

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 577 Tenant Safety

SPONSOR(S): Judiciary Committee, Regulatory Reform Subcommittee, Bartleman and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	16 Y, 0 N, As CS	Wright	Anstead
2) Judiciary Committee	20 Y, 0 N, As CS	Brascomb	Kramer
3) Commerce Committee			

SUMMARY ANALYSIS

The “Florida Residential Landlord and Tenant Act” (Act) governs the relationship between landlords and tenants under a residential rental agreement. The Act provides landlords with certain rights of entry to the dwelling unit. For example, the landlord may enter a dwelling unit for purposes of repair to the premises, but the landlord must first give “reasonable notice” of 12 hours to a tenant beforehand.

On September 24, 2021, Miya Marcano, a student at Valencia College, went missing from her apartment in Orlando, Florida, where she also worked at the front office. She was later found dead miles from her apartment. Investigators for the Orange County Sheriff’s Office allege Marcano was taken from her apartment by a maintenance worker at the same apartment complex, who used a master key fob for the apartment complex to enter her apartment.

Entitled “Miya’s Law,” CS/CS/HB 577 increases the time period that a landlord must give to a tenant prior to entering the dwelling unit from 12 hour to 24 hours. Specifically, the bill:

- Defines “student apartment” as a public lodging establishment with 15 or more dwelling units in which either:
 - Sixty percent of the apartment’s tenants are enrolled at an accredited college or university; or
 - The apartment holds itself out to the public as a student apartment;
- Requires a student apartment landlord to:
 - Notify the tenant in writing whether the landlord has required any of his or her current or potential employees to undergo a background screening;
 - Furnish a list to the tenant of every employee or contractor who has access to a master key and post such a list in a conspicuous place at the student apartment;
 - Maintain a log accounting for the following:
 - The issuance and return of all keys for each dwelling unit; and
 - The name, date, and time that a student apartment employee or student apartment contractor entered a dwelling unit;
 - Make such log accessible:
 - To law enforcement as needed in connection with the performance of their duties;
 - To a tenant only with respect to that tenant’s dwelling unit; and
 - In discovery in a civil action; and
 - Maintain such log for two years.

The bill does not have a fiscal impact on state or local governments.

Except as otherwise provided, the bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Residential Landlord and Tenant Act

Part II of ch. 83, F.S., known as the "Florida Residential Landlord and Tenant Act" (Act), governs the relationship between landlords and tenants under a residential rental agreement.¹

The Act does not apply to:²

- Residency or detention in a facility when it is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services.
- Occupancy under a contract of sale of a dwelling unit or property of which it is a part.
- Transient occupancy in a public lodging establishment or a mobile home park.
- Occupancy by a holder of a proprietary lease in a cooperative apartment.
- Occupancy by an owner of a condominium unit.

Any right or duty declared in the Act is enforceable by civil action. A right or duty enforced by civil action under the Act does not preclude prosecution for a criminal offense related to the lease or leased property. If either the landlord or the tenant fails to comply with the requirements of the rental agreement or the Act, the aggrieved party may recover the damages caused by the noncompliance.³ Under certain circumstances, either party may take action to terminate the lease.⁴

Covenant of Quiet Enjoyment

Generally, a tenant is entitled to the right of private, peaceful possession of the dwelling, which includes limited access to the dwelling unit by the landlord.⁵ In the absence of inconsistent express covenants, an ordinary lease includes an implied covenant of quiet enjoyment under Florida law,⁶ and use of the words "lease" or "demise" in a lease imports a covenant of quiet enjoyment.⁷ Thus, a valid ordinary lease of real estate raises an implied covenant of quiet and peaceful enjoyment of the leased premises exercisable against the landlord, unless there is an express covenant of a more limited character inconsistent with the judicially implied covenant of quiet enjoyment.⁸

Landlord's Obligation to Maintain Premises

At all times during a tenancy, the landlord must comply with the requirements of applicable building, housing, and health codes. Where there are no applicable building, housing, or health codes, the landlord must maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and the plumbing in reasonable working condition.⁹

¹ S. 83.41, F.S., provides that part II, ch. 83, F.S., applies to the rental of a dwelling unit.

² S. 83.42, F.S.

³ S. 83.55, F.S.

⁴ S. 83.56, F.S.

⁵ The Florida Bar, *Consumer Pamphlet: Rights and Duties of Tenants and Landlords*, <https://www.floridabar.org/public/consumer/tip014/> (last visited Feb. 17, 2022).

