

HOUSE BILL REPORT

HB 1388

As Reported by House Committee On:

Housing

Title: An act relating to protecting tenants by prohibiting predatory residential rent practices and by applying the consumer protection act to the residential landlord-tenant act and the manufactured/mobile home landlord-tenant act.

Brief Description: Protecting tenants by prohibiting predatory residential rent practices and by applying the consumer protection act to the residential landlord-tenant act and the manufactured/mobile home landlord-tenant act.

Sponsors: Representatives Macri, Ramel, Peterson, Thai, Gregerson, Hackney, Ormsby, Alvarado, Doglio, Cortes, Riccelli, Mena, Kloba, Bateman, Fitzgibbon, Street, Taylor, Lekanoff, Simmons, Farivar, Pollet, Stonier, Berry, Reed, Bergquist, Morgan, Davis, Santos, Chopp, Stearns and Fosse.

Brief History:

Committee Activity:

Housing: 1/24/23, 2/9/23 [DPS].

Brief Summary of Substitute Bill

- Prohibits, with certain exceptions, a landlord subject to the Residential Landlord-Tenant Act or the Manufactured/Mobile Home Landlord-Tenant Act from charging excessive rent; charging a higher rent or including terms of payment or other material conditions in a rental agreement that are more burdensome to a tenant based on whether the tenancy is month-to-month or longer term; and charging move-in fees and deposits that exceed one month's rent.

HOUSE COMMITTEE ON HOUSING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Signed by 7 members: Representatives Peterson, Chair; Alvarado, Vice Chair; Bateman, Chopp, Entenman, Reed and Taylor.

Minority Report: Do not pass. Signed by 6 members: Representatives Leavitt, Vice Chair; Klicker, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Barkis, Hutchins and Low.

Staff: Audrey Vasek (786-7383).

Background:

Residential Landlord-Tenant Act.

The Residential Landlord-Tenant Act (RLTA) regulates the relationship between landlords and tenants, and includes provisions regarding the duties of tenants and landlords, remedies for violations of those duties, and prohibited actions.

Manufactured/Mobile Home Landlord-Tenant Act.

The Manufactured/Mobile Home Landlord-Tenant Act (MHLTA) governs the legal rights, remedies, and obligations arising from any rental agreement between a landlord and a tenant regarding a mobile home lot within a mobile home park where the tenant has no ownership interest in the property or in the association that owns the property.

Consumer Protection Act.

The Consumer Protection Act (CPA) prohibits: unfair or deceptive acts or practices in trade or commerce; the formation of contracts, combinations, and conspiracies in restraint of trade or commerce; and monopolies. A person injured by a violation of the CPA may bring a civil action to enjoin further violations and recover actual damages, costs, and attorneys' fees.

The Attorney General (AG) may bring an action in the name of the state, or on behalf of persons residing in the state, against any person to enjoin violations of the CPA and obtain restitution. The AG may seek civil penalties up to the statutorily authorized maximums against any person who violates the CPA. Civil penalties are paid to the state.

Summary of Substitute Bill:

Prohibited Practices.

A landlord subject to the RLTA or the MHLTA is prohibited, with certain exceptions, from renting or seeking to rent a dwelling unit at an excessive rent if such rent increase is beyond the amount reasonably necessary to maintain or improve the dwelling unit and is:

- substantially likely to cause the tenant or household to move or involuntarily relocate from the home; or
- used as a means to avoid other protections afforded to tenants under the RLTA, the

MHLTA, or any other applicable law.

"Excessive rent" means a rent increase during any 12-month period that is greater than the rate of inflation as measured by the consumer price index or 3 percent, whichever is greater, up to a maximum of 7 percent above the existing rent, as required to be calculated and published by the Department of Commerce beginning on September 30, 2023, and on each following September 30th. The "rate of inflation as measured by consumer price index" means the September-to-September 12-month percent change in the Consumer Price Index for all Urban Consumers (CPI-U), West Region, as published each September by the United States Department of Labor, Bureau of Labor Statistics.

A landlord subject to the RLTA or the MHLTA is also prohibited from:

- charging a higher rent or including terms of payment or other material conditions in a rental agreement that are more burdensome to a tenant based on whether the tenancy is month-to-month or longer term; and
- charging a tenant move-in fees or security deposits that exceed one month's rent.

Exceptions.

The prohibitions do not apply to a tenancy in a federally funded property owned or operated by a public housing authority, or a tenancy in a property that is funded through a state housing assistance program. Additionally, for tenancies subject to the RLTA, the prohibitions do not apply to a tenancy in a dwelling unit for which the first certificate of occupancy was issued 12 or less years before the notice of the rent increase.

