

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1682

SPONSOR: Senator Geller

SUBJECT: Residential Tenancies

DATE: March 5, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable</u>
2.	_____	_____	<u>CP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill precludes landlords from prohibiting tenants from displaying a portable, removable United States flag, in a respectful manner in or on the dwelling unit, despite declaration rules or other requirements regarding flags and decorations. A landlord who violates the provisions of this bill is subject to certain damages, costs and fees.

This bill substantially amends s. 83.67 of the Florida Statutes.

II. Present Situation:

Flag Restrictions

Two residents at the Aventine apartment complex in Boynton Beach hung a flag in a bedroom window of their unit on September 11, 2001, and were ordered to remove it on January 12, 2004. Alternatively, they were ordered to hide it behind their blinds. The order is based on a standard lease provision that precludes renters from altering their apartments through hanging banners, streamers or even curtains that are visible to the outside. A lawsuit is pending, charging that the property owners are in violation of their lease.¹

Statutory Authority

Chapter 83 of the Florida Statutes is the Florida Residential Landlord and Tenant Act.² Part II of the Act governs Residential Tenancies, and addresses such areas as rental agreements,³ payment

¹ *Lawmaker Aids Tenants in Fight to Show Flag*, The Palm Beach Post (January 21, 2004)

² s. 83.40, F.S.

³ s. 83.45, 83.47, and s. 83.56, F.S.

of rent,⁴ payment of attorney's fees in civil actions,⁵ deposit money,⁶ and rights of action for possession.⁷

Section 83.67, F.S., prohibits certain landlord practices, to include termination or interruption of utility services, blocking of reasonable access to the dwelling unit, discrimination of a military service member, and removal of certain structures. A landlord who violates any of these provisions is liable for actual and consequential damages or three months' rent, whichever is more, and costs to include attorney's fees.

Chapter 718, F.S., governs condominium law. Section 718.113(4), F.S., authorizes each unit owner to display:

“a portable, removable United States flag in a respectful way and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, may display in a respectful way portable, removable official flags, *not larger than 4 ½ feet by 6 feet*, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, regardless of any declaration rules or requirements dealing with flags or decorations.”[Emphasis added]

Chapter 720, F.S., is the Homeowners' Association Act. s. 720.304(3), F.S., provides:

“Any homeowner may display one portable, removable United States flag in a respectful manner, regardless of any declaration rules or requirements dealing with flags or decorations.”

The provisions authorizing both homeowners' associations and condo residents to display flags passed in the 2002 legislative session.

III. Effect of Proposed Changes:

This bill precludes landlords from prohibiting tenants from displaying a portable, removable United States flag, in a respectful manner in or on the dwelling unit, despite declaration rules or other requirements addressing flags and decorations. A landlord who violates the provisions of this bill is subject to certain damages, costs and attorney's fees, and is considered irreparable harm for purposes of injunctive relief.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴ s. 83.46, F.S.

⁵ s. 83.48, F.S.

⁶ s. 83.49, F.S.

⁷ s. 83.59, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 10 of Article 1 of the State Constitution provides:

Prohibited Laws. – No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be passed.

It is uncertain whether this legislation is intended to apply retroactively, to include the incident described above. The general rule is that a law is presumed to apply only prospectively.

It is, however, possible for a bill to apply retroactively, provided that:

- There are no constitutional prohibitions against making them retroactive;
- The act overcomes the presumption that it applies only prospectively by explicitly providing for retroactive application, and,
- Its title conveys notice of this retroactive application.

No blanket constitutional prohibition on retroactive non-criminal statutes exists; however, a retroactive application of statutes that impairs the obligations of contracts or vested rights is invalid.

Should this bill become law, it may constitute an impairment of contract, as applied to a lease in existence at the time.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

- This provision applies to tenants who have likely entered into lease agreements with landlords. Even where the lease provides specific restrictions for affixing decorations, this legislation will preclude those limitations. This bill may result in the unintended consequence of authorizing potential damage to the owner's property in the process of attaching a flag to the dwelling unit, even where it was otherwise addressed in the terms of the lease.

- Since this provision relates strictly to landlord/tenant situations, and may be more likely to impact apartment situations with population dense units, it may be prudent to include a size restriction, similar to that provided in s. 718.113(4), F.S.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
