

provision would have the effect of prohibiting the use of the veto power wherever such language appeared. The veto power of the Governor is based in, and authorized by, the State Constitution. To suggest that this language, adopted by a majority vote, could prohibit the exercise of a constitutionally granted power is to suggest that the legislature can amend the Constitution by a majority vote, rather than two-thirds vote, and without referring such amendment to the people. Inasmuch as section 17 is so clearly unconstitutional, and as such is superfluous and constitutes only extra verbiage, I have determined to veto it.

With the exception of section 17, which I have vetoed for the reasons set out above, the remainder of Senate Bill No. 2183 is approved."

CHAPTER 207
[Engrossed Substitute Senate Bill No. 2226]
RESIDENTIAL LANDLORD-TENANT
ACT OF 1973

AN ACT Relating to the lease and rental of property; creating a new chapter in Title 59 RCW; and creating new sections.

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

NEW SECTION. Section 1. Sections 1 through 42 and 46 of this 1973 amendatory act shall be known and may be cited as the "Residential Landlord-Tenant Act of 1973", and shall constitute a new chapter in Title 59 RCW.

NEW SECTION. Sec. 2. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

NEW SECTION. Sec. 3. As used in this chapter:

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

(2) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the landlord.

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

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

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

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

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

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

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

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

(9) "Reasonable attorney's fees", where authorized in this chapter, means an amount to be determined including the following factors: The time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly, the fee customarily charged in the locality for similar legal services, the amount involved and the results obtained, and the experience, reputation and ability of the lawyer or lawyers performing the services.

NEW SECTION. Sec. 4. The following living arrangements are not intended to be governed by the provisions of this chapter, unless established primarily to avoid its application, in which event the provisions of this chapter shall control:

(1) Residence at an institution, whether public or private, where residence is merely incidental to detention or the provision of medical, religious, educational, recreational, or similar services, including but not limited to correctional facilities, licensed nursing homes, monasteries and convents, and hospitals;

(2) Occupancy under a bona fide earnest money agreement to purchase, bona fide option to purchase, or contract of sale of the

dwelling unit or the property of which it is a part, where the tenant is, or stands in the place of, the purchaser;

(3) Residence in a hotel, motel, or other transient lodging whose operation is defined in RCW 19.48.010;

(4) Rental agreements entered into pursuant to the provisions of chapter 47.12 RCW where occupancy is by an owner-condemnee and where such agreement does not violate the public policy of this state of ensuring decent, safe, and sanitary housing and is so certified by the consumer protection division of the attorney general's office;

(5) Rental agreements for the use of any single family residence which are incidental to leases or rentals entered into in connection with a lease of land to be used primarily for agricultural purposes;

(6) Rental agreements providing housing for seasonal agricultural employees while provided in conjunction with such employment;

(7) Rental agreements with the state of Washington, department of natural resources, on public lands governed by Title 79 RCW;

(8) Occupancy by an employee of a landlord whose right to occupy is conditioned upon employment in or about the premises.

NEW SECTION. Sec. 5. The district or superior courts of this state may exercise jurisdiction over any landlord or tenant with respect to any conduct in this state governed by this chapter or with respect to any claim arising from a transaction subject to this chapter within the respective jurisdictions of the district or superior courts as provided in Article IV, section 6 of the constitution of the state of Washington.

NEW SECTION. Sec. 6. The landlord will at all times during the tenancy keep the premises fit for human habitation, and shall in particular:

(1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented if such condition substantially endangers or V- [impairs the health or safety of the tenant];

(2) Maintain the roofs, floors, walls, chimneys, fireplaces, foundations, and all other structural components in reasonably good repair so as to be usable and capable of resisting any and all normal forces and loads to which they may be subjected;

(3) Keep any shared or common areas reasonably clean, sanitary, and safe from defects increasing the hazards of fire or accident;

(4) Provide a reasonable program for the control of infestation by insects, rodents, and other pests at the initiation of

the tenancy and, except in the case of a single family residence, control infestation during tenancy except where such infestation is caused by the tenant;

(5) Except where the condition is attributable to normal wear and tear, make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the commencement of the tenancy;

(6) Provide reasonably adequate locks and furnish keys to the tenant;

(7) Maintain all electrical, plumbing, heating, and other facilities and appliances supplied by him in reasonably good working order;

(8) Maintain the dwelling unit in reasonably weathertight condition;

(9) Except in the case of a single family residence, provide and maintain appropriate receptacles in common areas for the removal of ashes, rubbish, and garbage, incidental to the occupancy and arrange for the reasonable and regular removal of such waste;

(10) Except where the building is not equipped for the purpose, provide facilities adequate to supply heat and water and hot water as reasonably required by the tenant;

(11) Designate to the tenant the name and address of the person who is the landlord by a statement on the rental agreement or by a notice conspicuously posted on the premises. The tenant shall be notified immediately of any changes by certified mail or by an updated posting. If the person designated in this section does not reside in the state where the premises are located, there shall also be designated a person who resides in the county who is authorized to act as an agent for the purposes of service of notices and process, and if no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered such agent.

No duty shall devolve upon the landlord to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, where the defective condition complained of was caused by the conduct of such tenant, his family, invitee, or other person acting under his control, or where a tenant unreasonably fails to allow the landlord access to the property for purposes of repair. When the duty imposed by subsection (1) of this section is incompatible with and greater than the duty imposed by any other provisions of this section, the landlord's duty shall be determined pursuant to subsection (1) of this section.

