

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: CS/CS/SB 884

INTRODUCER: Community Affairs Committee, Judiciary Committee and Senator Boyd

SUBJECT: Fees in Lieu of Security Deposits

DATE: February 3, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 884 amends the Florida Residential Landlord and Tenant Act to expressly authorize and regulate agreements between a residential landlord and a tenant for the payment of a monthly fee in lieu of a security deposit.

By expressly authorizing the use of a fee in lieu of a security deposit, the bill may facilitate the use of security deposit insurance. This insurance product insures a landlord against losses that would otherwise be covered by a security deposit or advance rent.

The bill takes effect July 1, 2022.

II. Present Situation:

Security Deposits and the Florida Residential Landlord and Tenant Act

The Florida Residential Landlord and Tenant Act regulates residential rental agreements. The Act provides that when money is deposited or advanced by a tenant as security or advance rent, the landlord is required to:

- Hold the total amount of such money in a separate non-interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants. The landlord may not commingle the funds with any other funds of the landlord or hypothecate, pledge, or in any other way make use of the funds until they are actually due the landlord;

- Hold the total amount of the funds in a separate interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants, in which case the tenant must receive and collect interest in an amount of at least 75 percent of the annualized average interest rate payable on the account or interest at the rate of 5 percent per year, simple interest, whichever the landlord elects. The landlord may not commingle the funds with any other funds of the landlord or hypothecate, pledge, or in any other way make use of the funds until the funds are actually due the landlord; or
- Post a surety bond, executed by the landlord as principal and a surety company authorized and licensed to do business in the state as surety, with the clerk of the circuit court in the county in which the dwelling unit is located in the total amount of the security deposits and advance rent he or she holds on behalf of the tenants or \$50,000, whichever is less. In addition to posting the surety bond, the landlord must pay to the tenant interest at the rate of 5 percent per year, simple interest.¹

A landlord must, in the lease agreement or within 30 days after receipt of advance rent or a security deposit, give written notice to the tenant which includes disclosures relating to the advance rent or security deposit.² The written notice must:³

- Be given in person or by mail to the tenant;
- State the name and address of the depository where the advance rent or security deposit is being held or state that the landlord has posted a surety bond as provided by law;
- State whether the tenant is entitled to interest on the deposit; and
- Contain the following disclosure:

YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE LANDLORD MAY TRANSFER ADVANCE RENTS TO THE LANDLORD'S ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING YOUR DEPOSIT. THE LANDLORD MUST MAIL YOU NOTICE, WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU DO NOT REPLY TO THE LANDLORD STATING YOUR OBJECTION TO THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE LANDLORD'S NOTICE, THE LANDLORD WILL COLLECT THE CLAIM AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY.

IF THE LANDLORD FAILS TO TIMELY MAIL YOU NOTICE, THE LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT

¹ Section 83.49(1), F.S.

² Section 83.49(2), F.S. Additionally, if the landlord changes the manner or location in which he or she is holding the advance rent or security deposit, he or she must notify the tenant within 30 days after the change.

³ Section 83.49(2)(a-d), F.S.

FROM THE DEPOSIT, BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A REFUND.

YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE BEFORE FILING A LAWSUIT. GENERALLY, THE PARTY IN WHOSE FAVOR A JUDGMENT IS RENDERED WILL BE AWARDED COSTS AND ATTORNEY FEES PAYABLE BY THE LOSING PARTY.

THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL RIGHTS AND OBLIGATIONS.

If the landlord does not intend to impose a claim on the security deposit, the landlord has 15 days to return the security deposit together with interest.⁴ If the landlord intends to impose a claim on the deposit, such as for damage to the unit, the landlord has 30 days to give the tenant written notice by certified mail of the landlord's intention to impose a claim on the deposit along with the reason. The notice must contain a statement in substantially the following form:

This is a notice of my intention to impose a claim for damages in the amount of _____ upon your security deposit, due to _____. It is sent to you as required by s. 83.49(3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to (landlord's address).⁵

The landlord may then deduct the amount of his or her claim and must remit the balance of the deposit to the tenant within 30 days after the date of the notice of intention to impose a claim for damages. If the landlord fails to give the required notice within 30 days, the landlord forfeits the right to impose a claim upon the security deposit. The failure of the tenant to make a timely objection does not waive any rights of the tenant to seek damages in a separate action.⁶

Security Deposit Insurance

Florida law does not specifically require any sort of security deposit for a residential lease. It is generally up to the landlord and tenant to set up the lease agreement consistent with the provisions in the Florida Residential Landlord and Tenant Act under ch. 83, F.S. Likewise, Florida law does not address the issue of "security deposit insurance" for residential leases. This insurance product, which has been called "lease insurance," "rent insurance," "tenant insurance," or "landlord insurance," generally protects the landlord from damage to the property or loss of rent.⁷ Different insurance providers offer different levels of coverage. At least one company,

⁴ Section 83.49(3)(a), F.S.

⁵ *Id.*

⁶ Section 83.49(3)(b), F.S.

⁷ One company operating in Florida provides the following explanation of its security deposit insurance:

provides both security deposit insurance as well as the ability to sign a lease as the tenant's guarantor.⁸ Another company operating in Florida offers personal property, security deposit, and flexible rent payment insurance.⁹

Generally, security deposit insurance protects the landlord and are distinct from the more commonly used "renter's insurance," which often provides personal liability and personal property protection for the tenant. Additionally, many security deposit insurance policies operate under surety bonds,¹⁰ and allow the insurance provider to recoup from the tenant any insurance claim paid out to the landlord.

III. Effect of Proposed Changes:

The bill states that if a rental agreement requires a security deposit, the landlord may instead offer a tenant the option to pay a fee in the lieu of the security deposit. This option, if provided, must be provided to the tenant in writing and state:

- That the tenant has the option to pay a security deposit instead of a fee;
- The tenant at any time may terminate the agreement to pay a security deposit in the amount that is otherwise offered to new tenants for a substantially similar dwelling unit on the date that the tenant terminates the agreement; and
- Whether any additional charges apply for either of the above circumstances.

The landlord has sole discretion as to whether to offer tenants the option to pay a fee in lieu of a security deposit. If a tenant decides to pay a fee in lieu of a security deposit, a written agreement to collect the fee must be signed by the landlord, or the landlord's agent, and the tenant. The

Jetty Deposit is a deposit alternative product that replaces a traditional cash deposit with either a one-time, non-refundable premium or a low, non-refundable monthly premium. Instead of paying a cash security deposit, Jetty Deposit gives you the option to pay a fraction of the amount, which serves as a Jetty-backed guarantee to your property that they'll be protected in the event that you fail to pay for damage or skipped rent. Keep in mind that if you purchase Jetty Deposit, you're agreeing to pay your rent in full, not to cause damage beyond standard wear and tear on your rental home, and you remain responsible for keeping it in good condition. And if you do cause excessive damage and fail to pay, Jetty assumes the responsibility of recovering the cost from you. (Emphasis added).

Jetty Frequently Asked Questions, *What is Jetty Deposit and how does it work?* (Aug. 2021), <https://jetty.zendesk.com/hc/en-us/articles/4405193685911-What-is-Jetty-Deposit-and-how-does-it-work> (last visited Jan. 13, 2022)

⁸ Rhino Frequently Asked Questions, *What is Rhino Guarantor Coverage?* (Mar. 2021), <https://support.sayrhino.com/hc/en-us/articles/360061185252-What-is-Rhino-guarantor-coverage> (last visited Jan. 13, 2022).

⁹ *Jetty Introduces New Flexible Rent Payment Product and Raises \$23M*, PRNewswire, (Sept. 8, 2021), <https://www.prnewswire.com/news-releases/jetty-introduces-new-flexible-rent-payment-product-and-raises-23m-301372540.html> (last visited Jan. 13, 2022).

¹⁰ "Sometimes, when a party owes others legal duties, the party posts a surety bond to guarantee their performance. The surety bond is like a security deposit, with the party promising to do something as the renter and person they owe obligations to, or obligee, is like the landlord. Thus, if the party that made the promise fails to perform their duty, the obligee is compensated out of the bond." See Legal Information Institute, *Surety Bond*, available at https://www.law.cornell.edu/wex/surety_bond). One insurance provider provides the following explanation of surety bonds: Surety bonds—like Rhino's security deposit insurance—share a common purpose with traditional cash security deposits: to reimburse property owners for unpaid rent and excessive damage to the home. However, surety bonds are less expensive than traditional security deposits. Surety bonds also have transparency built into their insurance model. Instead of paying a cash security deposit and wondering if you'll ever see it again or if you'll get it back in its entirety, renters pay for incidents (if they happen) through Rhino directly.

Rhino Blog, *What renters need to know about surety bonds*, (Apr. 30, 2021), <https://www.sayrhino.com/blog/posts/surety-bonds-for-renting> (last visited Jan. 13, 2022).

written agreement must specify the amount of the fee and how and when the fee is to be collected. Additionally, written agreement must include the following disclosure:

THIS AGREEMENT HAS BEEN ENTERED INTO VOLUNTARILY BY BOTH PARTIES AND THE TENANT AGREES TO PAY THE LANDLORD A FEE IN LIEU OF A SECURITY DEPOSIT AS AUTHORIZED UNDER SECTION 83.491, FLORIDA STATUTES. THIS FEE IS NOT A SECURITY DEPOSIT AND PAYMENT OF THE FEE DOES NOT ABSOLVE THE TENANT OF ANY OBLIGATIONS UNDER THE RENTAL AGREEMENT, INCLUDING THE OBLIGATION TO PAY RENT AS IT BECOMES DUE AND ANY COSTS AND DAMAGES BEYOND NORMAL WEAR AND TEAR THAT THE TENANT OR HIS OR HER GUESTS MAY CAUSE. THE TENANT MAY TERMINATE THIS AGREEMENT AT ANY TIME AND STOP PAYING THE FEE AND INSTEAD PAY A SECURITY DEPOSIT AS PROVIDED IN SECTION 83.491, FLORIDA STATUTES.

THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL RIGHTS AND OBLIGATIONS.

The bill provides that a fee in lieu of a security deposit may be a recurring monthly fee, payable on the same date that the rent payment is due under the rental agreement; or payable upon a schedule that the landlord and tenant choose as specified in the written agreement.

The bill provides that such a fee, an insurance product, or a surety bond accepted by a landlord in lieu of a security deposit is not a security deposit for the purposes of landlord tenant law.

The bill provides that a landlord has exclusive discretion whether to offer tenants the option to pay a fee in lieu of a security deposit. If a landlord offers a tenant the option to pay a fee in lieu of a security deposit, the landlord must also offer all new tenants renting a dwelling unit on the same premises the option to pay a fee in lieu of a security deposit, unless the landlord chooses to terminate the fee option for all tenants. However, acceptance by a landlord of an insurance product or a surety bond that is purchased or procured by a tenant, a landlord, or an agent of the landlord may not be considered an offer by the landlord to allow tenants to pay a fee in lieu of a security deposit for the purposes of being required to offer such option to all tenants.

The bill provides that this section applies to rental agreements entered into or renewed on or after July 1, 2022.

The bill provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

If implemented by landlords, a monthly fee in lieu of a security deposit may benefit certain tenants who may otherwise be unable to afford a large security deposit.

CS/CS/SB 884 may positively impact insurance providers that offer security deposit insurance.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 83.491, Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Community Affairs on February 2, 2022:

The CS clarifies language regarding payments not to be regarded as security deposits, and landlords terminating the fee option prospectively. The CS further clarifies that the bill does not prohibit a tenant from being marketed an insurance product or surety bond to present to the landlord in lieu of a security deposit. Such an arrangement would not require the landlord to offer all tenants on the premises to pay a fee in lieu of a security deposit.

CS by Judiciary on January 18, 2022:

The CS specifies that a landlord has the sole discretion to determine whether to accept a fee in lieu of a security deposit.

- B. **Amendments:**

None.