HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/CS/HB 577 Tenant Safety
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

The "Florida Residential Landlord and Tenant Act" (Act) governs the relationship between landlords and tenants under a residential rental agreement. The Act provides landlords with certain rights of entry to the dwelling unit. For example, the landlord may enter a dwelling unit for purposes of repair to the premises, but the landlord must first give "reasonable notice" of 12 hours to a tenant beforehand.

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. An investigation by the Orange County Sheriff's Office indicated that Marcano was taken from her apartment by a maintenance worker at the same apartment complex, who used a master key fob to enter her apartment.

The bill, "Miya's Law":

- Increases the time period that a landlord must give to a tenant prior to entering the dwelling unit from 12 hour to **24 hours**, unless the tenant consents to a shorter time period.
- Requires an operator of an apartment complex with **15 or more units** to:
  - Upon request, notify a tenant or prospective tenant in writing whether the operator requires any employees or contractors to undergo a **background screening**.
  - Upon request, provide a list to the tenant of every employee or contractor who has **access to a master key** or fob or individual unit keys, and post such a list in a conspicuous place on the apartment complex grounds or on the apartment's website.
  - Maintain a log accounting for all employees or contractors that have access to a master key or fob or individual unit keys.
  - Make such log accessible:
    - To law enforcement as needed in connection with the performance of their duties;
    - To a tenant; and
    - In discovery in a civil action related to an action involving a tenant or the apartment.
  - Maintain such log for one year.

The bill may have an indeterminate fiscal impact on state government and does not have an impact on local governments.

Except as otherwise provided, the bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Residential Landlord and Tenant Act

Part II of ch. 83, F.S., known as the "Florida Residential Landlord and Tenant Act" (Act), governs the relationship between landlords and tenants under a residential rental agreement.[1]

The Act does not apply to:[2]

- Residency or detention in a facility when it is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services.
- Occupancy under a contract of sale of a dwelling unit or property of which it is a part.
- Transient occupancy in a public lodging establishment or a mobile home park.
- Occupancy by a holder of a proprietary lease in a cooperative apartment.
- Occupancy by an owner of a condominium unit.

Any right or duty declared in the Act is enforceable by civil action. A right or duty enforced by civil action under the Act does not preclude prosecution for a criminal offense related to the lease or leased property. If either the landlord or the tenant fails to comply with the requirements of the rental agreement or the Act, the aggrieved party may recover the damages caused by the noncompliance.[3] Under certain circumstances, either party may take action to terminate the lease.[4]

Covenant of Quiet Enjoyment

Generally, a tenant is entitled to the right of private, peaceful possession of the dwelling, which includes limited access to the dwelling unit by the landlord.[5] In the absence of inconsistent express covenants, an ordinary lease includes an implied covenant of quiet enjoyment under Florida law,[6] and use of the words "lease" or "demise" in a lease imports a covenant of quiet enjoyment.[7] Thus, a valid ordinary lease of real estate raises an implied covenant of quiet and peaceful enjoyment of the leased premises exercisable against the landlord.[8]

Landlord's Obligation to Maintain Premises

At all times during a tenancy, the landlord must comply with the requirements of applicable building, housing, and health codes. Where there are no applicable building, housing, or health codes, the landlord must maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and the plumbing in reasonable working condition.[9]

Landlord's Access to the Dwelling Unit

[1] S. 83.41, F.S., provides that part II, ch. 83, F.S., applies to the rental of a dwelling unit.
[2] S. 83.42, F.S.
[3] S. 83.55, F.S.
[4] S. 83.56, F.S.
[5] The Florida Bar, *Consumer Pamphlet: Rights and Duties of Tenants and Landlords*, https://www.floridabar.org/public/consumer/tip014/ (last visited Feb. 26, 2022).
[6] Fla. Jur. 2d Landlord and Tenant § 90. *Stinson, Lyons, Gerlin & Bustamante, P.A. v. Brickell Bldg. 1 Holding Co., Inc.*, 923 F.2d 810 (11th Cir. 1991); *Coral Wood Page, Inc. v. GRE Coral Wood, LP*, 71 So. 3d 251 (Fla. 2d DCA 2011); *Hankins v. Smith*, 103 Fla. 892, 138 So. 494 (1931).
[7] Fla. Jur. 2d Landlord and Tenant § 90; *Hankins*, 138 So. 494.
[8] Fla. Jur. 2d Landlord and Tenant § 90; *McClosky v. Martin*, 56 So. 2d 916 (Fla. 1951); *Hankins*, 138 So. 494.
[9] S. 83.51(1), F.S.