Investigations.

The AG may investigate prohibited practices. When investigating, the AG may consider, in addition to any other relevant information, the condition of the dwelling unit; whether a rent increase, move-in fee, security deposit, term of payment, or other material condition in the lease was used to evade tenant protections under the RLTA, MHLTA, or any other source of legal rights; and whether a rent increase will force the tenant or household to move or involuntarily relocate from the home.

Enforcement and Remedies.

The AG may issue a cease and desist letter to prevent prohibited practices, and may file an action in Superior Court to enforce the cease and desist letter if the recipient of the letter does not comply within five calendar days of receipt of the letter. If the court finds that a person engaged in prohibited practices and failed to comply with a cease and desist letter, the court must enjoin the person from engaging in prohibited practices and impose a civil penalty of no more than \$10,000, in addition to other remedies, per violation of the cease and desist letter. The AG may bring an action in Superior Court for violations of these prohibitions. In any successful action, the court must impose a civil penalty of no more than \$25,000 per violation.

In any successful action to enforce a cease and desist letter or bring an action for violations

of these prohibitions, the court must award the AG the costs of bringing the action, including reasonable investigative costs and attorneys' fees, plus damages and restitution for any persons harmed by the violation. These remedies are in addition to, and are not prerequisites for, any other remedies a court may order under private actions that tenants bring against their landlords for violations of these prohibitions.

Additional civil penalties may not be assessed for the same violation under the CPA.

A tenant whose landlord engages in prohibited practices may bring an action against the landlord to recover actual damages in the amount of the excess rent or charges paid, mandatory punitive damages equal to three months of the unlawful higher rent or charges, and reasonable attorneys' fees and costs incurred in bringing the action. These remedies are in addition to any other legal remedies.

Additional Protections.

A landlord may not report a tenant to a tenant screening service provider for failure to pay excessive rent.

It is a defense to an eviction action that the eviction is for nonpayment of an excessive rent increase.

Translations of Prohibitions.

By January 1, 2024, the AG must produce and maintain translated versions of the statutes containing the prohibited practices on its website in the 10 languages most frequently spoken in the state. A translation must be made available upon request in printed form.

Application of the Consumer Protection Act.

A violation of the RLTA or the MHLTA by a landlord is an unfair or deceptive act in trade or commerce for the purpose of applying the CPA.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

- removes references to "predatory" such that the bill refers to prohibited practices rather than prohibited predatory practices;
- revises the prohibition on excessive rent increases such that a landlord may not rent or seek to rent a dwelling unit at an excessive rent, if such rent increase is beyond the amount reasonably necessary to maintain or improve the dwelling unit and is: (1) substantially likely to cause the tenant or household to move or involuntarily relocate from the home; or (2) used as a means to avoid other protections afforded to tenants under the RLTA, the MHLTA, or any other applicable law;
- revises the prohibition on charging move-in fees or security deposits that exceed one month's rent such that the language regarding the timing of the charge ("before a tenant takes possession of a dwelling unit") is removed;

- revises the exemption for tenancies in new buildings such that the exemption applies to tenancies in dwelling units for which the first certificates of occupancy were issued 12 or less years, instead of 10 or less years, before the date of the notice of the rent increase;
 - revises the provisions related to the AG's investigation authority to clarify the types of civil investigative demands that the AG may issue; and
 - revises the provisions related to the AG's enforcement authority to clarify that the enforcement authority for the cease and desist letter is separate from the general enforcement authority for the bill, and to clarify that the AG's enforcement is not a prerequisite for a tenant to bring a private action against a landlord.
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Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) Washington state is in a housing crisis. The solution to this crisis has to be multifaceted. Subsidized housing is a critical part of the solution but on its own will not be able to meet the need for housing at the scale and urgency required. Rent stabilization has to be part of the solution.

Every average \$100 rent increase in a community leads to an increase in homelessness in the community. Rent increases often mean that people have to leave the community, and that's a loss to the community and to their employers. Rent increases are unpredictable and destabilizing. In 1985, the Washington State Supreme Court ruled that landlords are exempt from suit under the CPA. This means that tenants have no consumer protection when there is an unfair rent hike.

Washington tenants have been suffering since there have been no restrictions on rent. Landlords can use rent increases as weapons. Some landlords use rent increases to evict tenants when they don't have just cause to evict. Some rent increases are in retaliation for asking for repairs.

