

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 931 Residential Tenancies

SPONSOR(S): Williams and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1408

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Safety & Security Council</u>	<u></u>	<u>Davis</u>	<u>Havlicak</u>
2) <u></u>	<u></u>	<u></u>	<u></u>
3) <u></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 creates s. 83.683, F.S., and provides that a landlord may not terminate a tenancy, fail to renew a tenancy, refuse to enter into a rental agreement, or otherwise retaliate in the rental of the dwelling unit if the tenant, applicant, or household member is a victim of domestic violence, dating violence, repeat violence, or sexual violence.

The bill allows tenants to terminate their rental agreement early due to domestic violence, dating violence, repeat violence, or sexual violence. The bill provides for payment of specified rent, and prohibits tenant liability for other rent or fees. Additionally, it provides that the excluded tenant is still liable for rent and damages.

The bill states that a landlord may not include in a residential rental agreement a provision that authorizes a landlord to terminate or to impose a penalty upon a tenant for calls made by the tenant for assistance from a law enforcement agency in response to domestic violence, dating violence, repeat violence, or sexual violence.

The bill allows a victim of domestic violence, dating violence, repeat violence, or sexual violence to request that the landlord change all locks and gives the landlord 72 hours to comply.

Lastly, the bill provides that its provisions may not be waived or modified by agreement of the parties.

The bill becomes effective July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty -- This bill decreases the ability of landlords and tenants to enter into contract terms as they see fit.

Empower families -- This bill may serve or benefit families that are suffering from the effects of domestic violence.

B. EFFECT OF PROPOSED CHANGES:

Termination of Lease Agreements

The Florida Residential Landlord and Tenant Act, first enacted in 1973, governs residential landlord tenant law.¹ A lease is an agreement to use real property for a certain length of time. According to s. 83.43, F.S., a tenant is any person entitled to occupy a dwelling unit under a rental agreement and a landlord is the owner or lessor of a dwelling unit. By definition, all residential tenancies must end. Most end at the conclusion of the agreed-upon lease term with the tenant having paid all rents due. Section 83.595, F.S., governs the financial obligation of the tenant where the tenant's occupation of the property ends prior to the agreed upon term of the lease.

Section 83.595, F.S., provides that a landlord who has retaken possession of a rental property before the end of the lease term may do any of the following: treat the lease as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant; retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between the rental stipulated to be paid under the lease agreement and what, in good faith, the landlord is able to recover from renting to another tenant; or stand by and do nothing, holding the tenant liable for the rent as it comes due.

Florida law currently provides several circumstances under which a rental agreement may be terminated prematurely by a tenant with little or no penalty. These circumstances include the following: if the landlord materially fails to comply with certain obligations to maintain the premises; if the landlord fails to remedy certain provisions of the rental property after those provisions have been called to his or her attention in writing by the tenant;² if the premises are damaged or destroyed by an action that is not the tenant's fault and the tenant cannot substantially enjoy the premises;³ or if the tenant is an active duty member of the armed forces, and is either transferred or discharged from service.⁴

A tenant may terminate a rental agreement when the landlord materially fails to comply with s. 83.51(1) F.S.,⁵ or material provisions of the rental agreement within seven days of notice from the tenant specifying the noncompliance and indicating the tenant's intent to terminate the rental agreement. If the landlord's failure to comply is due to causes beyond the control of the landlord, and the landlord has made every reasonable effort to comply, and the landlord's failure to comply makes the dwelling unit

¹ Part II of ch. 83, F.S.

² Section 83.56, F.S.

³ Section 83.63, F.S.

⁴ Section 83.682, F.S.

⁵ Section 83.51(1), F.S., requires a landlord to comply with all applicable building, housing, and health codes, and maintain all structural components and plumbing in good repair.

untenantable, and the tenant then vacates the unit, the tenant will not be liable for rent during the time the dwelling unit remains uninhabitable.⁶ The landlord is not responsible to the tenant for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.⁷

A provision in a rental agreement is void and unenforceable to the extent that it purports to limit or preclude any liability of the landlord to the tenant or of the tenant to the landlord.⁸

A tenant has an obligation at all times to maintain a dwelling. Specifically, a tenant must conduct him or herself and require other persons on the premises with his or her consent to conduct themselves in a manner that does not unreasonably disturb the tenant's neighbors or constitutes a breach of the peace.⁹

Injunctions against Domestic, Repeat, Dating, or Sexual Violence

Section 741.30(1)(a), F.S., creates a cause of action for an injunction for protection against domestic violence, and provides that a person who is the victim of domestic violence, as defined in s. 741.28, F.S.,¹⁰ or who has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence, has standing to seek an injunction against domestic violence. A domestic violence injunction may be sought by family or household members, and "no person shall be precluded from seeking injunctive relief pursuant to this chapter solely on the basis that such person is not a spouse."¹¹

Courts have adopted a two-pronged test for determining whether a relationship is such that the court can properly issue a domestic violence injunction against one of the parties.¹² First, the petitioner must have a familial or domestic relationship with the respondent that falls within the range of relationships listed in the statute, and second, the parties must have resided together, either in the past or present, as a family or household in the same dwelling unit.¹³ An action for an injunction does not affect the title to any real estate.¹⁴

Section 784.046, F.S., defines violence, repeat violence, sexual violence, and dating violence, and creates separate causes of action for repeat, sexual, and dating violence. Any person who is the victim

⁶ Section 83.56(1)(a), F.S.

