

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/CS/HB 577 Tenant Safety

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

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 898

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**FINAL HOUSE FLOOR ACTION:** 120 Y's 0 N's **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/CS/HB 577 passed the House on March 10, 2022, as CS/SB 898 as amended. The Senate concurred in the House amendment to the Senate bill and subsequently passed the bill as amended on March 11, 2022.

On September 24, 2021, Miya Marcano went missing from her apartment in Orlando, Florida, and was later found dead. A police investigation indicated that Marcano was taken from her apartment by a maintenance worker at the same apartment complex, who used a master key to enter her apartment.

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 before entry.

Currently, Florida law does not require landlords of apartments, which are regulated by the Department of Business and Professional Regulation (DBPR), to perform a background check on employees or potential employees, nor does it require landlords of apartments to exclude employees due to their criminal history.

The bill, entitled "Miya's Law," increases the time period that a landlord must give to a tenant prior to entering the dwelling unit for repairs to 24 hours, from 12 hours.

The bill requires a landlord of an apartment to require that each employee of the establishment undergo a background screening as a condition of employment. Such background screening must include a screening of nationwide criminal records and sexual offender registries.

The bill allows such a landlord to disqualify a person from employment if the person has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, the following:

- Certain criminal offenses involving disregard for the safety of others.
- Certain violent criminal offenses, such as sexual battery, robbery, carjacking, and stalking.

The bill prohibits an operator of a public lodging establishment from offering an hourly rate for an accommodation, with an exception for late fees.

Related to regulation of apartments by DBPR, effective January 1, 2023, the bill requires each apartment to:

- Require that each employee of the licensee undergo the required background screening.
- Maintain a log accounting for the issuance and return of all keys for each dwelling unit.
- Establish policies and procedures for the issuance and return of dwelling unit keys.
- Upon request during DBPR's annual inspection of the premises, provide proof of compliance with such requirements.

The bill may have an indeterminate fiscal impact on state government and does not have an impact on local governments.

The bill was approved by the Governor on June 27, 2022, ch. 2022-222, L.O.F., and will become effective on July 1, 2022.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0577z1.DOCX

**DATE:** 6/28/2022

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### 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.<sup>1</sup>

The Act provides the following definitions:

- "Dwelling unit" means:
  - A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household.
  - A mobile home rented by a tenant.
  - A structure or part of a structure that is furnished, with or without rent, as an incident of employment for use as a home, residence, or sleeping place by one or more persons.
- "Landlord" means the owner or lessor of a dwelling unit.
- "Tenant" means any person entitled to occupy a dwelling unit under a rental agreement.

The Act does not apply to:<sup>2</sup>

- 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.<sup>3</sup> Under certain circumstances, either party may take action to terminate the lease.<sup>4</sup>

#### *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.<sup>5</sup> In the absence of inconsistent express covenants, an ordinary lease includes an implied covenant of quiet enjoyment under Florida law,<sup>6</sup> and use of the words "lease" or "demise" in a lease imports a covenant of quiet enjoyment.<sup>7</sup> 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.<sup>8</sup>

#### *Landlord's Obligation to Maintain Premises*

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

<sup>2</sup> S. 83.42, F.S.

<sup>3</sup> S. 83.55, F.S.

<sup>4</sup> S. 83.56, F.S.

<sup>5</sup> The Florida Bar, *Consumer Pamphlet: Rights and Duties of Tenants and Landlords*, <https://www.floridabar.org/public/consumer/tip014/> (last visited Feb. 26, 2022).

<sup>6</sup> 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).

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

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

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.<sup>9</sup>

### *Landlord's Access to the Dwelling Unit*

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

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.<sup>11</sup>

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.<sup>12</sup> The landlord may enter the dwelling unit when necessary for these purposes under any of the following circumstances:<sup>13</sup>

- 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.<sup>14</sup>

### Public Lodging Establishments

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.

"Public lodging establishments" includes transient and nontransient public lodging establishments.<sup>15</sup> 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.<sup>16</sup>

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<sup>9</sup> S. 83.51(1), F.S.

<sup>10</sup> S. 83.53(2), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> S. 83.53(1), F.S.

<sup>13</sup> S. 83.53(2), F.S.

<sup>14</sup> S. 83.53(3), F.S.

<sup>15</sup> S. 509.013(4)(a), F.S.

<sup>16</sup> S. 509.013(4)(a)1., F.S.

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.<sup>17</sup>

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

DBPR’s regulation of public lodging establishments includes:

- Sanitation standards;
- Inspections; and
- Personnel training.<sup>19</sup>

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.<sup>20</sup>

If a public lodging establishment operates in violation of ch. 509, F.S., or division rules, the division may impose the following disciplinary actions:<sup>21</sup>

- Fines not to exceed \$1,000 per offense; and
- The suspension, revocation, or refusal of a license.

### *Nontransient and Transient Apartments*

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 in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.<sup>22</sup>

The division licenses certain transient and non-transient apartments in the state with 5 or more units.<sup>23</sup> Both transient and non-transient apartments are inspected by the division at least annually.<sup>24</sup>

### *Safety Regulations*

Public lodging establishments must follow certain safety regulations.<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup>

### *Hourly Rates*

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<sup>17</sup> S. 509.013(4)(a)2., F.S.

<sup>18</sup> S. 509.242(1), F.S.

<sup>19</sup> S. 509.032 (2) (a), F.S.

<sup>20</sup> S. 509.032 (2) (b), F.S.

<sup>21</sup> S. 509.261(1), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> S. 509.013 (4) (b), F.S. 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.

<sup>24</sup> S. 509.032(2)(a), F.S.

<sup>25</sup> S. 509.211, F.S.

<sup>26</sup> S. 509.211 (1) F.S.

<sup>27</sup> S. 509.211 (3) F.S.

According to research, human trafficking for commercial sexual activity and prostitution commonly takes place in hotels or motels.<sup>28</sup> Hourly rental bans at hotels and motels in cities such as Nashville, Charlotte and Los Angeles<sup>29</sup> have been implemented recently to combat prostitution and human trafficking. It appears that if a governmental entity has a reasonable basis for banning hourly rates because it leads to an increase in crime, the ordinance will be allowed.<sup>30</sup> Currently, public lodging establishments, including hotels and motels, are not prohibited from offering hourly rates for accommodations to customers in Florida.

### Employee Background Screenings

Generally, criminal background screenings used for employment are generated by searching various databases for criminal history, including misdemeanor and felony convictions and pending cases.<sup>31</sup> There is no requirement in Florida law that apartments must perform a background check on employees or potential employees nor does it require landlords or apartments to exclude potential employees due to their criminal history.

The law also does not prevent an apartment from performing a criminal background check on potential employees on its own accord, but the employer must follow federal standards under Title VII of the Civil Rights Act of 1964, as it relates to employment discrimination, and the Fair Credit Reporting Act (FCRA) as it relates to requirements for how a background check is conducted and applied to employment.

Florida law provides employers that conduct a background investigation with the legal presumption that they were not negligent in hiring. As long as the background check didn't uncover any information that reasonably demonstrates that the employee was unfit for the job or employment in general, the employer is entitled to a presumption that it did not act negligently.<sup>32</sup>

### *Third Party Background Screening*

There are hundreds of companies engaged in employment and tenant background screening across the United States.<sup>33</sup> These companies are defined as “consumer reporting agencies” (CRAs), pursuant to the FCRA and are regulated by both the Federal Trade Commission and Consumer Financial Protection Bureau.<sup>34</sup> The FCRA promotes the accuracy, fairness, and privacy of information that consumer reporting agencies and their related entities collect.<sup>35</sup> The FCRA governs the acts of CRAs, entities that furnish information to CRAs (furnishers), and individuals who use credit reports issued by CRAs. Specifically, CRAs and their furnishers must adopt methods to ensure the information they collect and report is accurate.

