

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: SB 612

INTRODUCER: Senator Steube

SUBJECT: Sexual Offenders

DATE: December 4, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 612 creates “The Florida Sex Offender Rental Notification Act,” which requires that all residential rental agreements of a certain duration contain a distinct and prominent disclosure statement regarding the employment of sexual offenders. 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 also authorizes a tenant to cancel the rental agreement within a specified period of time if the agreement disclosed the employment of a sexual offender.

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

¹ Section 83.49, F.S.

² Section 83.50, F.S.

³ Section 83.595(4), F.S.

- 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

Overview of Sexual Predator and Sexual Offender Registration

Florida law requires certain persons to register as a sexual predator or sexual offender. In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred.⁶

A sexual predator or sexual offender must comply with a number of registration requirements.⁷ Most of these requirements relate to the registration of particular identifying and residence information but other information may also be required (e.g., vehicular information, attendance at an institution of higher education, and temporarily or permanently departing from or reentering this state). The agency to which the person reports this information is determined by the person's status or the type of information that has to be reported. For example, if the person is not in the custody of or under the supervision of the Department of Corrections (DOC), Department of Juvenile Justice (DJJ), or Department of Children and Families (DCF) (civilly-confined violent sexual predators), he or she would report, in most circumstances, to the local sheriff's office. An exception would be reporting to the Department of Highway Safety and Motor Vehicles (DHSMV) to obtain or renew a driver license or state identification card (or to update information relevant to the license or card).

Information reported by registered sexual predators and sexual offenders is provided to the Florida Department of Law Enforcement (FDLE) and entered in a statewide database. The registry laws contain a public or community notification component.⁸ The FDLE maintains a website that makes available to the public some of this information (e.g., identifying information,

⁴ Section 83.67(5), F.S.

⁵ Section 404.056(5), F.S.

⁶ See generally ss. 775.21, 943.0435, 944.607, and 985.4815, F.S. "All sex offenders that are required to register have been convicted of certain qualifying felonies set forth in Florida statutes or have registration requirements in other states.... Some sex offenders are designated by the court as sexual predators because they are deemed to present an extreme threat to public safety as demonstrated through repeated sex offenses, the use of physical violence, or preying on child victims." *Sex Offender Registration and Monitoring: Statewide Requirements, Local Practices, and Monitoring Procedures*, Report No. 15-16, p. 2 (footnote omitted), Office of Program Policy Analysis & Government Accountability, The Florida Legislature. This report is available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1516rpt.pdf> (last visited on November 28, 2017). This report is further referenced in this analysis as "OPPAGA Report."

⁷ *Id.* Failure to comply with these requirements is generally a third degree felony. See ss. 775.21, 943.0435, and 985.4815, F.S.

⁸ "Local law enforcement agencies are ... required to notify the public of the presence of sexual predators living in their communities. Within 48 hours, law enforcement agencies must notify licensed child care centers and schools within a one-mile radius of the predator's residence." OPAAGA Report. "In addition, local law enforcement agencies, or ... [DOC], if an offender is on community supervision, are also required to notify institutions of higher learning when a sex offender enrolls, is employed, or volunteers at that institution of higher learning, including technical schools, community colleges, and state universities." *Id.*

residence information, and registration-qualifying sexual offense or offenses).⁹ Information is also available through a toll-free hotline.

Sexual Predator and Sexual Offender Criteria

Several provisions of the registry laws specify that the following offenses are registration-qualifying offenses: kidnapping (s. 787.01, F.S.); false imprisonment (s. 787.02, F.S.); and luring or enticing a child (s. 787.025(2)(c)), F.S. However, these are registration-qualifying offenses only if the victim is a minor.¹⁰ In addition, convictions for these offenses can only be used as a registration-qualifying offense if the court finds that the conviction has a sexual component. As one Florida appellate court has held, the state has an interest in protecting the public from sexual offenders and the designation of a person as a sexual offender is rationally related to that goal where an accused has been convicted of false imprisonment of a child under 13 when committed along with an enumerated sexual offense. However, where an accused is convicted of false imprisonment devoid of a sexual component, such rational basis is lost.¹¹

Section 943.0435, F.S., includes a list of registration-qualifying offenses relevant to certain juvenile offenders. This subparagraph does not include similar offenses committed in Florida which have been redesignated from a former statute number to one of the listed offenses. This appears to be an error because a provision of this type appears in all other provisions of the registry laws relating to registration criteria.

Registration and Reregistration

Sexual predators and sexual offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence.¹² Sexual predators and sexual offenders who are in the custody of, or under the supervision of, the DOC or a local jail must register with the DOC and the jail, respectively. During initial registration, the registrant must provide information to the sheriff's office including, in part, his or her name, address, e-mail address, home and cellular telephone number, and Internet identifier. The sheriff's office is then responsible for providing the information to the FDLE for inclusion in the statewide database. Sexual predators and sexual offenders also must reregister at specified intervals and immediately report any changes to registration information.¹³

The interval at which sexual predators and sexual offenders must reregister depends on whether the person is designated as a sexual predator or as a sexual offender and the qualifying offense that was the basis for the designation. Sexual predators and certain sexual offenders must report to reregister in person each year during their birth month and during every third month thereafter to the sheriff's office in the county in which they reside or are otherwise located.¹⁴ Examples of sexual offenders who must register quarterly include sexual offenders who have a conviction for

⁹ See <https://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on November 28, 2017).