Rent increases are one of the most common reasons why tenants call statewide tenant hotlines. Huge rent increases result in economic eviction for low-income tenants. It is hard to address the impact of staggering rent increases, and the impact is worse where the natural elements are harsher on homeless people. Some tenants have experienced rent increases that add up to over \$1,000 per month over the course of less than a year, and some people are now homeless because of rent increases. Some people have lost family members who

passed away shortly after experiencing homelessness.

For those on fixed incomes, rent increases can be a disaster. Some people with fixed incomes living in manufactured homes bought their homes for hundreds of thousands of dollars in cash but do not own the land their homes are on. If the rents for their lots go up, they are at risk of losing the equity in their homes and will have to move. Sometimes out-of-state corporations own these properties and are raising the rents.

Rent stabilization is a controversial topic, but the status quo protects those with wealth and power. Rent stabilization is the only way to let people of all income levels keep roots in their communities. Rent stabilization allows tenants to save money to eventually buy a home. If a tenant can't afford their rent, they won't be able to save up to purchase a home.

Tenants need protection from rent gouging that displaces tenants from communities for profits. These bills will relieve suffering and save lives.

(Opposed) Rent control is not the solution to the problem. Rent control kills housing. This bill will discourage production of housing supply and discourage capital from coming to Washington and building homes. A study by ECONorthwest found that rent control in Washington could reduce investment in housing by \$3.5 billion in economic activity over 10 years. The Legislature should focus on empirically based solutions for the housing crisis. The best protection for tenants is a 10 percent vacancy rate. Washington needs to add more housing providers to the market.

Rent control means that people will be not willing to pay as much for housing developments, which means that financing new development becomes less attractive. Typically, only 30-40 percent of the funding for a project is the developer's money. The rest of the funding is financed from the banks. Underwriting models consider the impact to future rents. Lenders tell developers what the debt coverage ratios are.

When rent increases go up by a lot it is concerning, but all the other costs have gone up as well. For the past two years, landlords couldn't raise the rent and couldn't keep up with the costs of insurance, taxes, and everything else going up. Rent increases provide money for essential improvements to the unit. Rent increases are also needed to pay staff livable wages. Unless the Legislature also caps increases for other goods and services, it won't work to cap the rent for housing because those other costs will keep rising and make housing providers unable to continue.

By having the state determine a set percentage by which landlords can raise the rent, landlords won't be able to continue to invest in their properties. Private housing is private business and nothing is free. These rent control regulations will force small landlords to stop renting. Small mom and pop providers will have to sell to larger property management companies, which will displace tenants. Studies in San Francisco have shown that with rent control, tenants were less able to find housing because housing was more scarce, which

made housing more expensive.

Bad actors are concerning, but they are such a small percentage of the market. This bill will take income away from small landlords that don't have much money. Landlords are not all rich white men. Some landlords are single moms who rely on \$1,500 rent checks. This bill is like using a sledgehammer to swat a fly. A more targeted approach that focuses on bad actors who are charging 100 percent rent increases or engaging in egregious behavior would be better.

Some landlords are actually decreasing rents, and some landlords actually charge less than or only a hundred dollars more than the mortgage on their units. Month-to-month leases have a lot of uncertainty, so that's why landlords need to be able to charge more for month-to-month leases than for longer term leases.

There are also objections to subjecting all violations of the RLTA and MHLTA to the CPA. This bill has language that requires consideration of the status of the tenant, which is not an objective standard. Recent changes to the law have made it impossible to address issues with noncompliant tenants. It is confusing how the CPA will interact with all the other regulations in place.

Persons Testifying: (In support) Representative Nicole Macri, prime sponsor; Devin Glaser, Tenant Law Center; Stacey Valenzuela; Kimberly Ellefson; Anne Sadler, Association of Manufactured Home Owners; Clifford Cawthon, Habitat for Humanity Seattle- King and Kittias; Terri Anderson, Tenants Union of Washington State; Sarah Nagy, Columbia Legal Services; Guillermo Rivera, Eastside for All; Aaron Johnson, BIPOC Apostrophe Foundation; Me Shah; Jeff Campbell; Robin Zorich; Michele Thomas, Washington Low Income Housing Alliance; and Po Leapai.

(Opposed) Chester Baldwin, Rental Housing Coalition; McKenzie Darr, NAIOP; Patricia Hoendermis, Yakima Valley Landlords Association; Bill Riley, Vista Property Management; Nelya Calev; Mike Hoover, Detente Management; Mary Hull-Drury, Washington Realtors; Mike Ennis, Association of Washington Business; Jacob Arntson; and Chelsy Parris and Sarah Hughes, Dobler Management Company.

Persons Signed In To Testify But Not Testifying: More than 20 persons signed in. Please see committee staff for information.