

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1193 Court Records of Eviction Proceedings

SPONSOR(S): Justice Appropriations Subcommittee, Aloupis

TIED BILLS: HB 1195 **IDEN./SIM. BILLS:** SB 1746

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	18 Y, 0 N	Brascomb	Jones
2) Justice Appropriations Subcommittee	15 Y, 0 N, As CS	Smith	Keith
3) Judiciary Committee	16 Y, 0 N	Brascomb	Kramer

SUMMARY ANALYSIS

A lease is an estate interest in real property held under a rental agreement by which the owner (landlord) gives another (tenant) the right to occupy or use land for a period of time. Section 83.56, F.S., establishes the circumstances under which a residential landlord or tenant may terminate a rental agreement. A landlord may terminate a tenancy early and evict a tenant for a number of reasons, including not paying rent, violating the lease or rental agreement, or committing an illegal act.

There is currently no public records exemption for eviction-related court records. An eviction on a public court record may prevent a family from relocating to safe, affordable housing because landlords often screen applicant background criteria including credit history, criminal history, and eviction history before renting a property. Increasingly, landlords search court websites and purchase reports from tenant screening companies, which collect information from eviction courts and aggregate it with other publicly available data. Some tenant screening companies make recommendations based solely on the existence of a court case, regardless of whether the case resulted in a judgment against the tenant.

CS/HB 1193 creates s. 83.626, F.S., authorizing a tenant or mobile home owner who is a defendant in an eviction proceeding to file a motion with the court to have the records of such proceedings sealed and to have his or her name substituted with the word "tenant" on the progress docket if:

- The parties file a joint stipulation.
- The case was dismissed.
- The case was resolved by settlement or stipulation of the parties and the defendant has complied with the terms of the agreement.
- A default judgment was entered against the defendant, and the defendant has satisfied any monetary award included in the judgment.
- A judgment was entered against the defendant on the merits at least 5 years before the motion was filed under this subsection, and the tenant has satisfied any monetary award included in the judgment.

The bill also requires a court to grant such motion if the parties file a joint stipulation or the case was dismissed. In a mobile home park lot eviction proceeding under s. 723.061, F.S., the court must substitute the defendant's name on the progress docket with "tenant" if the court entered a judgment in favor of the defendant.

The bill has no fiscal impact on state and local governments.

The bill has an effective date of July 1, 2021, and applies to any judgment entered before, on, or after that date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Residential Tenancies

A lease is an estate interest in real property held under a rental agreement by which the owner (landlord) gives another (tenant) the right to occupy or use land for a period of time.¹ Section 83.56, F.S., establishes the circumstances under which a residential landlord or tenant may terminate a rental agreement. A landlord may terminate a tenancy early and evict a tenant for a number of reasons, including not paying rent, violating the lease or rental agreement, or committing an illegal act. To terminate the tenancy, the landlord must first give the tenant written notice. The type of notice is determined by the reason for the termination as follows:

- If the tenant fails to pay rent, then the landlord can give the tenant a three-day notice to pay rent or terminate the rental agreement.
- If the tenant violates the lease or rental agreement and the violation can be corrected, then the landlord can give the tenant a seven-day notice to cure.
- If the tenant intentionally destroys the rental property or other tenants' property, creates unreasonable disturbances, or repeats the same lease violation within a 12-month period, an unconditional quit notice allows the landlord to terminate the tenancy at the end of a seven-day period and proceed with the eviction without giving the tenant time to cure a violation.

Public Records

The state Constitution guarantees each person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.² The Legislature, however, may provide by general law for the exemption of records from the constitutional requirement.³ The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law.⁴ A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.⁵

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees each person a right to inspect and copy any state, county, or municipal record. Further, the Open Government Sunset Review Act (Act) provides that a public record exemption may be created or maintained only if it serves an identified public purpose.⁶ In addition, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a government program, which administration would be significantly impaired without the exemption;
- Protecting personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protecting trade or business secrets.⁷

¹ West's Encyclopedia of American Law, Leasehold (2008), <https://legaldictionary.thefreedictionary.com/leasehold> (last visited Apr. 1, 2021). See s. 689.01, F.S.

² Art. I, s. 24(a), Fla. Const.

³ Art. I, s. 24(c), Fla. Const.

⁴ *Id.*

⁵ *Id.*

⁶ S. 119.15, F.S.

⁷ S. 119.15(6)(b), F.S.

The Act also requires the automatic repeal of a public record or public meeting exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁸

There is currently no public records exemption for eviction-related court records. An eviction on a public court record may prevent a family from relocating to safe, affordable housing because before renting a property, landlords often screen applicant background criteria including credit history, criminal history, and eviction history.⁹ Increasingly, landlords search court websites and purchase reports from tenant screening companies, which collect information from eviction courts and aggregate it with other publicly available data.¹⁰ Some tenant screening companies make recommendations based solely on the existence of a court case, regardless of whether the case resulted in a judgment against the tenant.¹¹ Reliance on screening company reports may have also increased due to the decision by the three major credit bureaus in 2017 to not include the vast majority of civil judgments on a standard consumer credit report without other identifying information, such as a birthdate or social security number.¹²

Effect of Proposed Changes

CS/HB 1193 creates s. 83.626, F.S., authorizing a tenant or mobile home owner who is a defendant in an eviction proceeding to file a motion with the court to have the records of such proceedings sealed and to have his or her name substituted with the word “tenant” on the progress docket if:

- The parties file a joint stipulation.
- The case was dismissed.
- The case was resolved by settlement or stipulation of the parties and the defendant has complied with the terms of the agreement.
- A default judgment was entered against the defendant, and the defendant has satisfied any monetary award included in the judgment.
- A judgment was entered against the defendant on the merits at least 5 years before the motion was filed under this subsection, and the tenant has satisfied any monetary award included in the judgment.

If the defendant files a motion to seal because the case was settled or the defendant satisfied the monetary award in a default judgment, the bill requires the defendant to serve a copy of the motion on all parties to the proceeding. If a party files a written objection within 30 days after such service, the court must schedule a hearing. If no written objection is filed within 30 days or after the court determines that the defendant is eligible for relief, the court must grant the motion.

The bill also requires a court to grant such motion without a hearing if the parties file a joint stipulation or the case was dismissed. In a mobile home park lot eviction proceeding under s. 723.061, F.S., the court must substitute the defendant’s name on the progress docket with “tenant” if the court entered a judgment in favor of the defendant.

The bill applies to any judgment entered before, on, or after July 1, 2021.

The bill has an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Creates s. 83.626, F.S., relating to court records of eviction proceedings.

Section 2: Provides an effective date of July 1, 2021.

⁸ S. 119.15(3), F.S.

⁹ Lawyers’ Committee for Better Housing, *Prejudged: The Stigma of Eviction Records*, Housing Action Illinois (March 2018), <http://housingactionil.org/downloads/EvictionReport2018.pdf> (last visited Apr. 1, 2021).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 30, 2021, the House Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed the portion of the bill

prohibiting the clerk of the court from charging a filing fee for the sealing of certain eviction records specified in the bill.

This analysis is drafted to the committee substitute as passed by the House Justice Appropriations Subcommittee.