The landlord is generally restricted to accessing the dwelling unit under certain scenarios. However, they may enter the dwelling unit at any time for the protection or preservation of the premises.[10]

The landlord may enter the dwelling unit upon 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 notice given at least 12 hours prior to the entry, and reasonable time for the purpose of repair is between 7:30 a.m. and 8:00 p.m.[11]

The tenant may not unreasonably withhold consent to the landlord to enter the dwelling unit from time to time in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.[12] The landlord may enter the dwelling unit when necessary for these purposes under any of the following circumstances:[13]

- With the consent of the tenant;
- In case of emergency;
- When the tenant unreasonably withholds consent; or
- If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments; but if the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

The landlord may not abuse the right of access or use it to harass the tenant.[14]

Transient and Non-transient Apartments

"Public lodging establishments" includes transient and nontransient public lodging establishments.[15] The principal difference between a transient and nontransient public lodging establishment is how frequently the establishment is rented in a calendar year and the duration of the rental.

A "transient public lodging establishment" is:

> 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 one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.[16]

A "nontransient public lodging establishment" is:

> 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 one 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 one calendar month.[17]

Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project.[18]

A **nontransient apartment** is 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

[10] S. 83.53(2), F.S.
[11] *Id*.
[12] S. 83.53(1), F.S.
[13] S. 83.53(2), F.S.
[14] S. 83.53(3), F.S.
[15] S. 509.013(4)(a), F.S.
[16] S. 509.013(4)(a)1., F.S
[17] S. 509.013(4)(a)2., F.S.
[18] S. 509.242(1), F.S.

buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.[19]

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (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 certain transient and non-transient apartments in the state with 5 or more units.[20]

DBPR's regulation of public lodging establishments includes:
- Sanitation standards;
- Inspections; and
- Personnel training.[21]

Both transient and non-transient apartments are inspected by the division at least annually. 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.[22]

If a public lodging establishment, including an apartment, operates in violation of ch. 509, F.S., or division rules, the division may impose the following disciplinary actions:[23]
- Fines not to exceed $1,000 per offense; and
- The suspension, revocation, or refusal of a license.

Safety Regulations

Section 509.211, F.S., provides safety regulations of public lodging establishments. Current 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.[24] 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.[25]

Employee Background Screenings

Generally, criminal background screenings used for employment are generated by searching various databases for criminal history, including misdemeanor and felony convictions and pending cases.[26] There is no requirement in Florida law that apartments must perform a background check on employees or potential employees nor does it requires landlords or apartments to exclude potential employees due to their criminal history.

The law also does not prevent an apartment from performing a criminal background check on potential employees on its own accord, but the employer must follow federal standards under Title VII of the Civil Rights Act of 1964, as it relates to employment discrimination, and the Fair Credit Reporting Act (FCRA) as it relates to requirements for how a background check is conducted and applied to employment.

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[19] *Id.*
[20] S. 509.013 (4) (b), F.S. Any non-transient 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.
[21] S. 509.032 (2) (a), F.S.
[22] S. 509.032 (2) (b), F.S.
[23] S. 509.261(1), F.S.
[24] S. 509.211 (1) F.S.
[25] S. 509.211 (3) F.S.
[26] GoodHire, *Criminal Background Check For Employment*, https://www.goodhire.com/screening/criminal-background-check/ (last visited Feb. 26, 2022).

Florida law provides employers that conduct a background investigation with the legal presumption that they were not negligent in hiring. As long as the background check didn't uncover any information that reasonably demonstrates that the employee was unfit for the job or employment in general, the employer is entitled to a presumption that it did not act negligently.[27]

Third Party Background Screening

There are hundreds of companies engaged in employment and tenant background screening across the United States.[28] 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.[29] The FCRA promotes the accuracy, fairness, and privacy of information that consumer reporting agencies and their related entities collect.[30] 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.

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.[31]

Statutory 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.[32] The state mandates background screenings for all state employees[33] and many professions that interact with vulnerable persons.[34]

Such criminal history check must include a Florida criminal history provided by the Florida Department of Law Enforcement (FDLE). The information may be provided by a private vendor only if that information is directly obtained from the FDLE for each request.[35]

A Level 1 screening is a name-based demographic screening that includes a statewide criminal record check through the FDLE.[36] A Level 1 background screening involves a name-based search of Florida records, including employment history, state and local criminal history check, and a search of the National Sex Offender Public Website.[37]

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[27] S. 768.096, F.S.; Lisa Guerin, *Florida Laws on Employer Use of Arrest and Conviction Records*, Nolo.com, https://www.nolo.com/legal-encyclopedia/florida-laws-employer-use-arrest-conviction-records.html (last visited Feb. 26, 2022).
[28] Professional Background Screening Association (PBSA), *About PBSA*, *available at* https://thepbsa.org/about-us/about-pbsa/ (last visited Feb. 26, 2022.)
[29] *Id.*
[30] 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. 26, 2022). *See also*, Federal Trade Commission, *Fair Credit Reporting Act*, https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act (last visited Feb. 26, 2022).
[31] 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).
[32] Ss. 435.01-435.12, F.S.
[33] S. 110.1127, F.S.
[34] S. 435.02(6), F.S.
[35] S. 943.053(12), F.S.
[36] S. 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. 26, 2022).
[37] S. 435.03(1), F.S.

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.[38] 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.[39]

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.[40]

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.[41]

Effect of Proposed Changes

The sponsor has entitled the act "Miya's Law," in memory of Miya Marcano.

The bill increases the "reasonable notice" time period that a landlord must give to a tenant prior to entering the dwelling unit for purposes of repair of the premises, from 12 hours, to 24 hours.

Effective January 1, 2023, the bill requires each nontransient apartment or transient apartment building or complex with at least 15 individual units to:

- Upon request of the tenant or prospective tenant, provide the tenant or prospective tenant with information in writing indicating whether the operator requires any current employees or contractors to undergo a **background screening** and, if so, such notification must also state all of the following:
  - The positions of those required to undergo background screenings.
  - The type of background screening or criminal background screening the operator performed, and whether such background screenings include a search of the National Sex Offender Registry or other similar databases.
  - That the operator has discretion to make employment decisions, regardless of a current employee's or contractor's background screening results.
  - That state law does not disqualify any current employee or contractor from working at a nontransient apartment or transient apartment based on background screening results.
- Upon request of the tenant, provide a list to the tenant of every current employee or contractor who has **access to a master key** or fob or individual unit keys, which is updated as needed or at least quarterly, and such list must be posted in a conspicuous place on the grounds of the apartment building or complex or on the website of the apartment building or complex.
- Maintain a log that accounts for all employees or contractors that have access to a master key or fob or individual unit keys.
- Make such log accessible upon request:
  - To a law enforcement officer as needed in connection with the performance of the officer's official duties.
  - To a tenant.
  - During discovery in a civil action related to an action involving a tenant or the apartment.
- Maintain such log for at least 1 year.

[38] S. 435.04, F.S.
[39] Ss. 435.03(2) and 435.04(2), F.S.
[40] Cristobal Reyes, *Miya Marcano's family again blasts Orange sheriff after autopsy released: 'Precious moments' lost*, Orlando Sentinel, Orlando Sentinel (Dec. 28, 2021), https://www.orlandosentinel.com/news/crime/os-ne-miya-marcano-autopsy-response-20211228-svqnw6bdozaghnoijjevdgkgoi-story.html (last visited Feb. 26, 2022); Vanessa Etienne, *Miya Marcano Cause of Death Ruled a 'Homicide by Undetermined Means': Medical Examiner*, People (Dec. 29, 2021) https://people.com/crime/texas-girls-abduction-inspired-amber-alert-26-years-later-case-remains-unsolved/ (last visited Feb. 26, 2022).
[41] Cristobal Reyes, *supra* note 15.

Upon request during the division's annual inspection of the premises, a licensee must provide the division with proof of compliance with these requirements during the inspection.

Except as otherwise provided, the bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Provides a short title.
Section 2: Amends s. 83.53, F.S., relating to landlord's access to a dwelling unit.
Section 3: Amends s. 509.211, F.S., relating to apartment safety regulations.
Section 4: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DBPR may see an increase in fines related to an operator that fails to provide certain information during an inspection.

2. Expenditures:

DBPR will likely be able to review master key logs without incurring additional expenses during annual inspections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES