

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 Appropriations Subcommittee on Agriculture, Environment, and General Government

BILL: CS/SB 898

INTRODUCER: Community Affairs Committee and Senator Stewart and others

SUBJECT: Tenant Safety

DATE: February 21, 2022 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Betta</u>	<u>AEG</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 898, designated as “Miya’s Law,” makes changes to Florida’s Residential Landlord and Tenant Act as well as public lodging establishment laws in an effort to provide safety and security to apartment tenants.

The bill directs landlords or licensees of transient and nontransient apartments to require that all employees undergo a background screening performed by a consumer reporting agency (CRA) done in accordance with the federal Fair Credit Reporting Act (FCRA) as a condition of employment. A person may be disqualified from employment based on the background screening if the person has been found guilty or plead no contest to certain offenses, including those involving violence and disregard for safety.

Under the bill, apartments must maintain a log accounting for the issuance and return of all keys for each dwelling unit, and establish policies for the issuance and return of unit keys, as well as storage and access to unissued keys. An apartment’s key logs and employee background screening files are subject to the Department of Business and Professional Regulation’s (DBPR) annual inspection of apartments. This portion of the bill takes effect on January 1, 2023.

The bill changes from 12 hours to 24 hours the “reasonable notice” that a landlord must give a tenant for entry of a unit for the purpose of repair for all tenancies.

The DBPR has estimated it will need five full-time positions and \$475,480 from the Hotel and Restaurant Trust Fund due to workload and regulatory duties to ensure public lodging establishments provide proof of compliance with conducting employee background screening checks. It is anticipated there will be an indeterminate increase in fines to the trust fund.

Except as otherwise expressly provided, the bill takes effect on July 1, 2022.

II. Present Situation:

The Florida Residential Landlord and Tenant Act

Residential tenancies are governed by the Florida Residential Landlord and Tenant Act (act).¹

The landlord is the owner or lessor of a dwelling unit. The tenant is a person entitled to occupy a dwelling unit under a rental agreement, in which the tenant makes periodic payments of rent to the landlord.² When people enter into a landlord and tenant relationship, as evidenced by a rental agreement, each party commits to abide by certain legal obligations and responsibilities. Rental agreements may be written or oral.³ Oral rental agreements are for a duration of less than one year.⁴ Every rental agreement carries with it an obligation of good faith in both performance and enforcement.⁵ Landlords are entitled to collect security deposits from tenants and hold the deposits as security against the performance of the rental agreement.⁶

Landlords and tenants have different obligations to maintain the property. Landlords must comply with building, housing, and health codes, and for dwelling units other than a single-family home or a duplex, a landlord must provide for:

- The extermination of insects and rodents;
- Locks and keys;
- The clean and safe condition of common areas;
- Garbage removal; and
- Heat during winter, running water, and hot water.⁷

Tenants, in turn, must:

- Comply with building, housing, and health codes that apply to tenants;
- Keep the premises clean and sanitary;
- Keep plumbing fixtures clean and sanitary and in repair;
- Use and operate electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other appliances in a reasonable manner;
- Not destroy or damage the premises or property or allow others to do so; and
- Not disturb the peace.⁸

¹ Part II of ch. 83, F.S., s. 83.40, F.S.

² Sections 83.43(3), (4), and (6), F.S.

³ Section 83.43(7), F.S.

⁴ *Id.*

⁵ Section 83.44, F.S.

⁶ Section 83.43(12), F.S.

⁷ Sections 83.51(1)(a) and (2)(a), F.S.

⁸ Section 83.52, F.S.

A landlord may enter a dwelling unit at any time for the protection or preservation of the premises.⁹ The landlord may enter a dwelling unit with 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 a notice given at least 12 hours prior to the entry, and reasonable time for the purpose of repair is defined as between the hours of 7:30 a.m. and 8:00 p.m.¹⁰ A landlord cannot abuse the right of access nor use it to harass the tenant.¹¹

Transient and Non-transient Apartments

The Division of Hotels and Restaurants (division) within the 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 nontransient apartments in the state. Any nontransient 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.¹²

The regulation of public lodging establishments includes, but is not limited to, sanitation standards, inspections, and training and testing of personnel. Both transient and nontransient apartments are inspected by the division at least annually.¹³ 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.¹⁴

The term “public lodging establishments” includes transient and nontransient public lodging establishments.¹⁵ The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are rented in a calendar year and the duration of the rentals.

A “transient public lodging establishment” is defined in s. 509.013(4)(a)1., F.S., as:

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 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.*

⁹ Section 83.53(2), F.S.

¹⁰ Section 83.53(2), F.S.

¹¹ Section 83.53(3), F.S.

¹² Section 509.013 (4)(b), F.S.

¹³ Section 509.032 (2)(a), F.S.

¹⁴ Section 509.032 (2)(b), F.S.

¹⁵ Section 509.013(4)(a), F.S.

A “nontransient public lodging establishment” is defined in s. 509.013(4)(a)2., F.S., as:

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 1 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 1 calendar month.

Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project.¹⁶

A nontransient apartment is defined as 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.¹⁷

Safety Regulations

Section 509.211, F.S., dictates safety regulations of public lodging establishments. The 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.¹⁸ 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.¹⁹

Employee 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.²⁰

By law, when a criminal history check or a duty to disclose the absence of a criminal history check is mandated by state law, the criminal history check must include a Florida criminal history provided by the Florida Department of Law Enforcement (FDLE). Such Florida criminal history information may be provided by a private vendor only if that information is directly obtained from the FDLE for each request.²¹

A Level 1 screening is a name-based demographic screening that includes a statewide criminal record check through the FDLE.²² A Level 1 background screening involves a name-based

¹⁶ Section 509.242(1), F.S.

¹⁷ *Id.*

¹⁸ Section 509.211(1), F.S.

¹⁹ Section 509.211(3), F.S.

²⁰ Sections 435.01-435.12, F.S.

²¹ Section 943.053(12), F.S.

²² Section 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. 9, 2022).

search of Florida records, including employment history, state and local criminal history check, and a search of the National Sex Offender Public Website.²³ A Level 1 screening may be paid for and conducted through the FDLE's website, which provides immediate results.²⁴

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.²⁵ 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.²⁶

The state mandates background screenings for many professions, including at least a Level 1 screening, and on an agency-determined basis a Level 2, for all state employees.²⁷ Many professions require a background screening that interact with vulnerable persons like minors or vulnerable adults, whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.²⁸ Examples of professions requiring background screening include employees who work in schools, substance abuse and mental health facilities, nursing homes, and massage therapists.

For athletic coaches authorized in the state, a background screening conducted by a commercial CRA in compliance with the federal FCRA, which includes a Level 1 background screening and a search of designated identifying information against listed sexual predator and sexual offender internet sites, is also deemed to satisfy the specified requirements.²⁹

Third Party Background Screening

There are hundreds of companies engaged in employment and tenant background screening across the United States.³⁰ 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.³¹ The FCRA promotes the accuracy, fairness, and privacy of information that consumer reporting agencies and their related entities collect.³² 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.

²³ Section 435.03(1), F.S.

²⁴ FDLE, State of Florida Criminal History Records Check, available at <http://www.fdle.state.fl.us/Criminal-History-Records/Florida-Checks.aspx> (last visited Feb. 9, 2022).

²⁵ Section 435.04, F.S.

²⁶ Sections 435.03(2) and 435.04(2), F.S.

²⁷ Section 110.1127, F.S.

²⁸ Section 435.02(6), F.S.

²⁹ Section 943.0438(2)(a)2., F.S.

³⁰ Professional Background Screening Association (PBSA), About PBSA, available at <https://thepbsa.org/about-us/about-pbsa/> (last visited Feb. 9, 2022.)

³¹ *Id.*

³² 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. 9, 2022). See also, Federal Trade Commission, *Fair Credit Reporting Act*, <https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act> (last visited Feb. 9, 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.³³

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.³⁴

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.³⁵

III. Effect of Proposed Changes:

The bill, cited as “Miya’s Law,” creates s. 83.515, F.S., to direct landlords of transient and nontransient apartments to require all employees to undergo a background screening performed by a consumer reporting agency done in accordance with the federal Fair Credit Reporting Act as a condition of employment. The screening must include a screening of criminal history records and sexual predator and sexual offender registries of all states and the District of Columbia.

The bill authorizes landlords to disqualify a person from employment based on the background screening if the person has been convicted of 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 Florida, is a felony or first degree misdemeanor or, if committed in another state, would be a felony or a misdemeanor of the first degree if committed in Florida; or
- 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.

³³ 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).

³⁴ Cristobal Reyes, *Miya Marcano’s family again blasts Orange sheriff after autopsy released: ‘Precious moments’ lost*, Orlando Sentinel, Orlando Sentinel (Dec. 28, 2021), available at <https://www.orlandosentinel.com/news/crime/os-ne-miya-marcano-autopsy-response-20211228-svqnw6bdozaghnoijjevdkgoi-story.html> (last visited Feb. 9, 2022); Vanessa Etienne, *Miya Marcano Cause of Death Ruled a ‘Homicide by Undetermined Means’*: Medical Examiner, People (Dec. 29, 2021), available at <https://people.com/crime/miya-marcano-cause-of-death-ruled-a-homicide-by-undetermined-means-by-medical-examiner/> (last visited Feb. 9, 2022).

³⁵ *Id.*

Effective January 1, 2023, the bill amends s. 509.211 F.S., to direct all public lodging establishments licensed by the Division of Hotels and Restaurants as a transient or nontransient apartment to require all employees to undergo a background screening as a condition of employment, as provided in s. 83.515, F.S., created in section 1 of the bill. Such licensed apartments must also maintain a log accounting for the issuance and return of all keys for each dwelling unit, and establish policies for the issuance and return of unit keys, as well as storage and access to unissued keys. Upon request during the division's annual inspection of the premises, a licensee must provide proof of compliance with these requirements.

Finally, the bill amends s. 83.53, F.S., to change from 12 hours to 24 hours the "reasonable notice" that a landlord must give a tenant for entry of a unit for the purpose of repair.

Except as otherwise provided, the bill takes effect on 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The DBPR anticipates an indeterminate increase in fines collected due to noncompliance.³⁶

³⁶ See Department of Business and Professional Regulation, *2022 Agency Legislative Bill Analysis for SB 898* at 4 (Nov. 12, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

B. Private Sector Impact:

The cost of the background screening will be borne by either an applicant/employee or the apartment landlord/licensee; however the bill does not specify. If the cost is to be borne by the apartment landlord/licensee, this expense may be passed on to apartment tenants. Background screening requirements may have a negative impact on workforce availability in affected lodging establishments.

The Division of Hotels and Restaurants currently licenses 19,261 transient and non-transient apartments. According to the DBPR, if third-party screening rates are similar to the FDLE rate of \$72.99 per person, the total fiscal impact to license holders to process one employee per license is \$1,405,860. However, the associated costs will be much greater because most properties will have multiple employees requiring screening.³⁷

Third-party background screening organizations will experience a significant increase in demand for their services due to this bill.

C. Government Sector Impact:

The bill will have a negative fiscal impact on state expenditures due to costs involved related to additional items for the DBPR to review during annual inspections of apartments. The DBPR estimates a cost of \$475,480 (\$346,795 recurring) to the Hotel and Restaurant Trust Fund and a need of five full-time positions due to workload and regulatory duties to ensure public lodging establishments provide proof of compliance with conducting employee background screening checks.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 34-39 of the bill requires a “third-party” background check conducted by a consumer reporting agency. According to FDLE, landlords will be responsible for finding a third-party company that can meet the screening criteria in the bill. The FDLE is unaware of the existence of a vendor with this capability.³⁸

The bill does not specify a date in which existing apartment employees must obtain a background screening.

It is unclear how the effective date in section 4 of the bill is intended to operate in concert with section 2 of the bill.

³⁷ *Id.* at 7.

³⁸ See Florida Department of Law Enforcement, *2022 Agency Legislative Bill Analysis for SB 898* at 4 (Dec. 10, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

The sponsor may consider incorporating reference to electronic programmable key cards to the bill provision requiring apartments to maintain a log accounting for the issuance and return of dwelling unit keys.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 83.53 and 509.211.

This bill creates section 83.515 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.)

CS by Community Affairs on January 25, 2022:

The committee substitute removes the requirement that a background screening required under the bill be performed by a consumer reporting agency accredited by the Professional Background Screening Association and replaces it with the requirement that the background screening be done in accordance with the federal Fair Credit Reporting Act.

- B. **Amendments:**

None.