⁷ Section 83.51(4), F.S.

⁸ Section 83.47, F.S.

⁹ Section 83.52(7), F.S.

¹⁰ Section 741.28(2), F.S., provides that 'domestic violence' means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

¹¹ Section 741.30(1)(e), F.S.

¹² *Kokoris v. Zipnick*, 738 So.2d 369, 370 (Fla. 4th DCA 1999).

¹³ *Id.*

¹⁴ Section 741.30(1)(h), F.S.

of repeat violence,¹⁵ or the parent of a minor child who lives at home and is the victim of repeat violence, has standing to file a sworn petition for an injunction against repeat violence.¹⁶

“Dating violence” is defined as “violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature.”¹⁷ Any person who has reasonable cause to believe that he or she is in imminent danger of becoming the victim of an act of dating violence, or who is the victim of dating violence and has reasonable cause to fear imminent future dating violence, or who is the parent of a minor child living at home and is in need of protection from dating violence, may file a petition for an injunction to protect against dating violence.¹⁸

A person who is the victim of sexual violence,¹⁹ or the parent of any minor child living at home who is the victim of sexual violence, has standing to file a petition for a protective injunction against sexual violence if:

- The person has reported the sexual violence to a law enforcement agency and is cooperating with any criminal proceeding against the respondent; or
- The person who committed the sexual violence was sentenced to a term of imprisonment for the sexual violence, and such sentence expires or shall expire within 90 days of the filing of the petition.²⁰

The court is authorized to grant an injunction enjoining the respondent from committing any acts of violence and it is also given broad authority to order such other relief as is necessary to protect the victim.²¹ When it appears to the court that an immediate and present danger of domestic violence exists, the court may grant a temporary injunction ex parte which may include awarding a petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner.²² An order granting an injunction must be supported by competent, substantial evidence.²³

The Bill

Victim Protection/Nondiscrimination

¹⁵ Section 784.046(1)(b), F.S., provides that “repeat violence” means two incidents of violence or stalking committed by the respondent, one of which must have occurred within six months of the filing of the petition, and which were directed against the petitioner or an immediate member of the petitioner’s family.

¹⁶ Section 784.046(2)(a), F.S.

¹⁷ Section 784.046(1)(d), F.S. The dating relationship shall be determined based on the existence of the following factors: 1) a dating relationship must have existed within the past 6 months; 2) the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and 3) the frequency and type of interaction between the persons involved in the relationship must have included that all the persons have been involved over time and on a continuous basis during the course of the relationship.

¹⁸ Section 784.046(2)(b), F.S.

¹⁹ Section 784.046(1)(c), F.S., provides that “sexual violence” means one incident of sexual battery, a lewd or lascivious act committed upon or in the presence of a person younger than 16, luring or enticing a child, sexual performance by a child, or any forcible felony wherein a sexual act is committed or attempted, regardless of the presence or absence of criminal charges resulting from the incident.

²⁰ Section 784.046(2)(c), F.S.

²¹ Section 784.046(6)(a), (7)(a)-(b), F.S.

²² Sections 741.30(5)(a)2 and 741.30(6)(a)2.

²³ *Forrest v. Wilson*, 889 So.2d 124, 124-25 (Fla. 1st DCA 2004).

The bill creates s. 83.683, F.S., and states that a landlord may not terminate a tenancy, fail to renew a tenancy, refuse to enter into a rental agreement, or otherwise retaliate in the rental of the dwelling unit if the tenant, applicant, or household member²⁴ is a victim of domestic violence, dating violence, repeat violence, or sexual violence or if the tenant terminated a rental agreement due to domestic violence.

The bill states that a landlord may not include in a residential rental agreement a provision that authorizes a landlord to terminate or to impose a penalty upon a tenant for calls made by the tenant for assistance from a law enforcement agency or other emergency assistance in response to domestic violence, dating violence, repeat violence, or sexual violence.

Evidence

The bill provides that the evidence provided to a landlord to prove the occurrence of domestic violence, dating violence, repeat violence, or sexual violence may include:

- Records, orders, or files of a court, law enforcement agency, or state or federal agency;
- Documentation from a domestic violence or sexual assault protection program; or
- Documentation from a medical professional.

Early Termination of Rental Agreement

The bill provides that a tenant protected by newly created s. 83.683, F.S., may terminate his or her rental agreement for a dwelling unit by providing the landlord with a written notice of termination to be effective on a date stated in the notice which must be at least 30 days after the landlord receives the written notice of termination.