⁶ Fla. Jur. 2d Landlord and Tenant § 90; *Stinson, Lyons, Gerlin & Bustamante, P.A. v. Brickell Bldg. 1 Holding Co., Inc.*, 923 F.2d 810 (11th Cir. 1991); *Coral Wood Page, Inc. v. GRE Coral Wood, LP*, 71 So. 3d 251 (Fla. 2d DCA 2011); *Hankins v. Smith*, 103 Fla. 892, 138 So. 494 (1931).

⁷ Fla. Jur. 2d Landlord and Tenant § 90; *Hankins*, 138 So. 494.

⁸ Fla. Jur. 2d Landlord and Tenant § 90; *McClosky v. Martin*, 56 So. 2d 916 (Fla. 1951); *Hankins*, 138 So. 494.

⁹ S. 83.51(1), F.S.

Landlord's Access to the Dwelling Unit

The landlord is generally restricted to accessing the dwelling unit under certain scenarios. However, he or she may enter the dwelling unit at any time for the protection or preservation of the premises.¹⁰

The landlord may enter the dwelling unit upon reasonable notice to the tenant and at a reasonable time for the purpose of repair of the premises. "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 7:30 a.m. and 8:00 p.m.¹¹

The tenant may not unreasonably withhold consent to the landlord to enter the dwelling unit from time to time in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.¹² The landlord may enter the dwelling unit when necessary for these purposes under any of the following circumstances:¹³

- With the consent of the tenant;
- In case of emergency;
- When the tenant unreasonably withholds consent; or
- If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments; but if the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

The landlord may not abuse the right of access or use it to harass the tenant.¹⁴

Transient and Non-transient Apartments

"Public lodging establishments" includes transient and nontransient public lodging establishments.¹⁵ The principal difference between a transient and nontransient public lodging establishment is how frequently the establishment is rented in a calendar year and the duration of the rental. A "transient public lodging establishment" is:

Any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.¹⁶

A "nontransient public lodging establishment" is:

Any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or one calendar month.¹⁷

Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project.¹⁸

A nontransient apartment is a building or complex of buildings in which 75 percent or more of the units are available for rent to nontransient tenants. A transient apartment is a building or complex of buildings

¹⁰ S. 83.53(2), F.S.

¹¹ *Id.*

¹² S. 83.53(1), F.S.

¹³ S. 83.53(2), F.S.

¹⁴ S. 83.53(3), F.S.

¹⁵ S. 509.013(4)(a), F.S.

¹⁶ S. 509.013(4)(a)1., F.S.

¹⁷ S. 509.013(4)(a)2., F.S.

¹⁸ S. 509.242(1), F.S.

in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.¹⁹

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR) is the state agency charged with enforcing the provisions of ch. 509, F.S., relating to the regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare.

The division licenses transient and non-transient apartments in the state. Any non-transient apartment renting four units or less or any apartment building inspected by the United States Department of Housing and Urban Development (HUD) or other entity acting on its behalf that is designated primarily as housing for tenants at least 62 years of age is exempt from division licensure.²⁰

DBPR's regulation of public lodging establishments includes:

- Sanitation standards;
- Inspections; and
- Personnel training.²¹

Both transient and non-transient apartments are inspected by the division at least annually. For purposes of performing required inspections and the enforcement, the division has the right of entry and access to public lodging establishments at any reasonable time.²²

Safety Regulations

Section 509.211, F.S., provides safety regulations of public lodging establishments. Current law requires every bedroom or apartment in a public lodging establishment to be equipped with an approved locking device on each door opening to the outside, to an adjoining room or apartment, or to a hallway.²³ Every public lodging establishment that is three or more stories in height must have safe and secure railings on all balconies, platforms, and stairways, and all such railings must be properly maintained and repaired.²⁴

Miya Marcano

On September 24, 2021, Miya Marcano, a student at Valencia College, went missing from her apartment in Orlando, Florida, where she also worked at the front office. She was later found dead miles from her apartment.²⁵

Investigators for the Orange County Sheriff's Office said Marcano was taken from her apartment by Armando Caballero, who was a maintenance worker at the same apartment complex. It is alleged that he used a master key fob for the apartment complex to enter her apartment. Caballero was found dead by apparent suicide a few days after Marcano went missing.²⁶

Effect of Proposed Changes

¹⁹ *Id.*

²⁰ S. 509.013 (4) (b), F.S.

²¹ S. 509.032 (2) (a), F.S.

