

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 494

INTRODUCER: Judiciary Committee and Senators DiCeglie and Calatayud

SUBJECT: Fees in Lieu of Security Deposits

DATE: April 18, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<b>Favorable</b>
3.	<u>Davis</u>	<u>Twogood</u>	<u>RC</u>	<b>Favorable</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 494 amends and expands the Florida Residential Landlord and Tenant Act. The bill provides that a landlord may offer a tenant the option to pay a fee, or monthly fees, in lieu of paying the traditional security deposit for a rental unit. The bill also establishes criteria that govern disclosures and agreements for a fee in lieu of a deposit. The bill specifies, in part that:

- A tenant who pays a fee in lieu of a security deposit has the option to pay the security deposit instead of the fee at any time.
- The fee is nonrefundable.
- A landlord's use of the fee to purchase an insurance product does not affect the tenant's liability for rent, damages, or other amounts owed.
- The landlord has exclusive discretion whether to offer tenants the option to pay a fee in lieu of a deposit.
- A landlord may not submit an insurance claim for a tenant's unpaid rent, fees, or other obligations or damages to premises until 15 days after the landlord notifies the tenant of the amounts owed.
- The provisions apply to rental agreements entered into or renewed on or after July 1, 2023.

The bill takes effect July 1, 2023.

## II. Present Situation:

### Security Deposits

#### *Background Information*

The Florida Residential and Tenant Act, contained in chapter 83, F.S., regulates rental agreements for dwelling units.<sup>1</sup> Generally, before a landlord enters into a rental agreement with a tenant, the landlord requires the tenant to make a payment, known as a security deposit. Florida law, however, does not specifically require the payment of a security deposit for a residential lease. Once paid, the security deposit is then held by the landlord as security for the performance of the rental agreement and to cover any monetary damage the landlord may suffer if the tenant breaches the lease before the lease expires<sup>2</sup> or to cover the costs to repair any damage caused by the tenant.

Current law does not place limits on the amount that a landlord may require for a security deposit. However, most landlords generally require a deposit equal to at least 1-month's rent while some may require as much as 3-months' rent.<sup>3</sup>

The landlord must preserve the security deposit during the tenancy and either return the entire amount within 15 days after the tenant vacates the premises at the end of the lease or, within 30 days after the end of the lease, provide the tenant with a written notice stating why the landlord will impose a claim, either in full or in part, against the deposit. If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim against the security deposit.<sup>4</sup> If the tenant does not object within 15 days to the landlord's notice of intention to impose a claim, the landlord may deduct the amount of the claim and return the remaining balance to the tenant within 30 days after date of the notice.<sup>5</sup>

#### *Less Expensive Options to Paying a Security Deposit*

The ability to provide a security deposit is difficult for some families and students. For example, if someone lives in a rental property and chooses to move to another rental property, the new security deposit is often due before the last deposit has been refunded to the tenant. As companies have realized that many families cannot afford to pay the up-front costs of security deposits, they have developed other payment options. Although these options are available to tenants, they do not afford tenants the statutory protections required for security deposits found in the Florida Residential Landlord and Tenant Act.

#### Security Deposit Insurance

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

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<sup>1</sup> Sections 83.40 and 83.41, F.S.

<sup>2</sup> Section 83.43(12), F.S.

<sup>3</sup> Apartments.com, *How Much Is a Security Deposit?* (Nov. 6, 2020) <https://www.apartments.com/rental-manager/resources/article/how-much-to-charge-for-a-security-deposit>

<sup>4</sup> Section 83.49(3)(a), F.S.

<sup>5</sup> Section 83.49(3)(b), F.S.

rent. As a creative alternative to security deposits, some companies have begun to offer security deposit insurance in which renters pay \$5 to \$10 per month for coverage in lieu of a security deposit.<sup>6</sup>

#### Security Bond

Another option is the security bond, a three-party agreement, in which the tenant pays a surety company a percentage of the security deposit. If the tenant damages the apartment or does not make a required rental payment, the surety bond covers the reimbursement costs due to the landlord, if the landlord files a claim. The tenant is then responsible for reimbursing the surety company for the expenses it has paid, as well as any non-refundable fees.<sup>7</sup>

While security deposits are refundable up to the total amount paid by the tenant, security deposit insurance and security bonds are not refundable to the tenant.