¹⁰ Sections 775.21(4)(a), 943.0435(14)(b), and 944.607(13)(b), F.S. This language is also included in the requirement for notifications the FDLE and/or others are required to make regarding certain sex offenders under s. 944.606(1)(f), F.S.

¹¹ *Raines v. State*, 805 So. 2d 999, 1003 (Fla. 4th DCA 2001).

¹² See ss. 775.21 and 943.0435, F.S.

¹³ *Id.*

¹⁴ Sections 775.21(8)(a), 943.0435(14)(b), 944.607(13)(b), and 985.4815(13)(a), F.S.

kidnapping or false imprisonment (where the victim is a minor) or sexual battery.¹⁵ Sexual offenders who do not fall in the quarterly reporting category must report semiannually during their birthday month and during the sixth month thereafter.¹⁶ Reports must be made in person to the sheriff's office in the county in which the registrant resides or is otherwise located.¹⁷

Registration – Electronic Mail Addresses and Internet Identifiers

Sexual predators and sexual offenders must register all electronic mail (e-mail) address or Internet identifiers with the FDLE before such addresses or identifiers can be used.¹⁸ Registration must be made either in person or through the FDLE's online system.¹⁹

The term "Internet identifier" is defined in s. 775.21(2)(j), F.S., to mean all electronic mail, chat, instant messenger, social networking, application software, or similar names used for Internet communication, but does not include a date of birth, social security number, or personal identification number (PIN).²⁰

Sections 775.21 and 943.0435, F.S., require the FDLE to establish an online system through which sexual predators and sexual offenders may securely access and update all electronic mail addresses and Internet identifier information.

Registration – Location of Residence or Travel

Sexual predators and sexual offenders must register their permanent, temporary, or transient residences both within the state and outside the state.²¹ A sexual predator or sexual offender who intends to establish a permanent, temporary, or transient residence in a state or jurisdiction other than Florida must report in person to the sheriff of the county of current residence within:

- 48 hours before the date he or she intends to leave Florida to establish residence in another state or jurisdiction; or
- 21 days before his or her planned departure date for stays outside the country lasting longer than five days.²²

The notification provided to the sheriff must include the address, municipality, county, state, and country of intended residence.²³ The sheriff must promptly provide the FDLE with the information received from the registrant and the FDLE must notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence of the registrant's intended residence.²⁴

¹⁵ Sections 943.0435(14)(b) and 944.607(13)(b), F.S.

¹⁶ Sections 943.0435(14)(a) and 944.607(13)(a), F.S.

¹⁷ *Id.*

¹⁸ Sections 775.21(6)(a), (6)(e), and (6)(g) and 943.0435(2)(a), (2)(b), and (4)(e), F.S.

¹⁹ Sections 775.21(6)(g) and 943.0435(4)(e), F.S.

²⁰ Voluntary disclosure by a sexual predator of his or her date of birth, social security number, or PIN as an Internet identifier waives the disclosure exemption in this paragraph for such personal information. *Id.*

²¹ Sections 775.21(6)(a) and (i) and 943.0435(2)(b) and (7), F.S.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

Registration – Institution of Higher Education

Sexual predators and sexual offenders who are enrolled, employed, volunteering, or carrying on a vocation at an institution of high education must provide:

- The name, address, and county of each institution, including each campus attended; and
- Enrollment, volunteer, or employment status.²⁵

Additionally, a change in such enrollment, volunteer, or employment status must be reported in person to the appropriate entity within 48 hours.²⁶ The appropriate entity must promptly notify each institution of the sexual predator's or sexual offender's presence and any change in enrollment, volunteer, or employment status.²⁷

The term:

- "Institution of higher education" is included in ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., and is defined to mean a "career center, community college, college, state university, or independent postsecondary institution."²⁸
- "Change in status at an institution of higher education" is included in ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., and is defined to mean the "commencement or termination of enrollment, including, but not limited to, traditional classroom setting or online courses, or employment, whether for compensation or as a volunteer, at an institution of higher education or a change in location of enrollment or employment, whether for compensation or as a volunteer, at an institution of higher education."²⁹

Registration – Professional Licenses and Employment Information

Sexual predators and sexual offenders must provide information about employment and any professional licenses they possess.³⁰ A professional license is defined as the "document of authorization or certification issued by an agency of this state for a regulatory purpose, or by any similar agency in another jurisdiction for a regulatory purpose, to a person to engage in an occupation or to carry out a trade or business."³¹

Registration – Driver License or Identification Card

Sexual predators and sexual offenders who are not incarcerated must register in person at a driver license office within 48 hours to obtain a driver license or identification card.³²

Additionally, sexual predators and sexual offenders must report specified information to the

²⁵ Sections 775.21(6)(a), 943.0435(2)(b), 944.607(4)(b), and 985.4815(4)(b), F.S.

