

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.)

Prepared By: Criminal Justice Committee

BILL: SB 666

INTRODUCER: Senators Rich, Haridopolos, and others

SUBJECT: Rental Agreements/Domestic Violence

DATE: February 22, 2006

REVISED: 03/08/06

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|----------------|-----------|-------------------------|
| 1. | <u>Dugger</u> | <u>Cannon</u> | <u>CJ</u> | <u>Fav/2 amendments</u> |
| 2. | <u></u> | <u></u> | <u>JU</u> | <u></u> |
| 3. | <u></u> | <u></u> | <u></u> | <u></u> |
| 4. | <u></u> | <u></u> | <u></u> | <u></u> |
| 5. | <u></u> | <u></u> | <u></u> | <u></u> |
| 6. | <u></u> | <u></u> | <u></u> | <u></u> |

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

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. 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 within 15 days of the date the victim plans to vacate and the rent is unpaid, the property is considered abandoned and the landlord may dispose of it as he or she deems necessary. The victim and respondent are not permitted to waive or modify the terms of this provision.

This bill creates section 83.683 of the Florida Statutes.

II. Present Situation:

Early Termination of a Rental Agreement

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, in good faith, the landlord is able to recover from renting to another tenant; or stand by and do nothing, holding the tenant liable for the rent as it comes due.

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; 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; or if the tenant is an active duty member of the armed forces, and is either transferred or discharged from service. (ss. 83.56, 83.63, and 83.682, F.S.)

There is no specific provision in current law allowing 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.)

The court is authorized to grant an injunction enjoining the respondent from committing any acts of violence (including domestic violence, repeat, sexual, or dating violence) and it is also given broad authority to order such other relief as is necessary to protect the victim under s. 784.046(6) and s. 784.046(7), F.S. An order granting an injunction for protection against domestic violence, repeat, sexual, or dating violence must be supported by competent, substantial evidence. *Forrest v. Wilson*, 889 So.2d 124, 124-125 (Fla. 1st DCA 2004). Either party may move to have such injunction modified or dissolved at any time, and the terms of the injunction remain in effect until it is modified or dissolved under s. 784.046(7) and s. 784.046(10), F.S.

III. Effect of Proposed Changes:

This bill 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 s. 741.28 or s. 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) of the bill, 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 also provides that the victim and the respondent by agreement may not waive or modify the terms of the bill. Finally, the bill applies to rental agreements executed on or after July 1, 2006.

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:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

Barcode 171106 by Criminal Justice:

Clarifies that a “permanent injunction” under the bill must be a **final** injunction for protection (it can’t be temporary.)

Barcode 973182 by Criminal Justice:

Specifies that the required notice does not contain the victim’s new address.

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