

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 612

INTRODUCER: Community Affairs Committee and Senator Steube

SUBJECT: Sexual Offenders

DATE: December 5, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	Fav/CS
2.			JU	
3.			RC	

I. Summary:

CS/SB 612 creates “The Florida Tenant Notification Act,” which requires that all residential rental agreements contain a prominent disclosure statement regarding whether the landlord has required any of his or her current or potential employees to undergo a level 1 background screening. If the landlord has required the screening, the disclosure must also state whether the employee was convicted of credit card theft, a crime involving violence, or sexual battery. The bill provides that the rental agreement is not complete until the tenant has signed the acknowledgement of receipt in the disclosure statement. The bill authorizes a tenant to cancel the rental agreement within a specified period of time if the agreement disclosed the employment of someone convicted of credit card theft, a crime involving violence, or sexual battery. The bill also authorizes a tenant to cancel the rental agreement if the agreement failed to disclose that any of the landlord’s current or recently hired employees were convicted of credit card theft, a crime involving violence, or sexual battery.

II. Present Situation:

Florida Residential Landlord and Tenant Act

Part II of ch. 83, F.S., titled “Florida Residential Landlord and Tenant Act,” governs the relationship between landlords and tenants under a residential lease agreement. The Landlord and Tenant Act contains certain mandatory provisions and disclosures that a landlord must provide to a tenant or prospective tenant. Specifically, a landlord must disclose in writing or a lease agreement:

- Whether the tenant's security deposit will be held in an interest or non-interest-bearing account; the name of the account depository and disclose the rate and time of interest payments within 30 days after receiving the security deposit.¹
- The name and address of the landlord or person authorized to receive notices and demands on the landlord's behalf.²
- Notice of the potential liquidated damages, if there is a liquidated damages provision in the lease.³
- A specific notice if the landlord has no liability for storing or disposing the tenant's personal property after the tenant surrenders the dwelling.⁴
- A specific warning of the health risks of radon gas and which also refers the tenant to the county health department for additional information.⁵

Level 1 Background Screenings

In 1995, the Legislature created standard procedures for criminal history background screening of prospective employees in order to protect vulnerable persons. Chapter 435, F.S., outlines the screening standards for Level 1 and Level 2 employment screening.⁶ The Florida Department of Law Enforcement provides criminal history checks to the employer. The primary difference between Level 1 and Level 2 screenings is that Level 2 screenings require the submission of fingerprint information for applicants, while Level 1 screenings are name-based demographic screenings. The list of disqualifying offenses for both Level 1 and Level 2 screenings covers includes 52 separate offenses, and 6 entire chapters of Florida law. Offenses relating to domestic violence are also grounds for disqualification.⁷ Additionally, the security investigations under this section must ensure no person subject to this section has been found guilty of any offense that constitutes domestic violence as defined in s. 741.28, F.S.

The fee for a Level 1 screening request is \$24.00.⁸

Exemptions from Disqualification

Section 435.07, F.S., provides a mechanism to obtain an exemption from disqualification if a person is disqualified from employment with an agency through either a Level 1 or Level 2 background screening. An exemption may be granted if the applicant was disqualified for:

- Felonies committed more than 3 years prior to the date of disqualification;
- Misdemeanors;
- Offenses that were felonies when committed but now are misdemeanors; or
- Findings of delinquency.

¹ Section 83.49, F.S.

² Section 83.50, F.S.

³ Section 83.595(4), F.S.

⁴ Section 83.67(5), F.S.

⁵ Section 404.056(5), F.S.

⁶ Sections 435.03 and 435.04, F.S.

⁷ Section 435.03(2), F.S. (Level 1 screening standards), refers to the list of offenses set forth in s. 435.04(2), F.S. (Level 2 screening standards). Section 435.03(3) adds domestic violence offenses defined in s. 741.28, F.S.

⁸ Florida Department of Law Enforcement, Criminal History Information, available at <https://cchinet.fdle.state.fl.us/search/app/default?0> (last visited December 5, 2017).