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<sup>28</sup> The Polaris Project, *The Typology of Modern Slavery: Defining Sex and Labor Trafficking in the United States*, (March 2017) <https://polarisproject.org/wp-content/uploads/2019/09/Polaris-Typology-of-Modern-Slavery-1.pdf> (last visited Feb. 8, 2022).

<sup>29</sup> Billy Kobin, Courier Journal, *Louisville Metro Council targets hourly hotel room rentals to fight human trafficking*, [Louisville ordinance bans hourly, under 12 hour hotel room rentals \(courier-journal.com\)](https://www.courier-journal.com/story/news/2022/03/11/louisville-ordinance-bans-hourly-under-12-hour-hotel-room-rentals/7000000001/) (last visited Mar. 11, 2022).

<sup>30</sup> Generally, these ordinances are allowed under the U.S. Supreme Court's “secondary effects doctrine,” which permits normally unconstitutional content-based regulation to be treated as if it were content-neutral. The doctrine took shape in the context of regulation of adult entertainment businesses, which allegedly impose adverse side effects — for example, increased crime and decreased property values — on the communities in which they are situated. David L. Hudson Jr., *The First Amendment Encyclopedia*, *Secondary Effects Doctrine*, <https://www.mtsu.edu/first-amendment/article/26/secondary-effects-doctrine> (last visited Mar. 11, 2022).

<sup>31</sup> GoodHire, *Criminal Background Check For Employment*, <https://www.goodhire.com/screening/criminal-background-check/> (last visited Feb. 26, 2022).

<sup>32</sup> S. 768.096, F.S.; Lisa Guerin, *Florida Laws on Employer Use of Arrest and Conviction Records*, Nolo.com, <https://www.nolo.com/legal-encyclopedia/florida-laws-employer-use-arrest-conviction-records.html> (last visited Feb. 26, 2022).

<sup>33</sup> Professional Background Screening Association (PBSA), *About PBSA*, available at <https://thepbsa.org/about-us/about-pbsa/> (last visited Feb. 26, 2022.)

<sup>34</sup> *Id.*

<sup>35</sup> Consumer Finance Bureau, *A Summary of Your Rights Under the Fair Credit Reporting Act* (Sept. 18, 2018), 12 CFR 1022, available at <https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf> (last visited Feb. 26, 2022). See also, Federal Trade Commission, *Fair Credit Reporting Act*, <https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act> (last visited Feb. 26, 2022).

Individuals can review the information a CRA has collected on them to ensure that it is accurate, and may dispute its accuracy—which triggers a CRA’s and furnisher’s duty to reinvestigate the information. Individuals may also request to review the information a CRA has in his or her file, the sources of the information, and the identity of those to whom the information was disclosed.

A CRA cannot provide information in a consumer report to anyone who does not have a specified purpose in the FCRA.<sup>36</sup>

### *Statutory Background Screenings*

Florida provides standard procedures for screening a prospective employee where the Legislature has determined it is necessary to conduct a criminal history background check to protect vulnerable persons.<sup>37</sup> The state mandates background screenings for all state employees<sup>38</sup> and many professions that interact with vulnerable persons.<sup>39</sup>

Such criminal history check must include a Florida criminal history provided by the Florida Department of Law Enforcement (FDLE). The information may be provided by a private vendor only if that information is directly obtained from the FDLE for each request.<sup>40</sup>

A Level 1 screening is a name-based demographic screening that includes a statewide criminal record check through the FDLE.<sup>41</sup> A Level 1 background screening involves a name-based search of Florida records, including employment history, state and local criminal history check, and a search of the National Sex Offender Public Website.<sup>42</sup>

A Level 2 screening consists of a fingerprint-based search of the FDLE and the Federal Bureau of Investigation databases for state and national criminal arrest records.<sup>43</sup> A Level 1 screening and Level 2 screening have the same disqualifying offenses, including, but not limited to, domestic violence, sexual misconduct, murder, and other violent or sexually-based offenses.<sup>44</sup>

### 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.<sup>45</sup>

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

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<sup>36</sup> Permissible purposes include employment, insurance underwriting that involves the consumer, evaluating the consumer’s eligibility for licensure or other governmental benefit that considers the applicants financial responsibility or status, or a legitimate business need. 15 U.S.C. § 1681b(a).

<sup>37</sup> Ss. 435.01-435.12, F.S.

<sup>38</sup> S. 110.1127, F.S.

<sup>39</sup> S. 435.02(6), F.S.

<sup>40</sup> S. 943.053(12), F.S.

<sup>41</sup> S. 435.03, F.S. A Level 1 criminal history record check is “a state-only name-based check.” Florida Department of Law Enforcement (FDLE), *Definitions*, <https://www.fdle.state.fl.us/Background-Checks/VECHS-FAQs/Definitions.aspx> (last visited Feb. 26, 2022).

<sup>42</sup> S. 435.03(1), F.S.

<sup>43</sup> S. 435.04, F.S.

<sup>44</sup> Ss. 435.03(2) and 435.04(2), F.S.

<sup>45</sup> 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-svqnw6bdozaghnoijjevdgkgoi-story.html> (last visited Feb. 26, 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. 26, 2022).

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.<sup>46</sup>

### Effect of Proposed Changes

The bill is entitled “Miya’s Law,” in memory of Miya Marcano.

#### *Related to the Florida Residential Landlord and Tenant Act:*

The bill increases 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, to 24 hours, from 12 hours.

The bill requires a landlord of a nontransient apartment or transient apartment to require that each employee of the establishment undergo a background screening as a condition of employment. Such background screening must be performed by a CRA in accordance with the FCRA, and must include a screening of criminal history records and sexual predator and sexual offender registries of all 50 states and the District of Columbia.

The bill allows such a landlord to disqualify a person from employment if the person has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, any of the following offenses:

- A criminal offense involving disregard for the safety of others which, if committed in this state, is a felony or a misdemeanor of the first degree or, if committed in another state, would be a felony or a misdemeanor of the first degree if committed in this state.
- A criminal offense committed in any jurisdiction which involves violence, including, but not limited to, murder, sexual battery, robbery, carjacking, home-invasion robbery, and stalking.

#### *Related to the Regulation of Public Lodging Establishments by the Division:*

The bill prohibits an operator of a public lodging establishment from offering an hourly rate for an accommodation, with an exception for late fees.

Effective January 1, 2023, the bill requires each nontransient apartment or transient apartment to:

- Require that each employee of the licensee undergo the background screening as a condition of employment by the landlord.
- Maintain a log accounting for the issuance and return of all keys for each dwelling unit.
- Establish policies and procedures for the issuance and return of dwelling unit keys and regulating the storage of, and access to, unissued keys.

Upon request during the division's annual inspection of the premises, a licensee must provide the division with proof of compliance with requirements for conducting background screenings, maintaining a log accounting of keys, and establishing policies and procedures related to keys.

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

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

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<sup>46</sup> Cristobal Reyes, *supra* note 43.

DBPR may see an increase in fines related to an operator that fails to provide proof of compliance with requirements for conducting background screenings, maintaining a log accounting of keys, and establishing policies and procedures related to keys during an inspection.

2. Expenditures:

DBPR may incur additional expenses during annual inspections due to increased review requirements.

A. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There is a possible indeterminate increase in disciplinary fines related to violations of the bill. There may be unknown costs to conduct background screenings on current employees and applicants seeking employment at a transient or nontransient apartment for those apartments who do not currently conduct such checks.

The bill may have an indeterminate fiscal impact on the private sector by prohibiting hourly rates for public lodging establishments.

C. FISCAL COMMENTS:

None.