²² S. 509.032 (2) (b), F.S.

²³ S. 509.211 (1) F.S.

²⁴ S. 509.211 (3) F.S.

²⁵ Cristobal Reyes, *Miya Marcano's family again blasts Orange sheriff after autopsy released: 'Precious moments' lost*, Orlando Sentinel, Orlando Sentinel (Dec. 28, 2021), <https://www.orlandosentinel.com/news/crime/os-ne-miya-marcano-autopsy-response-20211228-svqnw6bdozaghnoijjevdqkgoi-story.html> (last visited Feb. 17, 2022); Vanessa Etienne, *Miya Marcano Cause of Death Ruled a 'Homicide by Undetermined Means': Medical Examiner*, People (Dec. 29, 2021) <https://people.com/crime/texas-girls-abduction-inspired-amber-alert-26-years-later-case-remains-unsolved/> (last visited Feb. 17, 2022).

²⁶ Cristobal Reyes, *supra* note 15.

Entitled "Miya's Law," in memory of Miya Marcano, CS/CS/HB 577 amends s. 83.53, F.S., to increase the "reasonable notice" time period that a landlord must give to a tenant prior to entering the dwelling unit for purposes of repair of the premises from 12 hours to 24 hours.

Under the bill, a "student apartment" means a public lodging establishment classified under s. 509.242(1)(d) or (e), F.S., as a nontransient apartment or transient apartment, respectively, with 15 or more dwelling units, in which either:

- Sixty percent of the apartment's tenants are enrolled at an accredited college or university; or
- The apartment holds itself out to the public as a student apartment.

At the time a rental agreement or rental agreement renewal for a student apartment is executed, the bill requires a student apartment landlord to:

- Notify the tenant in writing whether the landlord has required any of his or her current or potential employees to undergo a background screening, which if required, the notification must also state:
 - The type of background screening performed;
 - That the landlord has discretion to make employment decisions, regardless of a current or potential employee's background screening results; and
 - That Florida law does not disqualify an employee from working at a public lodging establishment classified under s. 509.242(1)(d) or (e), F.S., as a nontransient apartment or transient apartment, respectively, due to the results of a background screening; and
- Furnish a list to the tenant of every employee or contractor who has access to a master key and post such list in a conspicuous place at the student apartment.

Effective January 1, 2023, the bill further requires a student apartment landlord to:

- Maintain a log accounting for the following:
 - The issuance and return of all keys for each dwelling unit; and
 - The name, date, and time that a student apartment employee or student apartment contractor entered a dwelling unit;
- Make such log accessible:
 - To law enforcement as needed in connection with the performance of their duties;
 - To a tenant only with respect to that tenant's dwelling unit; and
 - In discovery in a civil action; and
- Maintain such log for two years.

Except as otherwise provided, the bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

- Section 1:** Provides a short title.
Section 2: Amends s. 83.53, F.S., relating to landlord's access to a dwelling unit.
Section 3: Creates s. 83.684, F.S., relating to student apartment tenant notification.
Section 4: Amends s. 509.211, F.S., relating to safety regulations.
Section 5: Provides an effective date.

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 affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 27, 2022, the Regulatory Reform Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from HB 577 by removing provisions requiring apartments licensed by the Department of Business and Professional Regulation (DBPR) to:

- Screen each employee as a condition of employment;
- Maintain a log accounting of all keys for each dwelling unit;
- Establish policies and procedures related to dwelling unit keys; and
- Provide DBPR with proof of compliance of these requirements upon request.

On February 17, 2022, the Judiciary Committee considered a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill in that it:

- Defined “student apartment” as a public lodging establishment with 15 or more dwelling units in which either:
 - Sixty percent of the apartment’s tenants are enrolled at an accredited college or university; or
 - The apartment holds itself out to the public as a student apartment; and
- Required a student apartment landlord to:
 - Notify the tenant in writing whether the landlord has required any of his or her current or potential employees to undergo a background screening;

- Furnish a list to the tenant of every employee or contractor who has access to a master key and post such a list in a conspicuous place at the student apartment;
- Maintain a log accounting for the following:
 - The issuance and return of all keys for each dwelling unit; and
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- Make such log accessible:
 - To law enforcement as needed in connection with the performance of their duties;
 - To a tenant only with respect to that tenant's dwelling unit; and
 - In discovery in a civil action; and
- Maintain such log for two years.

The analysis is drafted to the committee substitute as passed by the Judiciary Committee.