NEW SECTION. Sec. 7. If at any time during the tenancy the landlord fails to carry out the duties required by section 6 of this 1973 amendatory act, the tenant may, in addition to pursuit of

remedies otherwise provided him by law, deliver written notice to the person designated in subsection (11) of section 6 of this 1973 amendatory act, or to the person who collects the rent, which notice shall specify the premises involved, the name of the owner, if known, and the nature of the defective condition. For the purposes of this chapter, a reasonable time for the landlord to commence remedial action after receipt of such notice by the tenant shall be, except where circumstances are beyond the landlord's control;

(1) Not more than twenty-four hours, where the defective condition deprives the tenant of water or heat or is imminently hazardous to life;

(2) Not more than forty-eight hours, where the landlord fails to provide hot water or electricity;

(3) Subject to the provisions of subsections (1) and (2) of this section, not more than seven days in the case of a repair under section 10 (3) of this 1973 amendatory act;

(4) Not more than thirty days in all other cases.

In each instance the burden shall be on the landlord to see that remedial work under this section is completed with reasonable promptness.

V- [Where circumstances beyond the landlord's control, including the availability of financing, prevent him from complying with the time limitations set forth in this section, he shall endeavor to remedy the defective condition with all reasonable speed.

V- [NEW SECTION. Sec. 8. The tenant shall be current in the payment of rent [including all utilities which the tenant has agreed in the rental agreement to pay] before exercising any of the remedies accorded him under the provisions of this chapter: PROVIDED, That this section shall not be construed as limiting the tenant's civil remedies for negligent or intentional damages: PROVIDED FURTHER, That this section shall not be construed as limiting the tenant's right in an unlawful detainer proceeding to raise the defense that there is no rent due and owing.

NEW SECTION. Sec. 9. If, after receipt of written notice, and expiration of the applicable period of time, as provided in section 7 of this 1973 amendatory act, the landlord fails to remedy the defective condition within a reasonable time the tenant may:

(1) Terminate the rental agreement and quit the premises upon written notice to the landlord without further obligation under the rental agreement, in which case he shall be discharged from payment of rent for any period following the quitting date, and shall be entitled to a pro rata refund of any prepaid rent, and shall receive a full and specific statement of the basis for retaining any of the deposit together with any refund due in accordance with section 28 of this 1973 amendatory act;

(2) Bring an action in an appropriate court, or at arbitration if so agreed, for any remedy provided under this chapter or otherwise provided by law; or

(3) Pursue other remedies available under this chapter.

NEW SECTION. Sec. 10. (1) If at any time during the tenancy, the landlord fails to carry out any of the duties imposed by section 6 of this 1973 amendatory act, and notice of the defect is given to the landlord pursuant to section 7 of this 1973 amendatory act, the tenant may submit to the landlord or his designated agent by certified mail or in person at least two bids to perform the repairs necessary to correct the defective condition from licensed or registered persons, or if no licensing or registration requirement applies to the type of work to be performed, from responsible persons capable of performing such repairs. Such bids may be submitted to the landlord at the same time as notice is given pursuant to section 7 of this 1973 amendatory act: PROVIDED, That the remedy provided in this section shall not be available for a landlord's failure to carry out the duties in subsections (6), (9), and (11) of section 6 of this 1973 amendatory act.

(2) If the landlord fails to commence repair of the defective condition within a reasonable time after receipt of notice from the tenant, the tenant may contract with the person submitting the lowest bid to make the repair, and upon the completion of the repair and an opportunity for inspection by the landlord or his designated agent, the tenant may deduct the cost of repair from the rent in an amount not to exceed the sum expressed in dollars representing one month's rental of the tenant's unit in any twelve-month period: PROVIDED, That when the landlord must commence to remedy the defective condition within thirty days as provided in subsection (4) of section 7 of this 1973 amendatory act, the tenant cannot contract for repairs for at least fifteen days following receipt of said bids by the landlord: PROVIDED FURTHER, That the total costs of repairs deducted in any twelve-month period under this subsection shall not exceed the sum expressed in dollars representing one month's rental of the tenant's unit.

(3) If the landlord fails to carry out the duties imposed by section 6 of this 1973 amendatory act within a reasonable time, and if the cost of repair does not exceed one-half month's rent, including the cost of materials and labor, which shall be computed at the prevailing rate in the community for the performance of such work, and if repair of the condition need not by law be performed only by licensed or registered persons, the tenant may repair the defective condition in a workmanlike manner and upon completion of the repair and an opportunity for inspection, the tenant may deduct the cost of repair from the rent: PROVIDED, That repairs under this

subsection are limited to defects within the leased premises: PROVIDED FURTHER, That the total costs of repairs deducted in any twelve-month period under this subsection shall not exceed one-half month's rent of the unit or seventy-five dollars in any twelve-month period, whichever is the lesser.

(4) The provisions of this section shall not:

(a) Create a relationship of employer and employee between landlord and tenant; or

(b) Create liability under the workmen's compensation act; or

(c) Constitute the tenant as an agent of the landlord for the purposes of RCW 60.04.010 and 60.04.040.

(5) Any repair work performed under the provisions of this section shall comply with the requirements imposed by any applicable code, statute, ordinance, or regulation. A landlord whose property is damaged because of repairs performed in a negligent manner may recover the actual damages in an action against the tenant.

(6) Nothing in this section shall prevent the tenant from agreeing with the landlord to undertake the repairs himself in return for cash payment or a reasonable reduction in rent, the agreement thereof to be agreed upon between the parties, and such agreement does not alter the landlord's obligations under this chapter.

NEW SECTION. Sec. 11. (1) If a court or an arbitrator determines that:

(a) A landlord has failed to carry out a duty or duties imposed by section 6 of this 1973 amendatory act; and

(b) A reasonable time has passed for the landlord to remedy the defective condition following notice to the landlord in accordance with section 7 of this 1973 amendatory act or such other time as may be allotted by the court or arbitrator; the court or arbitrator may determine the diminution in rental value of the premises due to the defective condition and shall render judgment against the landlord for the rent paid in excess of such diminished rental value from the time of notice of such defect to the time of decision and any costs of repair done pursuant to section 10 of this 1973 amendatory act for which no deduction has been previously made. Such decisions may be enforced as other judgments at law and shall be available to the tenant as a set-off against any existing or subsequent claims of the landlord.

The court or arbitrator may also authorize the tenant to make or contract to make further corrective repairs: PROVIDED, That the court specifies a time period in which the landlord may make such repairs before the tenant may commence or contract for such repairs:

PROVIDED FURTHER, That such repairs shall not exceed the sum expressed in dollars representing one month's rental of the tenant's unit in any one calendar year.

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(2) The tenant shall not be obligated to pay rent in excess of the diminished rental value of the premises until such defect or defects are corrected by the landlord or until the court or arbitrator determines otherwise.

NEW SECTION. Sec. 12. If a court or arbitrator determines a defective condition as described in section 6 of this 1973 amendatory act to be so substantial that it is unfeasible for the landlord to remedy the defect within the time allotted by section 7 of this 1973 amendatory act, and that the tenant should not remain in the dwelling unit in its defective condition, the court or arbitrator may authorize the termination of the tenancy: PROVIDED, That the court or arbitrator shall set a reasonable time for the tenant to vacate the premises.

NEW SECTION. Sec. 13. Each tenant shall pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law and comply with all obligations imposed upon tenants by applicable provisions of all municipal, county, and state codes, statutes, ordinances, and regulations, and in addition shall:

(1) Keep that part of the premises which he occupies and uses as clean and sanitary as the conditions of the premises permit;

(2) Properly dispose from his dwelling unit all rubbish, garbage, and other organic or flammable waste, in a clean and sanitary manner at reasonable and regular intervals, and assume all costs of extermination and fumigation for infestation caused by the tenant;

(3) Properly use and operate all electrical, gas, heating, plumbing and other fixtures and appliances supplied by the landlord;

(4) Not intentionally or negligently destroy, deface, damage, impair, or remove any part of the structure or dwelling, with the appurtenances thereto, including the facilities, equipment, furniture, furnishings, and appliances, or permit any member of his family, invitee, licensee, or any person acting under his control to do so;

(5) Not permit a nuisance or common waste; and

(6) Upon termination and vacation, restore the premises to their initial condition except for reasonable wear and tear or conditions caused by failure of the landlord to comply with his obligations under this chapter: PROVIDED, That the tenant shall not be charged for normal cleaning if he has paid a nonrefundable cleaning fee.

NEW SECTION. Sec. 14. The tenant shall conform to all reasonable obligations or restrictions, whether denominated by the landlord as rules, rental agreement, rent, or otherwise, concerning the use, occupation, and maintenance of his dwelling unit,

appurtenances thereto, and the property of which the dwelling unit is a part if such obligations and restrictions are not in violation of any of the terms of this chapter and are not otherwise contrary to law, and if such obligations and restrictions are brought to the attention of the tenant at the time of his initial occupancy of the dwelling unit and thus become part of the rental agreement. Except for termination of tenancy, after thirty days written notice to each tenant, a new rule of tenancy may become effective upon completion of the term of the rental agreement or sooner upon mutual consent.

NEW SECTION. Sec. 15. (1) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(2) The landlord may enter the dwelling unit without consent of the tenant in case of emergency or abandonment.

(3) The landlord shall not abuse the right of access or use it to harass the tenant. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least two days' notice of his intent to enter and shall enter only at reasonable times.

(4) The landlord has no other right of access except by court order, arbitrator or by consent of the tenant.

NEW SECTION. Sec. 16. If, after receipt of written notice, as provided in section 17 of this 1973 amendatory act, the tenant fails to remedy the defective condition within a reasonable time, the landlord may:

(1) Bring an action in an appropriate court, or at arbitration if so agreed for any remedy provided under this chapter or otherwise provided by law; or

(2) Pursue other remedies available under this chapter.

NEW SECTION. Sec. 17. If at any time during the tenancy the tenant fails to carry out the duties required by sections 13 or 14 of this 1973 amendatory act, the landlord may, in addition to pursuit of remedies otherwise provided by law, give written notice to the tenant of said failure, which notice shall specify the nature of the failure.

NEW SECTION. Sec. 18. If the tenant fails to comply with any portion of sections 13 or 14 of this 1973 amendatory act, and such noncompliance can substantially affect the health and safety of the tenant or other tenants, or substantially increase the hazards of fire or accident that can be remedied by repair, replacement of a damaged item, or cleaning, the tenant shall comply within thirty days after written notice by the landlord specifying the noncompliance,

or, in the case of emergency as promptly as conditions require. If the tenant fails to remedy the noncompliance within that period the landlord may enter the dwelling unit and cause the work to be done and submit an itemized bill of the actual and reasonable cost of repair, to be payable on the next date when periodic rent is due, or on terms mutually agreed to by the landlord and tenant, or immediately if the rental agreement has terminated. Any substantial noncompliance by the tenant of sections 13 and 14 of this 1973 amendatory act shall constitute a ground for commencing an action in unlawful detainer in accordance with the provisions of chapter 59.12 RCW, and a landlord may commence such action at any time after written notice pursuant to such chapter. The tenant shall have a defense to an unlawful detainer action filed solely on this ground if it is determined at the hearing authorized under the provisions of chapter 59.12 RCW that the tenant is in substantial compliance with the provisions of this section, or if the tenant remedies the noncomplying condition within the thirty day period provided for above or any shorter period determined at the hearing to have been required because of an emergency: PROVIDED, That if the defective condition is remedied after the commencement of an unlawful detainer action, the tenant may be liable to the landlord for statutory costs and reasonable attorney's fees.

NEW SECTION. Sec. 19. Whenever the landlord learns of a breach of section 13 of this 1973 amendatory act or has accepted performance by the tenant which is at variance with the terms of the rental agreement or rules enforceable after the commencement of the tenancy, he may immediately give notice to the tenant to remedy the nonconformance. Said notice shall expire after sixty days unless the landlord pursues any remedy under this act. V

NEW SECTION. Sec. 20. When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated by written notice of twenty days or more, preceding the end of any of said months or periods, given by either party to the other.

NEW SECTION. Sec. 21. Tenancies from year to year are hereby abolished except when the same are created by express written contract. Leases may be in writing or print, or partly in writing and partly in print, and shall be legal and valid for any term or period not exceeding one year, without acknowledgment, witnesses or seals.

NEW SECTION. Sec. 22. In all cases where premises are rented for a specified time, by express or implied contract, the tenancy shall be deemed terminated at the end of such specified time.

NEW SECTION. Sec. 23. (1) Any provision of a lease or other agreement, whether oral or written, whereby any section or subsection of this chapter is waived except as provided in section 36 of this 1973 amendatory act and shall be deemed against public policy and shall be unenforceable. Such unenforceability shall not affect other provisions of the agreement which can be given effect without them.

(2) No rental agreement may provide that the tenant:

(a) Agrees to waive or to forego rights or remedies under this chapter; or

(b) Authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(c) Agrees to pay the landlord's attorney's fees, except as authorized in this chapter; or

(d) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith; or

(e) And landlord have agreed to a particular arbitrator at the time the rental agreement is entered into.

(3) A provision prohibited by subsection (2) of this section included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by him to be prohibited, the tenant may recover actual damages sustained by him and reasonable attorney's fees.

(4) The common law right of the landlord of distress for rent is hereby abolished for property covered by this chapter. Any provision in a rental agreement creating a lien upon the personal property of the tenant or authorizing a distress for rent is null and void and of no force and effect. Any landlord who takes or detains the personal property of a tenant

V [without the specific consent of the
tenant to such incident of taking or detention], unless the property
has been abandoned as described in section 31 of this 1973 amendatory
act, and who, after written demand by the tenant for the return of
V [his personal property, refuses or neglects to return the same
promptly] shall be liable to the tenant for the value of the property
retained, and the prevailing party may recover his costs of suit and
a reasonable attorney's fee.

In any action, including actions pursuant to chapters 7.64 or 12.28 RCW, brought by a tenant or other person to recover possession of his personal property taken or detained by a landlord in violation of this section, the court, upon motion and after notice to the opposing parties, may waive or reduce any bond requirements where it appears to be to the satisfaction of the court that the moving party is proceeding in good faith and has, prima facie, a meritorious claim for immediate delivery or redelivery of said property.

NEW SECTION. Sec. 24. So long as the tenant is in compliance

with this chapter, the landlord shall not take or threaten to take reprisals or retaliatory action against the tenant because of any good faith and lawful:

(1) Complaints or reports by the tenant to a governmental authority concerning the failure of the landlord to substantially comply with any code, statute, ordinance, or regulation governing the maintenance or operation of the premises, if such condition may endanger or impair the health or safety of the tenant;

(2) Assertions or enforcement by the tenant of his rights and remedies under this chapter.

"Reprisal or retaliatory action" shall mean and include but not be limited to any of the following actions by the landlord when such actions are intended primarily to retaliate against a tenant because of the tenant's good faith and lawful act:

(1) Eviction of the tenant other than giving a notice to terminate tenancy as provided in section 20 of this 1973 amendatory act;

(2) Increasing the rent required of the tenant;

(3) Reduction of services to the tenant;

(4) Increasing the obligations of the tenant.

NEW SECTION. Sec. 25. Initiation by the landlord of any action listed in section 24 of this 1973 amendatory act within ninety days after a good faith and lawful act by the tenant as enumerated in section 24 of this 1973 amendatory act, or within ninety days after any inspection or proceeding of a governmental agency resulting from such act, shall create a rebuttable presumption affecting the burden of proof, that the action is a reprisal or retaliatory action against the tenant: PROVIDED, That if the court finds that the tenant made a complaint or report to a governmental authority within ninety days after notice of a proposed increase in rent or other action in good faith by the landlord, there is a rebuttable presumption that the complaint or report was not made in good faith: PROVIDED FURTHER, That no presumption against the landlord shall arise under this section, with respect to an increase in rent, if the landlord, in a notice to the tenant of increase in rent, specifies reasonable grounds for said increase, which grounds may include a substantial increase in market value due to remedial action under this chapter: PROVIDED FURTHER, That the presumption of retaliation, with respect to an eviction, may be rebutted by evidence that it is not practical to make necessary repairs while the tenant remains in occupancy. In any action or eviction proceeding where the tenant prevails upon his claim or defense that the landlord has violated this section, the tenant shall be entitled to recover his costs of suit or arbitration, including a reasonable attorney's fee, and where the landlord prevails upon his claim he shall be entitled to recover his costs of

suit or arbitration, including a reasonable attorney's fee: PROVIDED FURTHER, That neither party may recover attorney's fees to the extent that their legal services are provided at no cost to them.