The notice to the landlord must include:

- A copy of the injunction for protection against domestic violence issued by the court;
- A valid card issued under an address confidentiality program to the victim or a minor member of the tenant's household pursuant to s. 741.403, F.S.²⁵; or
- An order of no contact entered by a court in a criminal case.

The bill further provides that after terminating a rental agreement the tenant who is released is liable to the landlord for the rent due under the rental agreement prorated to the effective date of the termination. The tenant is not liable for any other rent or fees due to the early termination of the tenancy. At the end of the termination of the lease for the victim of domestic violence, if there are any remaining tenants residing in the dwelling unit, the tenancy shall continue for those tenants. If a tenant terminates the rental agreement 14 days or more before he or she initially occupies the dwelling unit, the tenant is not liable for any damages or penalties. The respondent who has been excluded from the dwelling unit under court order remains liable under the lease with any other tenant of the dwelling unit for rent or damages to the dwelling unit.

Changing Locks

²⁴ Section 741.28 F.S., defines "family or household member" as spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

²⁵ Pursuant to s. 741.403, F.S., an adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of a person adjudicated incapacitated under chapter 744 may apply to the Attorney General to have an address designated by the Attorney General serve as the person's address or the address of the minor or incapacitated person.

The bill provides that if the respondent of domestic violence, dating violence, repeat violence, or sexual violence **is not a tenant** in the same dwelling unit as the protected tenant, the protected tenant may give oral or written notice to the landlord that he or she is a victim of domestic violence and may request that the door and other locks be changed. A landlord that receives a request under these provisions must change the door locks or give permission to the tenant to change the locks within 72 hours.

If the respondent of domestic violence, dating violence, repeat violence, or sexual violence **is a tenant** in the same dwelling unit as the victim, the bill provides that the protected tenant may give oral or written notice to the landlord that he or she is a victim of domestic violence and may request that the door and other locks be changed. Before the landlord or tenant may change the door locks the tenant must provide the landlord with a copy of the court order excluding the respondent from the dwelling unit of the protected tenant. A landlord that receives a request under these provisions must change the door locks within 72 hours.

The bill requires that the protected tenant shall bear the cost of changing the locks and if the landlord does not act within the required time the tenant may change the locks without the landlord's permission, provided that the tenant give a key to the new locks to the landlord within 48 hours after the locks are changed.

The landlord, if provided with a court order excluding the respondent from the dwelling unit, may not grant the respondent access to the dwelling unit unless the respondent has a court order allowing access to retrieve personal belongings. If a landlord complies with this paragraph, the bill provides that the landlord is not liable for civil damages to a respondent excluded from the dwelling unit, or loss of use of that dwelling unit or loss of use or damage to the respondent's personal property.

Non-Waiver of Rental Terms

The bill provides that pursuant to s. 83.47, F.S., the provisions of the bill may not be waived or modified by agreement of the parties.

C. SECTION DIRECTORY:

Section 1: Creates s. 83.683 F.S., regarding prohibited discrimination against a victim of domestic violence, dating violence, repeat violence, or sexual violence.

Section 2: Provides for an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will have an indeterminate cost to landlords for the termination of rental agreements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the 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:

Impairment of Contracts

Both Article I, section 10 of the United States Constitution and Article I, section 10 of the Florida Constitution forbid state impairment "of the obligation of contracts."²⁶ Florida courts have generally treated the requirements of the state and federal Contract Clauses as identical, although they have suggested that the provision in the state constitution is probably stronger.²⁷

Applying the effects of this bill to contracts entered into before its effective date may implicate issues involving legislative impairment of contracts. Courts use a balancing test to determine whether particular legislation violates the Contract Clause, measuring the severity of contractual impairment against the importance of the interest advanced by the regulation, and also looking at whether the regulation is a reasonable and narrowly tailored means of promoting the state's interest.²⁸

However, Florida common law does not allow government to adversely affect substantive rights once those rights have vested,²⁹ moreover, unless the Legislature states otherwise, a statute is presumed only to operate prospectively, especially when such operation would impair vested rights.³⁰

²⁶ See generally 16 AM. JUR. 2D CONSTITUTIONAL LAW §§ 708-744; 10 FLA. JUR. 2D CONSTITUTIONAL LAW §§ 348-373.

²⁷ See, e.g., *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1980) (accepting as persuasive an interpretation of the federal Contract Clause by the Supreme Court of the United States in *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978)).

²⁸ See *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978); *East New York Savings Bank v. Hahn*, 326 U.S. 230 (1945); *Ruhl v. Perry*, 390 So.2d 353 (Fla. 1980); *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1980); *Yellow Cab Co. v. Dade County*, 412 So.2d 395 (Fla. 3d DCA 1982).

²⁹ See *Bitterman v. Bitterman*, 714 So.2d 356 (Fla. 1998).

³⁰ See *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55 (Fla. 1995); *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352 (Fla. 1994).

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill potentially applies to pre-existing contracts. It is suggested that an applicability clause be added to provide that the provisions of the bill only apply to contracts entered into on or after the date the bill becomes effective.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES