order, but may order repayment of the  
29 judgment balance within such time. If the payment plan is to exceed  
30 thirty days, the total cumulative payments for each thirty-day period  
31 following the order shall be no less than one month of the tenant's  
32 share of the rent, and the total amount of the judgment and all  
33 additional rent that is due shall be paid within ninety days.

34 (ii) Within any payment plan ordered by the court, the court  
35 shall require the tenant to pay to the landlord or to the court one  
36 month's rent within five court days of issuance of the order. If the  
37 date of the order is on or before the fifteenth of the month, the  
38 tenant shall remain current with ongoing rental payments as they  
39 become due for the duration of the payment plan; if the date of the  
40 order is after the fifteenth of the month, the tenant shall have the

1 option to apportion the following month's rental payment within the  
2 payment plan, but monthly rental payments thereafter shall be paid  
3 according to the rental agreement.

4 (iii) The sheriff may serve the writ of restitution upon the  
5 tenant before the expiration of the five court days of issuance of  
6 the order; however, the sheriff shall not execute the writ of  
7 restitution until after expiration of the five court days in order  
8 for payment to be made of one month's rent as required by (c)(ii) of  
9 this subsection. In the event payment is made as provided in (c)(ii)  
10 of this subsection for one month's rent, the court shall stay the  
11 writ of restitution ex parte without prior notice to the landlord  
12 upon the tenant filing and presenting a motion to stay with a  
13 declaration of proof of payment demonstrating full compliance with  
14 the required payment of one month's rent. Any order staying the writ  
15 of restitution under this subsection (3)(c)(iii) shall require the  
16 tenant to serve a copy of the order on the landlord by personal  
17 delivery, first-class mail, facsimile, or email if agreed to by the  
18 parties.

19 (A) If the tenant has satisfied (c)(ii) of this subsection by  
20 paying one month's rent within five court days, but defaults on a  
21 subsequent payment required by the court pursuant to this subsection  
22 (3)(c), the landlord may enforce the writ of restitution after  
23 serving a notice of default in accordance with RCW 59.12.040  
24 informing the tenant that he or she has defaulted on rent due under  
25 the lease agreement or payment plan entered by the court. Upon  
26 service of the notice of default, the tenant shall have three  
27 calendar days from the date of service to vacate the premises before  
28 the sheriff may execute the writ of restitution.

29 (B) If the landlord serves the notice of default described under  
30 this subsection (3)(c)(iii), an additional day is not included in  
31 calculating the time before the sheriff may execute the writ of  
32 restitution. The notice of default must be in substantially the  
33 following form:

34 NOTICE OF DEFAULT FOR RENT AND/OR PAYMENT PLAN ORDERED BY COURT

35 NAME(S)

36 ADDRESS

37 CITY, STATE, ZIP

1 THIS IS NOTICE THAT YOU ARE IN DEFAULT OF YOUR RENT AND/OR  
2 PAYMENT PLAN ORDERED BY THE COURT. YOUR LANDLORD HAS RECEIVED THE  
3 FOLLOWING PAYMENTS:

4 DATE  
5 AMOUNT  
6 DATE  
7 AMOUNT  
8 DATE  
9 AMOUNT

10 THE LANDLORD MAY SCHEDULE YOUR PHYSICAL EVICTION WITHIN THREE  
11 CALENDAR DAYS OF SERVICE OF THIS NOTICE. TO STOP A PHYSICAL  
12 EVICTION, YOU ARE REQUIRED TO PAY THE BALANCE OF YOUR RENT AND/OR  
13 PAYMENT PLAN IN THE AMOUNT OF \$. . . . .  
14 PAYMENT MAY BE MADE TO THE COURT OR TO THE LANDLORD. IF YOU FAIL  
15 TO PAY THE BALANCE WITHIN THREE CALENDAR DAYS, THE LANDLORD MAY  
16 PROCEED WITH A PHYSICAL EVICTION FOR POSSESSION OF THE UNIT THAT  
17 YOU ARE RENTING.

18 DATE  
19 SIGNATURE  
20 LANDLORD/AGENT  
21 NAME  
22 ADDRESS  
23 PHONE

24 (iv) If a tenant seeks to satisfy a condition of this subsection  
25 (3)(c) by relying on an emergency rental assistance program provided  
26 by a government or nonprofit entity and provides an offer of proof,  
27 the court shall stay the writ of restitution as necessary to afford  
28 the tenant an equal opportunity to comply.

29 (v) The court shall extend the writ of restitution as necessary  
30 to enforce the order issued pursuant to this subsection (3)(c) in the  
31 event of default.

32 (d) ((A)) Beginning July 1, 2023, a tenant who has been served  
33 with three or more notices to pay or vacate for failure to pay rent  
34 as set forth in RCW 59.12.040 within twelve months prior to the  
35 notice to pay or vacate upon which the proceeding is based may not  
36 seek relief under this subsection (3).

37 (e)(i) In any application seeking relief pursuant to this  
38 subsection (3) by either the tenant or landlord, the court shall

1 issue a finding as to whether the tenant is low-income, limited  
2 resourced, or experiencing hardship to determine if the parties would  
3 be eligible for disbursement through the landlord mitigation program  
4 account established within RCW 43.31.605(1)(c). In making this  
5 finding, the court may include an inquiry regarding the tenant's  
6 income relative to area median income, household composition, any  
7 extenuating circumstances, or other factors, and may rely on written  
8 declarations or oral testimony by the parties at the hearing.

9 (ii) After a finding that the tenant is low-income, limited  
10 resourced, or experiencing hardship, the court may issue an order:

11 (A) Finding that the landlord is eligible to receive on behalf of the  
12 tenant and may apply for reimbursement from the landlord mitigation  
13 program; and (B) directing the clerk to remit, without further order  
14 of the court, any future payments made by the tenant in order to  
15 reimburse the department of commerce pursuant to RCW  
16 43.31.605(1)(c)(iii). In accordance with RCW 43.31.605(1)(c), such an  
17 order must be accompanied by a copy of the order staying the writ of  
18 restitution. Nothing in this subsection (3)(e) shall be deemed to  
19 obligate the department of commerce to provide assistance in claim  
20 reimbursement through the landlord mitigation program if there are  
21 not sufficient funds.

22 (iii) If the department of commerce fails to disburse payment to  
23 the landlord for the judgment pursuant to this subsection (3)(e)  
24 within thirty days from submission of the application, the landlord  
25 may renew an application for a writ of restitution pursuant to RCW  
26 59.18.370 and for other rent owed by the tenant since the time of  
27 entry of the prior judgment. In such event, the tenant may exercise  
28 rights afforded under this section.

29 (iv) Upon payment by the department of commerce to the landlord  
30 for the remaining or total amount of the judgment, as applicable, the  
31 judgment is satisfied and the landlord shall file a satisfaction of  
32 judgment with the court.

33 (v) Nothing in this subsection (3)(e) prohibits the landlord from  
34 otherwise applying for reimbursement for an unpaid judgment pursuant  
35 to RCW 43.31.605(1)(c) after the tenant defaults on a payment plan  
36 ordered pursuant to (c) of this subsection.

37 (4) If a tenant seeks to stay a writ of restitution issued  
38 pursuant to this chapter, the court may issue an ex parte stay of the  
39 writ of restitution provided the tenant or tenant's attorney submits  
40 a declaration indicating good faith efforts were made to notify the

1 other party or, if no efforts were made, why notice could not be  
2 provided prior to the application for an ex parte stay, and  
3 describing the immediate or irreparable harm that may result if an  
4 immediate stay is not granted. The court shall require service of the  
5 order and motion to stay the writ of restitution by personal  
6 delivery, mail, facsimile, or other means most likely to afford all  
7 parties notice of the court date.

8 (5) In all other cases the judgment may be enforced immediately.  
9 If a writ of restitution shall have been executed prior to judgment  
10 no further writ or execution for the premises shall be required.

11 (6) This section also applies if the writ of restitution is  
12 issued pursuant to a final judgment entered after a show cause  
13 hearing conducted in accordance with RCW 59.18.380."

14 Renumber the remaining sections consecutively and correct any  
15 internal references accordingly.

**2SSB 5160** - S AMD **235**  
By Senator Kuderer

**NOT ADOPTED 03/04/2021**

16 On page 1, line 7 of the title, after "59.12.040," insert  
17 "59.18.410,"

EFFECT: Suspends the prohibition on use of judicial discretion  
when a tenant is served three or more pay or vacate notices in a 12-  
month period until July 1, 2023.

--- END ---