

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1009 w/CS Prohibited Landlord Practices

SPONSOR(S): Hasner

TIED BILLS: **IDEN./SIM. BILLS:** SB 1682

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	15 Y, 1 N w/CS	Havlicak	Havlicak
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

Current law permits property owners in condominiums and homeowners associations to display a United States flag in a respectful way despite any declaration rules or requirements to the contrary. This bill extends that same protection to tenants who rent a residential dwelling.

The bill's provisions protect tenants who display a United States flag made only of cloth or plastic and are no larger than 4 ½ x 6 feet. If the tenant chooses to display a flag under this provision, he or she must do so in accordance with existing law that precludes the tenant from damaging the premises. The displayed flag cannot infringe upon the space rented by another tenant. Finally, the landlord is not liable for any damages associated with the tenant's display of the flag.

This bill does not appear to have any fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1009a.ju.doc

DATE: March 17, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|-----------------------------------------|-----------------------------|-----------------------------------------|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

FLORIDA’S LANDLORD – TENANT LAW

Part II of chapter 83, F.S., entitled “Florida Residential Landlord and Tenant Act” governs the relationship between landlords and tenants in a residential lease agreement.¹ Such issues as payment of rent,² duration of leases,³ security deposits,⁴ maintenance of the dwelling and premises,⁵ and termination of rental agreements⁶ are addressed by chapter 83.

Section 83.67, F.S., prohibits certain acts by a landlord in a residential lease. Specifically, the following acts are prohibited:

- Terminating or interrupting of any utility service furnished to the tenant;
- Denying tenant reasonable access to the dwelling, e.g., changing the locks;
- Discriminating against a servicemember in offering the dwelling for rent or in any of the terms in the rental agreement; and
- Removing outside doors, locks, roof, walls, windows, or removing the tenants’ personal property unless taken pursuant to surrender, abandonment or a lawful eviction.

A landlord who violates any of these provisions is liable for actual and consequential damages or three months’ rent, whichever is greater. The landlord is also liable for costs and attorney’s fees.⁷

Proposed Changes: This bill adds a new prohibition to s. 83.67, F.S. Despite any declaration rules or requirements to the contrary, this bill prohibits landlords from preventing a tenant from “displaying one portable, removable, cloth or plastic United States flag, not larger than 4 and one-half feet by 6 feet, in a respectful manner in or on the dwelling unit. . . .”⁸

¹ This part applies to the rental of a “dwelling unit” which is defined as a structure or part of a structure rented for use as a home, residence or sleeping place. It also includes mobile homes rented by a tenant. Section 83.43, F.S.

² See 83.46, F.S.

³ *Id.*

⁴ See s. 83.49, F.S.

⁵ See ss. 83.51 and 83.52, F.S.

⁶ See s. 83.56, F.S.

⁷ See s. 83.67(5), F.S.

⁸ A recent landlord/tenant dispute brought this issue to light. A tenant in an apartment complex in Boynton Beach was displaying the U.S. flag in a window to show support for American servicemembers at war. The property manager threatened the tenants with eviction claiming the display of the flag violated community rules encouraging uniformity, and the lease agreement precluding tenants from altering their apartments in any way, to include hanging banners, streamers

This bill provides that if a tenant chooses to display a flag under this provision, he or she must do so in accordance with s. 83.52(6), F.S., which precludes the tenant from damaging the premises with such display. Additionally, the displayed flag cannot infringe upon the space rented by another tenant. Finally, the landlord is not liable for any damages associated with the tenant's display of the flag.

Florida has similar provisions permitting the display of flags in other areas of the law.

Section 718.113(4), F.S., was amended in 1989 to permit condominium owners to "display one portable, removable United States flag in a respectful way regardless of any declaration rules or requirements dealing with flags or decorations."⁹ In 2003, the Legislature expanded s. 718.113(4), F.S., to include the display of the Armed Services Flags on certain military and patriotic holidays.¹⁰

A similar flag provision is found in chapter 720, F.S., pertaining to homeowners associations. In 2002, s. 720.304(3), F.S., was amended to provide, "[a]ny homeowner may display one portable, removable United States flag in a respectful manner, regardless of any declaration rules or requirements dealing with flags or decorations."¹¹

C. SECTION DIRECTORY:

Section 1: amends s. 83.67, F.S., relating to prohibited landlord practices.

Section 2: provides an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

or even curtains which would be visible outside the apartment. The apartment managers have since dropped their threat to evict the tenants. See *Lawmaker Aids Tenants in Fight to Show Flag*, The Palm Beach Post (January 21, 2004); *Couple Can Keep Displaying Flag in Apartment Window*, St. Petersburg Times (January 23, 2004).

⁹ See Chapter 89-161, Laws of Florida.

¹⁰ See Chapter 2003-28, Laws of Florida.

¹¹ See Chapter 2002-50, Laws of Florida.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action which requires the expenditures of funds.

2. Other:

IMPAIRMENT OF CONTRACTS

Article I, Section 10, of the Constitution of the United States is the "Contract Clause" that prohibits states from passing laws which substantially impair contract rights.¹² Also, common law provides that the government cannot adversely affect substantive rights once such rights have vested.¹³ To determine whether a particular regulation violates the Contract Clause, courts use a balancing test. Courts measure the severity of contractual impairment against the importance of the interest advanced by the regulation and also look at whether the regulation is reasonable and narrowly tailored to the state's interest.¹⁴ This bill may impair existing contractual rights because many tenants have contractually agreed to abide by certain terms and have relied on the enforcement of these terms in choosing to rent in certain apartment complexes. This bill may invalidate, in part, such contractual agreements thus implicating the Contract Clause of the United States Constitution.

In *Gerber v. Longboat Harbour North Condominium, Inc.*¹⁵ an Air Force veteran initiated a law suit which raised freedom of speech issues by challenging a condominium association's regulation prohibiting the displaying of an American flag except on designated occasions. The United States District Court, Middle District of Florida, granted summary judgment to the plaintiffs and held that enforcement of private agreements by the judicial branch is sufficient to implicate state action and therefore the defendant's actions deprived the plaintiffs of the rights, privileges, and immunities secured by the First and Fourteenth Amendments to the United States Constitution.¹⁶ The Court stated in dicta that the Florida Legislature, in enacting s. 718.113, F.S., had merely recognized the plaintiffs' previously existing right to display the flag; it had not created rights and therefore not impaired existing contract rights.¹⁷

Similarly in Florida's Constitution, Article I, Section 10, provides in relevant part, "[n]o . . . law impairing the obligation of contracts shall be passed." The Florida Supreme Court discussed several factors for determining whether a government impairment of private contracts is permissible.¹⁸ The court explained

¹² *Home Building and Loan Association v. Blaisdell*, 290 U.S. 398 (1923).

¹³ *Bitterman v. Bitterman*, 714 So. 2d 356 (Fla. 1998).

¹⁴ *Allied Structural Steel v. Spannaus*, 438 U.S. 234 (1978).

¹⁵ 724 F. Supp. 884 (D. Fla. 1989).

¹⁶ *Id.* at 887. The First Amendment to the U.S. Constitution guarantees free speech and is made applicable to the states through the Fourteenth Amendment.

¹⁷ *Id.* On a motion to reconsider, the federal District Court, finding that its earlier decision granting summary judgment was inappropriate, partially vacated its earlier judgment. The court reaffirmed the portion of its earlier decision dealing with state action but vacated the remainder of the decision holding that there were material issues of fact pertaining to the manner in which the flag was displayed that needed to be decided by the trier of fact. See *Gerber v. Longboat Harbour North Condominium, Inc.*, 757 F.Supp. 1339, 1342 (D. Fla. 1991).

¹⁸ *Pomponio v. Cladridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1980).

that it must weigh the degree of impairment against "the evil which [the regulation] seeks to remedy."¹⁹ This analysis "requires a balancing of a person's interest not to have his contracts impaired with the state's interest in exercising its legitimate police power."²⁰ The public purpose in imposing the regulation must be significant and legitimate, and the regulation must not unreasonably intrude into the parties' bargain to a degree greater than is necessary to achieve the stated public purpose.²¹

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The prohibition against landlords in this bill is "regardless of any declaration rules or requirements dealing with flags or decorations." To be explicitly clear and comprehensive, this "regardless" clause should also include any lease agreement to the contrary.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 15, 2004, the Judiciary Committee adopted 2 amendments that:

- Limit the provisions of the bill to flags made of cloth or plastic and no larger than 4 ½ x 6 feet;
- Require tenants choosing to display the flag to do so in accordance with s. 83.52(6), F.S., which prohibit the tenant from damaging the premises;
- Relieve landlords from any liability associated with the tenant's displaying of the flag; and
- Preclude tenant's displaying of flag from infringing upon the space rented by another tenant.

A third amendment adopted at the committee meeting changed "may" to "shall" in subsections (1) through (5) in the bill to clarify that landlords are expressly prohibited from the actions set forth in those subsections.

This analysis is drafted to the bill as amended.

¹⁹ [Id. at 780.](#)

²⁰ [U.S. Fidelity & Guaranty Co. v. Department of Insurance, 453 So.2d 1355, 1360 \(Fla.1984\)](#)

²¹ [Pomponio, 378 So.2d at 780](#)