²⁶ Section 775.21(6)(b), F.S., provides that the sheriff or the DOC is the appropriate reporting entity. Section 943.0435(2)(b), F.S., provides that the sheriff, DOC or DJJ are the appropriate reporting entities. Section 944.607(4)(b), F.S., provides that the DOC is the appropriate reporting agency.

²⁷ *Id.*

²⁸ Section 775.21(1)(i), F.S.

²⁹ Section 775.21(1)(a), F.S.

³⁰ Sections 775.21(6)(a) and (8), 943.0435(2)(b) and (14)(c), 944.606(3)(a), 944.607(4)(a) and (14)(c), 985.481(3)(a), 985.4815(4)(a) and (13)(b), F.S.

³¹ Section 775.21(2)(l), F.S.

³² Sections 775.21(6)(f) and (g) and 943.0435(4)(a), F.S. Section 944.607, F.S., covers this requirement for sexual offenders who are not incarcerated, but are under the supervision of the DOC.

Department of Highway Safety and Motor Vehicles (DHSMV), maintain an accurate driver license or identification card, and report to a driver license office within 48 hours any time the registrant's:

- Driver license or identification card is subject to renewal;
- Residence has changed; or
- Name has changed by reason of marriage or other legal process.³³

The DHSMV must forward to the FDLE and the DOC all photographs and information provided by sexual predators and sexual offenders.³⁴

A sexual predator or sexual offender who is unable to secure or update a driver license or identification card with the DHSMV as described must report any change of the residence or change in name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the registrant resides or is located, and provide confirmation that he or she reported such information to the DHSMV.³⁵

III. Effect of Proposed Changes:

The bill creates s. 83.495, F.S., as "The Florida Sex Offender Rental Notification Act." A definition of "employee" is provided as "an owner, landlord, manager, and maintenance or other personnel who have or are entitled to have access by key, access code, or other means of entry into a rental residence." The definition for "sexual offender" is the same as s. 943.0435(1)(h)1.a.(I), F.S.

The bill requires that all residential rental agreements having a duration of longer than 5 consecutive days must contain a disclosure advising the tenant of the following:

- Whether all employees have been screened for offenses that would qualify them to register as a sexual offender under s. 943.0435, F.S., and if so, whether they are subject to annual rescreening;
- The manner, method, and date of all employee screenings performed pursuant to this section, including all jurisdictions searched, for offenses qualifying under s. 943.0435, F.S.; and
- The results of the screening, specifically identifying the name, job description, and offense of any employee who is a sexual offender.

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 an employee as a sexual offender, a tenant may cancel the residential rental agreement within three business days after completing it, and all deposit

³³ *Id.* "Local tax collectors perform driver's license related functions previously conducted by DHSMV, including processing sex offender identification requests, for 64 of Florida's 67 counties. The three counties with DHSMV offices are Broward, Miami Dade, and Volusia. When combined, these three counties reflect approximately 40% of all transactions and will remain the responsibility of DHSMV because their tax collectors are appointed, not elected officials." OPPAGA Report.

³⁴ *Id.*

³⁵ *Id.*

moneys must be returned to the tenant without penalty. Additionally, a residential rental agreement is voidable by the tenant at any time if the disclosure statement failed to disclose the employment of a sexual offender who was employed at the time the disclosure statement was prepared. In the event the agreement is voided, all deposit moneys, minus any amount payable for physical damage to the property 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:

As the bill is written, it is unclear what type of screening is to be performed on the employees with a means of entry into rental residences. It is possible that the intent of the bill is to utilize the services available on FDLE's website, or on the National Sexual Offender Registry, which do not charge a fee for the searches. However, if another type of screening is utilized, there could be a cost associated. FDLE pointed out that as the bill is written, specifically concerning not providing an identifiable regulatory agency, a state and national criminal history record check would not be a permissible avenue for conducting these screenings, pursuant to Public Law 92-544.³⁶

C. Government Sector Impact:

None.

³⁶ Florida Department of Law Enforcement, *Senate Bill 612 Analysis* (November 14, 2017).

VI. Technical Deficiencies:

None.

VII. Related Issues:

One issue in the bill is the definition of “sexual offender” on lines 42-43. An individual could meet the statutory definition of a sexual offender under s. 943.0435, F.S. in several ways. As it is now, the definition used in the bill is incomplete. Section 943.0435(1)(h)1.a.(I), F.S., is only one part of a list of criteria required to designate an individual as a sexual offender. In order to be designated a sexual offender under this section, the subject is required to meet both elements under (I) and (II). By specifically eliminating sub paragraph (II), the definition would no longer meet the complete definition of a sexual offender under s. 943.0435, F.S.³⁷

The second issue is that the bill limits disclosures to “sexual offenders.” By specifically limiting the disclosure of “sexual offenders”, it would preclude individuals from disclosing employees who are designated as “sexual predators” as defined under s. 775.21, F.S.³⁸

VIII. Statutes Affected:

This bill creates section 83.495 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.)

None.

B. Amendments:

None.

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

³⁷ *Id.*

³⁸ *Id.*