

# SENATE STAFF ANALYSIS AND ECONOMIC 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: Criminal Justice Committee

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BILL: CS/SB 2166

SPONSOR: Criminal Justice Committee and Senator Rich

SUBJECT: Rental Agreements/Domestic Violence

DATE: April 21, 2005

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cannon	CJ	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This legislation provides for the early termination of a rental agreement by a victim of domestic violence, sexual violence, dating violence, or repeat violence. The victim is allowed to terminate the lease agreement early and vacate the dwelling if he or she first gives the landlord written notice of that intent and a copy of a permanent injunction within 15 days after the injunction is issued. The victim must then vacate the dwelling when the lease expires or 30 days after the landlord receives the notice of termination, whichever happens first and the remaining tenants are still bound by the terms of the lease. However, if the respondent or any other tenant does not retake possession of the premises and the rent is unpaid, the property is considered abandoned and the landlord may dispose of any abandoned property as he or she deems necessary. The victim and respondent are not permitted to waive or modify the terms of this provision.

An additional provision in the bill states that a landlord may recover possession of a dwelling if, 45 days after the death of a tenant, the rent is unpaid and the landlord has not been notified of the tenant's estate being probated or notified of the name and address of a personal representative of the tenant.

This bill substantially amends sections 83.683 and 83.59, Florida Statutes.

## II. Present Situation:

### Early Termination of a Rental Agreement

Florida law currently provides several circumstances under which a rental agreement may be terminated prematurely by a tenant. Some of those circumstances are: if the landlord materially fails to comply with certain obligations to maintain the premises; if the landlord fails to remedy certain provisions of the rental property after those provisions have been called to his or her

attention in writing by the tenant; and if the premises are damaged or destroyed by an action that is not the tenant's fault and the tenant cannot substantially enjoy the premises. (ss. 83.56 and 83.63, F.S.) However, no specific provision exists in current law to allow a victim of abuse to prematurely terminate a lease agreement without penalty.

### **Injunctions for Protection Against Domestic Violence**

If someone is a victim of domestic violence as defined in s. 741.28, F.S., or has a reasonable belief that he or she is in imminent danger of becoming the victim of domestic violence, that person may petition the circuit court for an injunction for protection against domestic violence. (s. 741.30, F.S.) The granting of the injunction is not dependant on whether the parties are married to each other or how long either party has been a resident of the area. The petitioner, however, must have some type of domestic or familial relationship to the respondent that is listed in statute and the parties must have resided together either in the past or currently as a family or household in the same dwelling. *Kokoris v. Zipnick*, 738 So. 2d 369 (Fla. 4th DCA 1999)

### **Injunctions for Protection Against Repeat, Sexual, or Dating Violence**

In a similar manner, a person who is the victim of repeat violence, sexual violence, or dating violence may also seek a protective injunction in the circuit courts of this state. The statutes also provide for the parents or guardians of minors to seek injunctive relief on behalf of their minor children who are victims of dating, repeat, or sexual violence. (s. 784.046, F.S.)

Repeat violence is defined as two incidents of violence or stalking committed by the respondent, one of which occurred within 6 months of the filing of the petition, and those actions are directed against the petitioner or someone in his or her immediate family. (s. 784.046(1)(b), F.S.)

Sexual violence is defined as any one incident of sexual battery, a lewd or lascivious act committed upon or in the presence of a person under the age of 16, luring or enticing a child, a sexual performance by a child, or any other forcible felony in which a sexual act is committed or attempted. It does not matter, in these incidents, whether the criminal charges based on the incident were filed, reduced, or dismissed by the prosecuting attorney. (s. 784.046(1)(c), F.S.)

Dating violence is defined as "violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature." The dating relationship must have existed within the past 6 months and been characterized by the expectation of affection or sexual involvement of the parties and the frequency of interaction between the people involved must have lasted over a period of time and on a continuing basis. (s. 784.046(1)(d), F.S.)

### **Recovering Possession of a Dwelling Upon Death of a Tenant**

Section 83.59 provides circumstances under which a landlord may recover possession of a dwelling unit. Section 83.59(3), F.S., however, sets forth instances when the landlord is not allowed to recover possession of the unit. The statute states that the landlord may not recover possession unless: (1) the right of possession has been determined in a civil action; or (2) the tenant has surrendered possession of the unit to the landlord; or (3) the tenant has abandoned the unit. The landlord may have actual knowledge of the abandonment or there may be a presumption of the abandonment if the tenant is absent for a specified period of time and the rent is unpaid.

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

#### **Section 1**

This proposed legislation provides the means for a victim, or the parent or legal guardian of a minor, who has been granted a permanent injunction against domestic violence, sexual violence, dating violence, or repeat violence as defined in ss. 741.28 or 784.046, F.S., to terminate a rental agreement early without penalty.

The victim, who has been granted exclusive possession of the dwelling unit, must give the landlord a written notice of his or her intent to terminate the lease along with a copy of the permanent injunction. This notice and injunction must be given to the landlord no later than 15 days after its issuance.

The victim must then vacate the dwelling on the date the lease expires or 30 days after the landlord receives notice of the termination, whichever occurs first.

The landlord is then required to mail the notice required in s. 83.49(3)(a), F.S., to both the victim and the respondent concerning the return of the deposit. According to subsection (3) the remaining parties to the lease will be bound by the terms of the lease even though the victim has been released from the terms of the lease agreement. All parties to the lease, including the victim, are responsible for damages that exceed the ordinary wear and tear to the dwelling. However, if damages were incurred during an incident of domestic abuse, the cost will be the responsibility of the respondent alone. Subsection (3) further provides that none of the language in that subsection may be construed to limit the landlord's rights to evict any tenant for participating in unlawful activities.

If the respondent or other tenant does not retake possession of the premises within 15 days of the date the victim was to vacate the premises and the rent is not paid, the landlord may consider the premises abandoned and retake possession of the premises. The landlord is then authorized to dispose of any abandoned property in the manner he or she deems fit.

The legislation provides in proposed s. 83.683(5), F.S., that the victim and the respondent may not waive or modify the terms of this section.

#### **Section 2**

Section 83.59, F.S., provides an additional circumstance under which a landlord may recover possession of a dwelling unit. The bill provides that the landlord may take possession of a dwelling unit if, 45 days after the tenant's death, the rent has not been paid and the landlord has not been notified of the tenant's estate being probated or the name and address of a personal representative.

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

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

**Constitutional Issues:** Section 6 of Article III of the Constitution of the State of Florida requires each law to “embrace but one subject and matter properly connected therewith...”

It might be argued that the separate topics expressed in this bill, the early termination of a lease by victims of domestic, repeat, sexual or dating violence, and the right of a landlord to recover possession of a dwelling upon the death of a tenant with no discernible personal representative or probate estate, embrace more than a single topic.

Some provisions in this bill giving the landlord the right to take the property or premises of an absent tenant without first determining whether the landlord has that legal right to do so would seem to merit further study by a substantive committee.

**VII. Related Issues:**

None.

**viii. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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