

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 823 Access to Dwelling Units

SPONSOR(S): Kravitz

TIED BILLS: **IDEN./SIM. BILLS:** SB 1530

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Constitution & Civil Law</u>	<u>9 Y, 0 N</u>	<u>Thomas</u>	<u>Birtman</u>
2) <u>Safety & Security Council</u>	<u></u>	<u>Thomas</u>	<u>Havlicak</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill amends the Florida Residential Landlord and Tenant Act to require all landlords to maintain a written record that includes the names of all direct employees of the landlord who have access to a dwelling unit and the dates and times that any direct employee of the landlord has entered a dwelling unit. The written record is subject to inspection by a unit owner upon the unit owner's request.

The bill requires all landlords to obtain from the Florida Department of Law Enforcement criminal history information for all employees who have access to the interior portion of a dwelling unit that is under a rental agreement. The landlord may not permit an employee who has been convicted of a felony in this state to have access to the interior portion of a dwelling unit that is under a rental agreement unless the tenant has consented in writing to such access or the landlord supervises the employee during such access. A landlord who fails to conform to these provisions commits a misdemeanor of the second degree.

While the Florida Department of Law Enforcement reports that the bill will increase workload, it could be absorbed within existing resources. It does not appear that the bill will have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - the bill increases the responsibilities and obligations of landlords.

Maintain Public Security – the bill affects landlord participation in providing for physical security of tenants.

B. EFFECT OF PROPOSED CHANGES:

Florida Landlord - Tenant Law

The Florida Residential Landlord and Tenant Act, first enacted in 1973, governs the relationship between landlords and tenants in a residential lease agreement.¹ A rental agreement specifies the terms and conditions of a tenant's occupation in a dwelling unit for a specific period of time.² The provisions of the Act specifically address the payment of rent,³ duration of leases,⁴ security deposits,⁵ maintenance of the dwelling and premises,⁶ termination of rental agreements,⁷ liquidated damages for failure to provide notice before vacating,⁸ penalty for holding over,⁹ and a landlord's remedies for the breach of a lease.¹⁰

Landlord's Access to Dwelling Unit

A tenant may not unreasonably withhold consent to the landlord to enter the dwelling unit in order to inspect the premises, make repairs, or improvements; supply agreed services; or show the unit to prospective purchasers, tenants, workers, or contractors.¹¹ The landlord may enter the unit at any time for the protection or preservation of the premises or upon reasonable notice¹² and at a reasonable time for the purpose of repair of the premises.¹³ The landlord is, however, bound by the provisions of the lease for reentry.¹⁴ The landlord may not abuse the right of access nor use it to harass the tenant.¹⁵ Absent abandonment or voluntary relinquishment, the landlord's right to enter prior to taking possession must be pursuant to the lease or be established by legal process.¹⁶

¹ Part II of ch. 83, F.S. This part applies to the rental of a "dwelling unit" which is defined as a structure or part of a structure rented for use as a home, residence or sleeping place. It also includes mobile homes rented by a tenant. Section 83.43, F.S.

² Section 83.43(7), F.S., provides that: "Rental agreement" means any written agreement, or oral agreement if for less duration than 1 year, providing for use and occupancy of premises.

³ Section 83.46, F.S.

⁴ *Id.*

⁵ Section 83.49, F.S.

⁶ Sections 83.51 and 83.52, F.S.

⁷ Section 83.56, F.S.

⁸ Section 83.58, F.S.

⁹ Section 83.575, F.S.

¹⁰ Section 83.595, F.S.

¹¹ Section 83.53(1), F.S.

¹² "Reasonable notice" for the purpose of repair is notice given at least 12 hours prior to the entry, and reasonable time for the purpose of repair is between the hours of 7:30 a.m. and 8:00 p.m. Section 83.53(2), F.S.

¹³ Section 83.53(2), F.S.

¹⁴ *Id.*

¹⁵ Section 83.53(3), F.S.

¹⁶ *Van Hoose v. Robbins*, 165 So.2d 209 (Fla. 2d DCA 1964).