The person seeking an exemption must demonstrate by clear and convincing evidence that he or she should not be disqualified. This evidence may include:

- An explanation of the circumstances surrounding the criminal incident for which the exemption is sought;
- The time period that has elapsed since the incident;
- The nature of the harm caused to the victim;
- The history of the applicant since the incident; or
- Any other evidence indicating that the applicant will not present a danger if employment or continued employment is allowed.⁹

III. Effect of Proposed Changes:

The bill creates s. 83.684, F.S., as the “Florida Tenant Notification Act.” Definitional references are given for the following terms: “credit card theft” (s. 817.60, F.S.), “employee” (s. 440.02(15)(a), F.S.), and “sexual battery” (s. 794.011). The definition for a “crime involving violence” means an offense involving the use or threat of physical force or violence against an individual, including, but not limited to, a violent felony listed in s. 775.084(1)(c)1., F.S.

The bill provides that a landlord may require any current or potential employees who will have access to a premises undergo a level 1 background screening pursuant to s. 435.03, F.S., at the expense of the landlord. If a current or potential employee refuses to undergo the screening, they may be terminated or disqualified for employment by the landlord.

The bill requires that all residential rental agreements must contain a disclosure advising the tenant whether the landlord has required any of his or her current or potential employees to undergo the background screening. If the landlord has required the screening, the disclosure must also include the date of the screening, the full name and job description of the employee, and whether the results indicated the employee was convicted of credit card theft, a crime involving violence, or sexual battery.

The bill also provides that the disclosure statement must contain an acknowledgement of receipt to be signed by the tenant in the presence of a witness. The disclosure statement must be available to the tenant upon request. Any rental agreements subject to this section are deemed incomplete until the acknowledgement is signed.

If a disclosure statement identifies any employee or potential employee convicted of credit card theft, a crime involving violence, or sexual battery, a tenant may cancel the residential rental agreement within three business days after completing it, and all deposit moneys must be returned to the tenant without penalty. Additionally, a rental agreement is voidable if the agreement fails to disclose any current employees were convicted of a listed offense. The tenant may also terminate an agreement if within five business days after its completion, the landlord hires an employee who was convicted of one of the listed offenses. In the event the agreement is voided, all deposit moneys, minus any amount payable for physical damage to the property

⁹ Section 435.07(3), F.S.

caused by the tenant, must be returned to the tenant upon their request without penalty and without regard to any remaining tenant obligation under the rental agreement.

Finally, the disclosure statement must be updated upon renewal of a residential rental agreement.

The bill provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Landlords deciding to require level 1 background screenings for existing and potential employees will bear the burden of the cost of the screenings. Additionally, there could be a rise in administrative costs or burdens due to the bill's requirement that the disclosure be signed with a witness present.

C. Government Sector Impact:

The cost for a Florida criminal history record check is \$24 and goes into the Florida Department of Law Enforcement's Operating Trust Fund.¹⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

There appears to be a conflict between lines 32-35 and lines 39-44 that could cause confusion as to the duties of a landlord. At line 32 a landlord may require an employee to undergo level 1

¹⁰ Florida Department of Law Enforcement, House Bill 749 Analysis (December 1, 2017).

screening. At line 42-43 the phrase “screening required under paragraph (2)(a)” appears. Whether or not a landlord “requires” an employee to be screened is discretionary pursuant to lines 32-35. The confusion could be eliminated by removing the word ‘required’ found at line 42.¹¹

VIII. Statutes Affected:

This bill creates section 83.684 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on December 5, 2017:

Requires that all residential rental agreements contain a prominent disclosure statement regarding whether the landlord has required any of his or her current or potential employees to undergo a level 1 background screening. If the landlord has required the screening, the disclosure must also state whether the employee was convicted of credit card theft, a crime involving violence, or sexual battery. The bill provides that the rental agreement is not complete until the tenant has signed the acknowledgement of receipt in the disclosure statement. The bill authorizes a tenant to cancel the rental agreement within a specified period of time if the agreement disclosed the employment of someone convicted of credit card theft, a crime involving violence, or sexual battery. The bill also authorizes a tenant to cancel the rental agreement if the agreement failed to disclose that any of the landlord’s current or recently hired employees were convicted of credit card theft, a crime involving violence, or sexual battery.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹¹ *Id.*