

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 Criminal Justice Committee

BILL: CS/SB 596

INTRODUCER: Criminal Justice Committee and Senators Rich and Altman

SUBJECT: Residential Tenancies/Domestic, Repeat, Dating, or Sexual Violence

DATE: April 1, 2009 **REVISED:** _____

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

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill creates s. 83.683, F.S., and provides that a landlord may not refuse to enter into a rental agreement if the applicant or household member is a victim of domestic violence, dating violence, repeat violence, or sexual violence, and provides written evidence of such.

The bill allows tenants to terminate their rental agreement early if they provide specified written evidence of domestic violence, dating violence, repeat violence, or sexual violence. The bill provides for payment of liquidated damages. It also provides that the excluded tenant remains liable for rent and damages.

The bill allows a tenant who is the victim of domestic violence, dating violence, repeat violence, or sexual violence to request in writing that the landlord change all exterior door locks and gives the landlord a specified time period in which to comply, or allows the tenant to install new locks at his or her own expense.

Lastly, the bill provides that its provisions may not be waived or modified by agreement of the parties and that a landlord is not liable for damages or injury arising from a landlord's compliance or good faith attempt to comply with the bill.

This bill creates section 83.683 of the Florida Statutes.

II. Present Situation:

Termination of Lease Agreements

The Florida Residential Landlord and Tenant Act, first enacted in 1973, governs residential landlord tenant law.¹ A lease is an agreement to use real property for a certain length of time. According to s. 83.43, F.S., a tenant is any person entitled to occupy a dwelling unit under a rental agreement and a landlord is the owner or lessor of a dwelling unit. By definition, all residential tenancies must end. Most end at the conclusion of the agreed-upon lease term with the tenant having paid all rents due. Section 83.595, F.S., governs the financial obligation of the tenant where the tenant's occupation of the property ends prior to the agreed upon term of the lease.

Section 83.595, F.S., provides that a landlord who has retaken possession of a rental property before the end of the lease term may do any of the following: treat the lease as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant; retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between the rental stipulated to be paid under the lease agreement and what the landlord is able to recover from renting to another tenant; stand by and do nothing, holding the tenant liable for the rent as it comes due; or charge liquidated damages, as provided in the rental agreement, or an early termination fee if the landlord and tenant have agreed to this, provided the amount does not exceed two month's rent, and if, in the case of an early termination fee, the tenant is required to give no more than 60 days' notice prior to the proposed early termination date.

Florida law currently provides several circumstances under which a rental agreement may be terminated prematurely by a tenant with little or no penalty. These circumstances include the following: 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;² 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;³ or if the tenant is an active duty member of the armed forces, and is either transferred or discharged from service.⁴

A tenant may terminate a rental agreement when the landlord materially fails to comply with s. 83.51(1) F.S.,⁵ or material provisions of the rental agreement within seven days of notice from the tenant specifying the noncompliance and indicating the tenant's intent to terminate the rental agreement. If the landlord's failure to comply is due to causes beyond the control of the landlord, and the landlord has made every reasonable effort to comply, and the landlord's failure to

¹ Part II of ch. 83, F.S.

² Section 83.56, F.S.

³ Section 83.63, F.S.

⁴ Section 83.682, F.S.

⁵ Section 83.51(1), F.S., requires a landlord to comply with all applicable building, housing, and health codes, and maintain all structural components and plumbing in good repair.

comply makes the dwelling unit untenable, and the tenant then vacates the unit, the tenant will not be liable for rent during the time the dwelling unit remains uninhabitable.⁶ The landlord is not responsible to the tenant for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.⁷

A provision in a rental agreement is void and unenforceable to the extent that it purports to limit or preclude any liability of the landlord to the tenant or of the tenant to the landlord.⁸ A tenant has an obligation at all times to maintain a dwelling. Specifically, a tenant must conduct him or herself and require other persons on the premises with his or her consent to conduct themselves in a manner that does not unreasonably disturb the tenant's neighbors or constitutes a breach of the peace.⁹

Injunctions against Domestic, Repeat, Dating, or Sexual Violence

Section 741.30(1)(a), F.S., creates a cause of action for an injunction for protection against domestic violence, and provides that a person who is the victim of domestic violence, as defined in s. 741.28, F.S.,¹⁰ or who has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence, has standing to seek an injunction against domestic violence. A domestic violence injunction may be sought by family or household members, and "no person shall be precluded from seeking injunctive relief pursuant to this chapter solely on the basis that such person is not a spouse."¹¹

Courts have adopted a two-pronged test for determining whether a relationship is such that the court can properly issue a domestic violence injunction against one of the parties.¹² First, the petitioner must have a familial or domestic relationship with the respondent that falls within the range of relationships listed in the statute, and second, the parties must have resided together, either in the past or present, as a family or household in the same dwelling unit.¹³ An action for an injunction does not affect the title to any real estate.¹⁴

Section 784.046, F.S., defines violence, repeat violence, sexual violence, and dating violence, and creates separate causes of action for repeat, sexual, and dating violence. Any person who is the victim of repeat violence,¹⁵ or the parent of a minor child who lives at home and is the victim of repeat violence, has standing to file a sworn petition for an injunction against repeat violence.¹⁶

⁶ Section 83.56(1)(a), F.S.

⁷ Section 83.51(4), F.S.

⁸ Section 83.47, F.S.

⁹ Section 83.52(7), F.S.

¹⁰ Section 741.28(2), F.S., provides that "domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

¹¹ Section 741.30(1)(e), F.S.

¹² *Kokoris v. Zipnick*, 738 So.2d 369, 370 (Fla. 4th DCA 1999).

¹³ *Id.*

¹⁴ Section 741.30(1)(h), F.S.

¹⁵ Section 784.046(1)(b), F.S., provides that "repeat violence" means two incidents of violence or stalking committed by the respondent, one of which must have occurred within six months of the filing of the petition, and which were directed against the petitioner or an immediate member of the petitioner's family.

¹⁶ Section 784.046(2)(a), 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.”¹⁷ Any person who has reasonable cause to believe that he or she is in imminent danger of becoming the victim of an act of dating violence, or who is the victim of dating violence and has reasonable cause to fear imminent future dating violence, or who is the parent of a minor child living at home and is in need of protection from dating violence, may file a petition for an injunction to protect against dating violence.¹⁸

A person who is the victim of sexual violence,¹⁹ or the parent of any minor child living at home who is the victim of sexual violence, has standing to file a petition for a protective injunction against sexual violence if:

- The person has reported the sexual violence to a law enforcement agency and is cooperating with any criminal proceeding against the respondent; or
- The person who committed the sexual violence was sentenced to a term of imprisonment for the sexual violence, and such sentence expires or shall expire within 90 days of the filing of the petition.²⁰

The court is authorized to grant an injunction enjoining the respondent from committing any acts of violence and it is also given broad authority to order such other relief as is necessary to protect the victim.²¹ When it appears to the court that an immediate and present danger of domestic violence exists, the court may grant a temporary injunction *ex parte* which may include awarding a petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner.²² An order granting an injunction must be supported by competent, substantial evidence.²³

III. Effect of Proposed Changes:

Victim Protection

The bill creates s. 83.683, F.S., and states that a landlord may not refuse to enter into a rental agreement solely because the applicant or household member²⁴ is a victim of domestic violence,

¹⁷ Section 784.046(1)(d), F.S. The dating relationship shall be determined based on the existence of the following factors: 1) a dating relationship must have existed within the past 6 months; 2) the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and 3) the frequency and type of interaction between the persons involved in the relationship must have included that all the persons have been involved over time and on a continuous basis during the course of the relationship.

¹⁸ Section 784.046(2)(b), F.S.

¹⁹ Section 784.046(1)(c), F.S., provides that “sexual violence” means one incident of sexual battery, a lewd or lascivious act committed upon or in the presence of a person younger than 16, luring or enticing a child, sexual performance by a child, or any forcible felony wherein a sexual act is committed or attempted, regardless of the presence or absence of criminal charges resulting from the incident.

²⁰ Section 784.046(2)(c), F.S.

²¹ Section 784.046(6)(a), (7)(a)-(b), F.S.

²² Sections 741.30(5)(a)2 and 741.30(6)(a)2.

²³ *Forrest v. Wilson*, 889 So.2d 124, 124-25 (Fla. 1st DCA 2004).

²⁴ Section 741.28 F.S., defines “family or household member” as spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of

dating violence, repeat violence, or sexual violence, if the applicant provides the landlord with written evidence of such.

Early Termination of Rental Agreement

The bill provides that a tenant protected by newly created s. 83.683, F.S., may terminate his or her rental agreement for a dwelling unit by providing the landlord with written certification from a domestic violence center, issued within 30 days before the date on the application.

The certification to the landlord must include confirmation that the applicant received services from a domestic violence center, along with a certified copy of one of the following:

- a criminal court “no contact” order;
- a final protective injunction; or
- a documented police report.

The bill further provides that after terminating a rental agreement the tenant who is released is liable to the landlord for liquidated damages for one month of rent, plus any rental agreement concessions provided by the landlord. The tenant is also liable for any unpaid rent or other accrued charges owed to the landlord before the rental agreement termination, as well as charges for damages to the dwelling unit.

A cotenant remains bound by the agreement after the tenant terminates. However, the landlord may terminate the rental agreement for any cotenant who is named in a final injunction or in a no contact order as the perpetrator of domestic violence, dating violence, repeat violence, or sexual violence.

Changing Locks

The bill provides that if the victim of domestic violence, dating violence, repeat violence, or sexual violence has a court order granting a tenant possession of the dwelling unit to the exclusion of one or more co-tenants, the protected tenant may give that copy to the landlord and require that the landlord change the locks on all exterior doors or permit the tenant to do so within 72 hours of receiving such notice.

The bill requires the protected tenant to bear the cost of changing the locks and if the landlord does not act within the required time, the tenant may change the locks, providing the tenant does no permanent damage and gives a duplicate set of all keys to the landlord.

Limitation of Landlord’s Liability

Provides that a landlord is not liable for damages or injury arising from a landlord’s compliance or good faith attempt to comply with this newly created section of law.

Non-Waiver of Rental Terms

The bill provides that the provisions of the bill may not be waived or modified by agreement of the parties.

persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill could have an indeterminate fiscal impact upon landlords related to the early termination of rental agreements.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 1, 2009:

- Provides that a landlord cannot refuse to rent to an applicant or household member who is a victim of domestic, dating, repeat, or sexual violence if the applicant provides the landlord with the following:
 - written certification from a domestic violence center that the tenant received services from the center; and either a
 - copy of the certified final injunction, a certified “no contact” court order, or a certified copy of the police report.

- Provides that a landlord's right to otherwise terminate a rental agreement for the failure to comply or refusal to enter into a rental agreement if the applicant does not meet the landlord's creditworthiness criteria or criminal background criteria is not limited by the newly created section of law.
- Provides that as a condition for approval of the applicant and continued tenancy, a landlord has the right to exclude without cause from the applicant's dwelling unit, the person who is a perpetrator of domestic violence, dating violence, repeat violence, or sexual violence as named in a police report, a no contact order, or final injunction.
- Provides that a landlord is not liable for damages or injury arising from a landlord's compliance or good faith attempt to comply with this newly created section of law.

B. Amendments:

None.