### **III. Effect of Proposed Changes:**

This bill creates section 83.491, F.S., which states that landlords may offer potential tenants the option of paying a fee instead of a rental security deposit. While the bill authorizes the use of fees, it also establishes specific criteria that must be met if fees are paid.

#### **Subsection (1) – Authorization**

This subsection provides that a landlord may offer a tenant the option of paying a fee in lieu of the commonly required security deposit, if the rental agreement requires a security deposit.

#### **Subsection (3) – Written Offers to Pay a Fee Instead of a Security Deposit**

When a landlord provides the tenant with an option to pay a fee in lieu of a security deposit, the landlord must notify the tenant in writing that:

- The tenant has an option to pay a security deposit instead of the fee at any time.
- The tenant may terminate the fee agreement at any time and instead pay a security deposit as listed in the rental agreement. If the security deposit amount was not specified in the rental agreement, then the deposit must be the same amount offered to new tenants for a substantially similar dwelling unit on the date the tenant terminates the agreement.
- Whether any additional charges apply.
- The amount of the payments required for each option offered by the landlord.
- The fee:
  - Is nonrefundable.
  - Is only for securing occupancy by the tenant without paying the required security deposit.
  - Does not reduce or alter the tenant’s obligation to pay rent and fees or limit or change the tenant’s obligation to pay for damage repairs beyond normal wear and tear.

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<sup>6</sup> Adam Kovacevich, THE TALLAHASSEE DEMOCRAT, *Security Deposit Alternatives Can Help/Opinion* (March 6, 2022) <https://www.tallahassee.com/story/opinion/2022/03/06/floridas-renters-need-relief-security-deposit-alternatives-can-help-opinion/9367488002/>.

<sup>7</sup> Dawn M. Smith, Angi.com, *What Is a Surety Bond and Should I use it to Rent an Apartment?* (April 26, 2022) <https://www.angi.com/articles/what-surety-bond-apartment.htm>.

- If the landlord uses any portion of the fee to purchase insurance, the tenant is not insured and is not a beneficiary of the landlord's coverage, nor does the insurance change the tenant's obligations to pay rent, fees, or damage repairs in accordance with the rental agreement.

#### **Subsection (4) – Written Agreement Required**

If the tenant decides to pay a fee rather than a security deposit, a written agreement to collect the fee must be signed by the landlord, or his or her agent, and the tenant. The written agreement may not contain clauses that contradict s. 83.45, F.S., pertaining to unconscionable rental agreements or provisions, or s. 83.47, F.S., pertaining to prohibited provisions in rental agreements.

At a minimum, the written fee agreement must specify:

- The amount of the fee, which may not be increased during the term of the rental agreement.
- How and when the fee is to be collected.
- The process and timeframe for the tenant to pay the security deposit, if the tenant defaults on paying the fee, and that the default will not adversely affect the tenant's credit rating if the deposit is paid on time.
- That it may be terminated at any time as long as the tenant pays the amount of the security deposit specified in the rental agreement.
- If the tenant pays the security deposit amount specified in the rental agreement, then the tenant's default on paying the fee or termination of the written agreement may not adversely impact his or her credit report.

The written agreement to pay a fee instead of a security deposit must contain a disclosure in substantially the following form:

#### **FEE IN LIEU OF SECURITY DEPOSIT**

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 WHICH 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 THE SECURITY DEPOSIT AS PROVIDED IN SECTION 83.491, FLORIDA STATUTES.

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. IF THE LANDLORD USES ANY PORTION OF THE TENANT'S FEE TO PURCHASE INSURANCE, THE TENANT IS NOT INSURED AND IS NOT A BENEFICIARY OF SUCH COVERAGE, AND THE

INSURANCE DOES NOT CHANGE THE TENANT'S FINANCIAL OBLIGATIONS UNDER THE RENTAL AGREEMENT.

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

**Subsection (5) – When the Fee Payment is Due**

The fee paid in lieu of the security deposit may be a recurring monthly fee, payable when rent is due, or it may be payable upon a schedule that the tenant and landlord agree to as specified in the written agreement.

**Subsection (6) – The Fee, Insurance Product, or Surety Bond is Not a Security Deposit**

This subsection clarifies that a fee that is collected, or an insurance product or a surety bond that is accepted by a landlord in lieu of a security deposit, is not a security deposit as defined in s. 83.43(12), F.S.

**Subsection (2) – Written Notice, Conclusion of the Tenancy, Disbursement of Fees, Claims**

If a tenant enters into an agreement to pay a fee instead of paying a security deposit, the landlord is required to notify the tenant within 30 days after the tenancy ends if there are any costs or fees due. These items can arise from unpaid rent and other obligations, including the costs of repairing damage to the premises that are beyond the normal wear and tear that is expected.

Before a landlord may submit a loss claim to an insurer in an attempt to recover any losses caused by the tenant, the landlord must wait 15 days after providing the tenant with written notice of any costs or fees as discussed above. The landlord must provide the insurer with an itemized list of the items in question, dates, cost of repairs, and any objections or a report of communications raised by the tenant.

If an insurer pays a claim and has subrogation rights, he or she has 1 year after the tenancy ends to seek reimbursement from the tenant for the amounts paid to the landlord. However, if the insurer seeks reimbursement, the insurer must provide the tenant with all documents for losses that the landlord submitted to support the claim and a copy of the settlement statement demonstrating that the insurer paid the landlord's claim.

The tenant retains any defenses against the insurer which the tenant would have against the landlord. Additionally, the landlord is prohibited from collecting loss payments from the tenant and the insurer for the same items.

**Subsection (7) – The Landlord's Discretion to Offer a Fee Rather than a Security Deposit**

A landlord may not be required to offer tenants the option to pay a fee instead of a security deposit. However, if a landlord offers a tenant the option to pay a fee, the landlord may not use the tenant's choice to pay a fee in lieu of paying a security deposit as a criteria when determining

whether to approve or deny a tenant's application. Additionally, the landlord must also offer all new tenants on the same premises the option of paying a fee in lieu of a security deposit, unless he or she chooses to prospectively terminate the fee option for all new rental agreements.

#### **Subsection (8) – What the Bill Does Not Do**

The provisions of the bill do not:

- Require a fee collected in lieu of a deposit to be used to purchase an insurance product or a surety bond.
- Prohibit a tenant from being offered or sold an insurance product or surety bond if the offer or sale of the insurance product or surety bond complies with state laws.

If a landlord accepts an insurance product or a surety bond purchased or procured by a tenant, a landlord, or an agent of the landlord, that conduct may not be considered an offer on the landlord's part to allow a tenant to pay a fee in lieu of a security deposit.

#### **Subsection (9) –Application**

The provisions created in s. 83.491, F.S., apply to rental agreements entered into or renewed on or after July 1, 2023.

The bill takes effect July 1, 2023.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Not applicable. This bill does not require counties or municipalities to spend funds, limit their authority to raise revenue, or reduce the percentage of a state tax shared with them as specified in Article VII, s. 18 of the Florida Constitution.

##### **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:**

Individuals who cannot afford to rent a dwelling because they cannot afford the initial and more expensive security deposits might be able to rent a dwelling by paying a less expensive fee in lieu of a security deposit. The bill, by validating the use of fees in lieu of a security deposit, may encourage landlords to purchase insurance to cover the losses normally covered by a security deposit.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 83.491 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 Judiciary on March 7, 2023:**

The committee substitute makes the following four changes to the underlying bill:

- Corrects an incorrect reference to an “insurer” and replaces that phrase with the word “tenant” to clarify that the tenant retains defenses against the insurer and landlord.
- Clarifies that the tenant, at any time, has the option to pay a security deposit instead of the fee.
- Clarifies that the amount of a fee, paid in lieu of a security deposit, may not be increased during the term of the rental agreement.
- Reorganizes language contained in the written disclosure that the landlord must provide to the tenant but does not make significant changes to the substance of the disclosure.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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