NEW SECTION. Sec. 26. If any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a lease or rental agreement, such lease or rental agreement shall include the terms and conditions under which the deposit or portion thereof may be withheld by the landlord upon termination of the lease or rental agreement. If all or part of the deposit may be withheld to indemnify the landlord for damages to the premises for which the tenant is responsible, or if all or part thereof may be retained by the landlord as a non-returnable cleaning fee, the rental agreement shall so specify. No such deposit shall be withheld on account of normal wear and tear resulting from ordinary use of the premises.

NEW SECTION. Sec. 27. All moneys paid to the landlord by the tenant as a deposit as security for performance of the tenant's obligations in a lease or rental agreement shall promptly be deposited by the landlord in a trust account in a bank, savings and loan association, mutual savings bank, or licensed escrow agent located in Washington. The landlord shall provide the tenant with a written receipt for the deposit and shall provide written notice of the name and address and location of the depository and any subsequent change thereof. The tenant's claim to any moneys paid under this section shall be prior to that of any creditor of the landlord, including a trustee in bankruptcy or receiver, even if such moneys are commingled.

NEW SECTION. Sec. 28. Within fourteen days after the termination of the rental agreement and vacation of the premises the landlord shall give a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due the tenant under the terms and conditions of the rental agreement. No portion of any deposit shall be withheld on account of wear resulting from ordinary use of the premises.

The notice shall be delivered to the tenant personally or by mail to his last known address. If the landlord fails to give such statement together with any refund due the tenant within the time limits specified above he shall be liable to the tenant for the amount of refund due. In any action brought by the tenant to recover the deposit, the prevailing party shall additionally be entitled to the cost of suit or arbitration including a reasonable attorney's fee.

Nothing in this chapter shall preclude the landlord from proceeding against, and the landlord shall have the right to proceed against a tenant to recover sums exceeding the amount of the tenant's

damage or security deposit for damage to the property for which the tenant is responsible together with reasonable attorney's fees.

NEW SECTION. Sec. 29. (1) It shall be unlawful for the landlord to remove or exclude from the premises the tenant thereof except under a court order so authorizing. Any tenant so removed or excluded in violation of this section may recover possession of the property or terminate the rental agreement and, in either case, may recover the actual damages sustained. The prevailing party may recover the costs of suit or arbitration and reasonable attorney's fees.

(2) It shall be unlawful for the tenant to hold over in the premises or exclude the landlord therefrom after the termination of the rental agreement except under a valid court order so authorizing. Any landlord so deprived of possession of premises in violation of this section may recover possession of the property and damages sustained by him, and the prevailing party may recover his costs of suit or arbitration and reasonable attorney's fees.

NEW SECTION. Sec. 30. It shall be unlawful for a landlord to intentionally cause termination of any of his tenant's utility services, including water, heat, electricity, or gas, except for an interruption of utility services for a reasonable time in order to make necessary repairs. Any landlord who violates this section may be liable to such tenant for his actual damages sustained by him, and up to one hundred dollars for each day or part thereof the tenant is thereby deprived of any utility service, and the prevailing party may recover his costs of suit or arbitration and a reasonable attorney's fee. It shall be unlawful for a tenant to intentionally cause the loss of utility services provided by the landlord, including water, heat, electricity or gas, excepting as resulting from the normal occupancy of the premises.

NEW SECTION. Sec 31. If the tenant defaults in the payment of rent and reasonably indicates by words or actions his intention not to resume tenancy, he shall be liable for the following for such abandonment: PROVIDED, That upon learning of such abandonment of the premises the landlord shall make a reasonable effort to mitigate the damages resulting from such abandonment:

(1) When the tenancy is month-to-month, the tenant shall be liable for the rent for the thirty days following either the date the landlord learns of the abandonment, or the date the next regular rental payment would have become due, whichever first occurs.

(2) When the tenancy is for a term greater than month-to-month, the tenant shall be liable for the lesser of the following:

- (a) The entire rent due for the remainder of the term; or
- (b) All rent accrued during the period reasonably necessary to

rerent the premises at a fair rental, plus the difference between such fair rental and the rent agreed to in the prior agreement, plus actual costs incurred by the landlord in rerenting the premises together with statutory court costs and reasonable attorney's fees.

In the event of such abandonment of tenancy and an accompanying default in the payment of rent by the tenant, the landlord may immediately enter and take possession of any property of the tenant found on the premises and may store the same in a secure place. A notice containing the name and address of landlord and the place where the property is stored must be mailed promptly by the landlord to the last known address of the tenant. After sixty days from the date of default in rent, and after prior notice of such sale is mailed to the last known address of the tenant, the landlord may sell such property and may apply any income derived therefrom against moneys due the landlord, including drayage and storage. Any excess income derived from the sale of such property shall be held by the landlord for the benefit of the tenant for a period of one year from the date of sale, and if no claim is made or action commenced by the tenant for the recovery thereof prior to the expiration of that period of time, the balance shall be the property of the landlord.