Landlord's Duty to Protect Tenants From Third Parties

While a landlord has a duty to exercise reasonable care to maintain a leased premises in a reasonably safe condition, generally, there is no duty to protect a tenant from criminal attacks by third persons.¹⁷ In order to acquire such a duty, a tenant must allege and prove that the landlord had actual or constructive knowledge of prior similar acts committed on invitees on the premises.¹⁸

Negligent Hiring by Landlords

In Florida, a landlord may be liable for its negligence in hiring an employee that may be dangerous to others.¹⁹ An employer is liable for negligent hiring when the employer was in some way responsible for bringing a third person into contact with an employee whom the employer knew or should have known was predisposed to commit a wrong if given the opportunity.²⁰ For example, if an employer provides an employee with the "indicia of authority" to enter into the living quarters of others, the employer has the responsibility of first making some inquiry with respect to whether it is safe to facilitate the employee's access.²¹

In civil actions premised upon the death or injury of a third person as a result of intentional conduct of an employee, the employer is presumed not to have been negligent in hiring the employee, if prior to hiring, the employer conducted a background check on the employee which revealed no information that would cause an employer to conclude that the employee was unfit for work.²² Pursuant to statute, the background investigation must include:

- A criminal background check obtained from the Department of Law Enforcement (FDLE);²³
- Reasonable efforts to contact references and former employers;
- A job application form that includes questions requesting detailed information regarding previous criminal convictions;
- A written authorization allowing a check of the applicant's driver's license record if relevant to the work to be performed; or
- An interview of the prospective employee.²⁴

If the employer elects not to conduct an investigation prior to hiring, there is no presumption that the employer failed to use reasonable care in hiring an employee.²⁵

Civil Liability

Florida law provides that violations of statutes or ordinances, other than those imposing strict liability, may constitute negligence per se or evidence of negligence.²⁶ For a violation of statute to constitute

¹⁷ See *Paterson v. Deeb*, 472 So.2d 1210 (Fla. 1st DCA 1985); *Menendez v. The Palms West Condominium Ass'n, Inc.*, 736 So.2d 58 (Fla. 1st DCA 1999).

¹⁸ *Id.*

¹⁹ *Phillips v. Edwin P. Stimpson Co.*, 588 So.2d 1071 (Fla. 4th DCA 1991).

²⁰ *Brown v. Zaveri*, 164 F. Supp. 2d 1354 (S.D. Fla. 2001).

²¹ *Williams v. Feather Sound, Inc.*, 386 So.2d 1238 (Fla. 2d DCA 1980); *Tallahassee Furniture Co., Inc. v. Harrison*, 583 So.2d 744 (Fla. 1st DCA 1991).

²² Section 768.096(1), F.S.

²³ The employer must request and obtain from FDLE a check of the information as reported in the Florida Crime Information Center system as of the date of the request. Section 768.096(2), F.S.

²⁴ Section 768.096(1)(a)-(e), F.S.

²⁵ Section 768.096(3), F.S.

²⁶ *Lingle v. Dion*, 776 So.2d 1073 (Fla. 4th DCA 2001).

negligence per se, the injury must be to an individual who is a member of a class the statute was designed to protect, and the injury must be of a type the statute was intended to prevent.²⁷

A landlord's duty to protect a tenant can be based on requirements set forth by statute. For example, in *Paterson*, the tenant alleged that the landlord had failed to provide a working lock on the exterior bathroom to her apartment, in violation of s. 83.51, F.S.²⁸ The tenant was raped in the bathroom by an intruder who might not have been able to gain entry had the room been locked.²⁹ The court held that, while the landlord in *Paterson* had no general duty to protect the tenant from a criminal attack by a third person, he did have a specific duty to provide the tenant with a working lock.³⁰ The breach of this duty exposed the landlord to civil liability for negligence.

Effect of Proposed Changes

The bill requires all landlords to maintain a written record that includes the names of all direct employees of the landlord who have access to the dwelling unit and the dates and times that any direct employee of the landlord has entered the dwelling unit. This record is to be subject to inspection by a unit owner upon the unit owner's request.

The bill creates a new section of Florida Statutes that requires all landlords to obtain from FDLE criminal history information for all employees who have access to the interior portion of a dwelling unit that is under a rental agreement.³¹ The landlord may not permit an employee who has been convicted of a felony in this state to have access to the interior portion of a dwelling unit that is under a rental agreement unless the tenant has consented in writing to such access or the landlord supervises the employee during such access. A landlord who fails to conform to the provisions of this new statute commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.³²

The bill has an effective date of July 1, 2008.

C. SECTION DIRECTORY:

Section 1: Amends section s. 83.53, F.S., relating to a landlord's access to a dwelling unit.

Section 2: Creates s. 83.531, F.S., relating to access to dwelling units; prohibitions; penalties.

Section 3: Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

²⁷ *deJesus v. Seaborad Coast Line R. Co.*, 281 So.2d 198 (Fla. 1973); *Griffith v. Dep't of Health and Rehabilitative Serv.*, 624 So.2d 813 (Fla. 4th DCA 1993).

²⁸ *Paterson*, 472 So. 2d at 1213 and 1214.

²⁹ *Id.*

³⁰ *Id.*

³¹ Section 943.053, F.S., authorizes FDLE to perform background checks for the public. The fee per record for criminal history information provided to the public is \$23. Section 943.053(3)(b), F.S. These fees are deposited into the FDLE Administrative Trust Fund. Section 943.367(2), F.S.

³² Penalties for a second degree misdemeanor include a term of imprisonment not exceeding 60 days and a fine not to exceed \$500.

Each background check required by the bill will generate a \$23 fee collected by FDLE.³³ The Florida Apartment Association estimates that there are approximately 30,000 to 40,000 employees that will need to be checked in the first year. Therefore, the bill could generate \$920,000 in revenue in the first year of implementation. However, this estimate cannot be confirmed. Revenues in following years would be substantially smaller since only new employees would need to be checked.

2. Expenditures:

The bill has a minimal impact on state expenditures. See D. Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires landlords to incur the costs for performing state criminal background checks. The fee for each check is \$23. The Florida Apartment Association estimates that there are approximately 30,000 to 40,000 employees that will need to be checked. It is uncertain how many additional employees will need to be checked after the first year of implementation of the bill. Future costs will depend on turnover of employees and growth.

D. FISCAL COMMENTS:

The Florida Department of Law Enforcement reports that they are currently at 70% to 75% processing capacity on the database server for performing and maintaining criminal backgrounds checks and that adding a mandate of additional checks may require the Department to replace the server at an approximate cost of \$12,000. The Department stated that while it could absorb this workload within existing resources, it will monitor the impact of the additional checks and if necessary, request an appropriation through a future Legislative Budget Request.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None.

³³ Section 943.053(3)(b), F.S. These fees are deposited into the FDLE Administrative Trust Fund. Section 943.367(2), F.S.
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B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

FDLE recommends including a reference to a statewide criminal history record check on line 28 in the legislation.

The term "conviction" may need to be expanded to include pleas of no contest and cases where adjudication was withheld.

The term "direct employee" is used in section 1 of the bill and the term "employee" is used in section 2 of the bill. These terms appear to have the same meaning and should perhaps be made consistent. Whatever term is used, it perhaps needs to be defined to clarify whether the bill applies to contractors that are not actually employees under Internal Revenue Code regulations.

The bill applies to employees that have been convicted of a felony in Florida. Members may wish to consider if a) the bill should be more expansive to cover felonies outside of Florida, and b) whether the bill is too expansive in that it may cover crimes not related to safety of tenants.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 19, 2008, the Committee on Constitution & Civil Law recommended a strike-all amendment filed by Rep. Kravitz. The amendment does the following:

- Removes section 2 of the bill, which required criminal history checks of a landlord's employees;
- Defines the term "employee" as a person who receives compensation from, and is under the control of a landlord who regularly deducts FICA, withholding tax, and provides worker's comp;
- Exempts homes for the aged from the record-keeping requirements of the bill;
- Defines "homes for the aged" as it is defined in s. 212.08(7)(i), F.S., to the extent that such facilities provide care and services for the aged.