NEW SECTION. Sec. 32. (1) The landlord and tenant may agree, in writing, except as provided in section 23 (2) (e) of this 1973 amendatory act, to submit to arbitration, in conformity with the provisions of this section, any controversy arising under the provisions of this chapter, except the following:

(a) Controversies regarding the existence of defects covered in subsections (1) and (2) of section 7 of this 1973 amendatory act: PROVIDED, That this exception shall apply only before the implementation of any remedy by the tenant;

(b) Any situation where court action has been started by either landlord or tenant to enforce rights under this chapter; when the court action substantially affects the controversy, including but not limited to:

(i) Court action pursuant to subsections (2) and (3) of section 9 and subsections (1) and (2) of section 16 of this 1973 amendatory act; and

(ii) Any unlawful detainer action filed by the landlord pursuant to chapter 59.12 RCW.

(2) The party initiating arbitration under subsection (1) of this section shall give reasonable notice to the other party or parties.

(3) Except as otherwise provided in this section, the arbitration process shall be administered by any arbitrator agreed upon by the parties at the time the dispute arises: PROVIDED, That the procedures shall comply with the requirements of chapter 7.04 RCW

(relating to arbitration) and of this chapter.

NEW SECTION. Sec. 33. (1) Unless otherwise mutually agreed to, in the event a controversy arises under section 32 of this 1973 amendatory act the landlord or tenant, or both, shall complete an Application for Arbitration and deliver it to the selected arbitrator.

(2) The arbitrator so designated shall schedule a hearing to be held no later than ten days following receipt of notice of the controversy, except as provided in section 35 of this 1973 amendatory act.

(3) The arbitrator shall conduct public or private hearings. Reasonable notice of such hearings shall be given to the parties, who shall appear and be heard either in person or by counsel or other representative. Hearings shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. A recording of the proceedings may be taken. Any oral or documentary evidence and other data deemed relevant by the arbitrator may be received in evidence. The arbitrator shall have the power to administer oaths, to issue subpoenas, to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the arbitrator material to a just determination of the issues in dispute. If any person refuses to obey such subpoena or refuses to be sworn to testify, or any witness, party, or attorney is guilty of any contempt while in attendance at any hearing held hereunder, the arbitrator may invoke the jurisdiction of any superior court, and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof.

(4) Within five days after conclusion of the hearing, the arbitrator shall make a written decision upon the issues presented, a copy of which shall be mailed by certified mail or otherwise delivered to the parties or their designated representatives. The determination of the dispute made by the arbitrator shall be final and binding upon both parties.

(5) If a defective condition exists which affects more than one dwelling unit in a similar manner, the arbitrator may consolidate the issues of fact common to those dwelling units in a single proceeding.

(6) Decisions of the arbitrator shall be enforced or appealed according to the provisions of chapter 7.04 RCW.

NEW SECTION. Sec. 34. The administrative fee for this arbitration procedure shall be seventy dollars, and, unless otherwise allocated by the arbitrator, shall be shared equally by the parties: PROVIDED, That upon either party signing an affidavit to the effect that he is unable to pay his share of the fee, that portion of the

fee may be waived or deferred.

NEW SECTION. Sec. 35. When a party gives notice pursuant to subsection (2) of section 32, he must, at the same time, arrange for arbitration of the grievance in the manner provided for in this chapter. The arbitration shall be completed before the rental due date next occurring after the giving of notice pursuant to section 32 of this 1973 amendatory act: PROVIDED, That in no event shall the arbitrator have less than ten days to complete the arbitration process.

NEW SECTION. Sec. 36. A landlord and tenant may agree, in writing, to exempt themselves from the provisions of sections 6, 10, 11, 12, 13, and 19 of this 1973 amendatory act if the following conditions have been met:

(1) The agreement may not appear in a standard form lease or rental agreement;

(2) There is no substantial inequality in the bargaining position of the two parties;

(3) The exemption does not violate the public policy of this state in favor of the ensuring safe, and sanitary housing; and

(4) Either the local county prosecutor's office or the consumer protection division of the attorney general's office or the attorney for the tenant has approved in writing the application for exemption as complying with subsection (1) through (3) of this section.

NEW SECTION. Sec. 37. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the act, or its application to other persons or circumstances, is not affected.

NEW SECTION. Sec. 38. The plaintiff, at the time of commencing an action of forcible entry or detainer or unlawful detainer, or at any time afterwards, upon filing the complaint, may apply to the superior court in which the action is pending for an order directing the defendant to appear and show cause, if any he has, why a writ of restitution should not issue restoring to the plaintiff possession of the property in the complaint described, and the judge shall by order fix a time and place for a hearing of said motion, which shall not be less than six nor more than twelve days from the date of service of said order upon defendant. A copy of said order, together with a copy of the summons and complaint if not previously served upon the defendant, shall be served upon the defendant. Said order shall notify the defendant that if he fails to appear and show cause at the time and place specified by the order the court may order the sheriff to restore possession of the property to the plaintiff and may grant such other relief as may be prayed for in the complaint and provided by this chapter.

NEW SECTION. Sec. 39. At the time and place fixed for the hearing of plaintiff's motion for a writ of restitution, the defendant, or any person in possession or claiming possession of the property, may answer, orally or in writing, and assert any legal or equitable defense or set-off arising out of the tenancy. If the answer is oral the substance thereof shall be endorsed on the complaint by the court. The court shall examine the parties and witnesses orally to ascertain the merits of the complaint and answer, and if it shall appear that the plaintiff has the right to be restored to possession of the property, the court shall enter an order directing the issuance of a writ of restitution, returnable ten days after its date, restoring to the plaintiff possession of the property and if it shall appear to the court that there is no substantial issue of material fact of the right of the plaintiff to be granted other relief as prayed for in the complaint and provided for in this chapter, the court may enter an order and judgment granting so much of such relief as may be sustained by the proof, and the court may grant such other relief as may be prayed for in the plaintiff's complaint and provided for in this chapter, then the court shall enter an order denying any relief sought by the plaintiff for which the court has determined that the plaintiff has no right as a matter of law: PROVIDED, That within three days after the service of the writ of restitution the defendant, or person in possession of the property, may, in any action for the recovery of possession of the property for failure to pay rent, stay the execution of the writ pending final judgment by paying into court or to the plaintiff, as the court directs, all rent found to be due and all the costs of the action, and in addition by paying, on a monthly basis pending final judgment, an amount equal to the monthly rent called for by the lease or rental agreement at the time the complaint was filed: PROVIDED FURTHER, That before any writ shall issue prior to final judgment the plaintiff shall execute to the defendant and file in the court a bond in such sum as the court may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute his action without delay, and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the writ of restitution having been issued, should the same be wrongfully sued out. The court shall also enter an order directing the parties to proceed to trial on the complaint and answer in the usual manner.

If it appears to the court that the plaintiff should not be restored to possession of the property, the court shall deny plaintiff's motion for a writ of restitution and enter an order directing the parties to proceed to trial within thirty days on the complaint and answer. If it appears to the court that there is a

substantial issue of material fact as to whether or not the plaintiff is entitled to other relief as is prayed for in plaintiff's complaint and provided for in this chapter, or that there is a genuine issue of a material fact pertaining to a legal or equitable defense or set-off raised in the defendant's answer, the court shall grant or deny so much of plaintiff's other relief sought and so much of defendant's defenses or set-off claimed, as may be proper.

NEW SECTION. Sec. 40. The sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his agent, or attorney, or a person in possession of the premises, and shall not execute the same for three days thereafter, and the defendant, or person in possession of the premises within three days after the service of the writ of restitution may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of said court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the said premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of said premises, together with all damages which the court theretofore has awarded to the plaintiff as provided in this 1973 amendatory act, and also all the costs of the action. The plaintiff, his agent or attorneys, shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon said bond before said bond shall be approved by the clerk. The writ may be served by the sheriff, in the event he shall be unable to find the defendant, an agent or attorney, or a person in possession of the premises, by affixing a copy of said writ in a conspicuous place upon the premises.

NEW SECTION. Sec. 41. On or before the day fixed for his appearance the defendant may appear and answer. The defendant in his answer may assert any legal or equitable defense or set-off arising out of the tenancy.

NEW SECTION. Sec. 42. If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages arising out of the tenancy

occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer or unlawful detainer for the amount of damages thus assessed and for the rent, if any, found due, and the court may award statutory costs and reasonable attorney's fees. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant or any subtenant, or any mortgagee of the term, or other party interested in the continuance of the tenancy, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his tenancy; but if payment, as herein provided, be not made within five days the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately. If writ of restitution shall have been executed prior to judgment no further writ or execution for the premises shall be required.

NEW SECTION. Sec. 43. The provisions of this 1973 amendatory act shall not apply to any lease of a single family dwelling for a period of a year or more or to any lease of a single family dwelling containing a bona fide purchase by the tenant: PROVIDED, That an attorney for the tenant must approve on the face of the agreement any lease exempted from the provisions of this act as provided for in this section.

NEW SECTION. Sec. 44. The provisions of RCW 59.12.090, 59.12.100, 59.12.121, and 59.12.170 shall not apply to any rental agreement included under the provisions of Chapter... (SSB No. 2226).

NEW SECTION. Sec. 45. There is added to chapter 59.04 RCW a new section to read as follows:

This chapter does not apply to any rental agreement included under the provisions of chapter ... (SSB No. 2226), Laws of 1973.

NEW SECTION. Sec. 46. There is added to chapter 59.08 RCW a new section to read as follows:

This chapter does not apply to any rental agreement included under the provisions of chapter ... (SSB No. 2226), Laws of 1973.

NEW SECTION. Sec. 47. Sections 1 through 37 of this 1973 amendatory act shall not apply to any lease entered into prior to the effective date of this 1973 amendatory act. All provisions of this 1973 amendatory act shall apply to any lease or periodic tenancy entered into on or subsequent to the effective date of this 1973

V—amendatory act.

Passed the Senate April 13, 1973.

Passed the House April 9, 1973.

Approved by the Governor April 26, 1973, with the exception of certain items in Sections 6, 7, 11, 19, 23, 24, 25 and 31 and all of Sections 43 and 47 which are vetoed.

Filed in Office of Secretary of State April 26, 1973.

Note: Governor's explanation of partial veto is as follows:

"I am filing herewith to be transmitted to the Senate at the next session of the Legislature, without my approval as to certain items, Substitute Senate Bill No. 2226, entitled:

Veto
Message

"AN ACT Relating to the lease and rental of property."

This act establishes an elaborate set of contractual relationships between landlords and tenants in residential dwellings. The provisions include regulation of security and damage deposits, conditions under which a tenant may be evicted, dispute settlement between landlords and tenant with regard to the conditions of the premises, and other general responsibilities of tenants and landlords.

Section 6 of the bill sets out obligations. Subsection one requires the landlord to maintain the premises in compliance with applicable codes, statutes or ordinances, but only if such conditions substantially endanger or impair the health or safety of the tenant. This creates a difficult burden of proof for any tenant and would not only deter tenants from using these codes, but could also deprive them of a remedy in many cases of code violation. In subsection four, the landlord is required to provide a reasonable program for control of infestation by insects, rodents and other pests, but exempts single family residences. Since the provision does not require the landlord to control infestation caused by the tenant, there is no reason for exempting single family residences from this provision, and consequently I have vetoed it.

In section 7 the landlord is required to commence remedial action to keep the premises of a tenancy fit for human habitation. This section is designed to meet the problem of landlords who repeatedly promise repairs but

fail to meet those promises. The item consisting of the final four lines in this section provides that the time limitation set forth for remedial action will not be applicable where the landlord fails to meet specified deadlines because of circumstances beyond his control. This has the effect of exempting the landlord from the requirements previously set forth without adequate justification, and I have determined to veto it.

Veto
Message

In section 8 the tenant is required to be current in the payment of rent, including all utilities he has agreed to pay in the rental agreement, before he may exercise any remedies under this act. In an act which is designed to regulate the relationship between landlords and tenants it is inappropriate that there should also be a requirement that the tenant pay his bills to third parties in order to exercise his rights. Consequently I have vetoed that provision.

In section 11 the court or arbitrator may authorize further corrective repairs for a defective condition if the landlord has not corrected them within a specified time. However, the section limits the court or arbitrator's authority to set the actual value of repairs needed. Decisions will vary with individual circumstances and arbitrary restrictions should not be set upon the court or arbitrator in this regard, when the requirements are clearly otherwise. Accordingly, that item establishing that restriction is vetoed.

In section 19 the landlord is required to give notice to the tenant of any tenant-caused defect which the landlord want remedied. The language as it reads implies that where a landlord has accepted performance by the tenant, even though at variance with the terms of the rental agreement, he may nevertheless serve notice that he is instituting steps to require compliance with the rental agreement. This allows landlords to repudiate their own agreements, and is without justification. Consequently, I have vetoed this item.

In section 23 a landlord is prohibited from taking or detaining the personal property of a tenant unless the tenant has given specific consent to such taking or detention. Such provision may well encourage landlords to

coerce tenants into allowing their possessions to be taken as security for overdue rent. In another portion of the same section there is a requirement that the tenant give a written demand to the landlord for the return of his personal property before he may be granted relief. The effect of such language is to allow a landlord to seize the tenants personal property without penalty if the property is returned after receipt of a written notice. These items are unjustified and I have vetoed them. Veto
Message

In section 24 the landlord is prohibited from taking retaliatory action against the tenant because of any good faith and lawful complaint to a governmental authority concerning the landlord's failure to comply with applicable codes, statutes or ordinances; but only if such failure would endanger or impair the health or safety of the tenant. Since it is in the interest of regulatory authorities to receive such complaints, this limitation violates public policy. A tenant should be free to make any good faith report of any violation. In addition this section provides that reprisal and retaliatory action, as defined, excludes eviction of the tenant when the landlord has given 20-days notice to terminate such tenancy. This provision clearly renders the prohibition on retaliatory action meaningless. Therefore, both items are vetoed.

Section 25 further defines retaliatory action by the landlord and creates certain presumptions. One presumption is raised against the tenant if the tenant makes a complaint to a government agency within 90 days of an increase in rent. Thus, for 90 days after an increase in rent a tenant would be deterred from making a good faith complaint of any violation of law for fear a landlord might retaliate. Obviously, this would unduly discourage such complaints and is against public policy. Accordingly, I have vetoed this item.

Section 31 establishes the landlords rights where the tenant has abandoned the premises. One item would allow costs incurred in rerenting the premises, together with statutory court costs and reasonable attorneys fees, to be charged back against the tenant. Such a provision goes far beyond even the common law and cannot be justified. I have therefore vetoed it.

Section 43 establishes a procedure for exempting those who rent a single family dwelling from the requirements of the act. Section 36 already establishes such a procedure, and there is no need for this additional provision. Consequently, I have vetoed section 43.

Veto
Message

Section 47 provides that this act shall not apply to any lease or periodic tenancy entered into prior to the effective date of the act. Many tenancies are entered on a periodic basis and there is no sufficient reason to exempt existing tenancies from the provisions of this act. Accordingly, I have vetoed this section.

With the exceptions noted above, I have approved the remainder of Substitute Senate Bill No. 2226."

CHAPTER 208

[Engrossed Substitute Senate Bill No. 2365]

EMERGENCY MEDICAL CARE AND HEALTH
SERVICES

AN ACT Relating to emergency medical care and health services; creating a new chapter in Title 18 RCW; prescribing penalties; and establishing effective dates.

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

NEW SECTION. Section 1. The legislature finds that a state-wide program of emergency medical care is necessary to promote the health, safety, and welfare of the citizens of this state. The intent of the legislature is that the secretary of the department of social and health services develop and implement a program to promote immediate prehospital treatment for victims of motor vehicle accidents, suspected coronary illnesses, and other acute illness or trauma.

The legislature further recognizes that emergency medical care and transportation methods are constantly changing and conditions in the various regions of the state vary markedly. The legislature, therefore, seeks to establish a flexible method of implementation and regulation to meet those conditions.

NEW SECTION. Sec. 2. The legislature further declares its intention to supersede all ordinances, regulations, and requirements promulgated by counties, cities and other political subdivisions of the state of Washington, insofar as they may provide for the regulation of emergency medical care, first aid, and ambulance services which do not exceed the provisions of this chapter; except