



Committee on Constitution & Civil Law

**Wednesday, March 12, 2008
9:00am - 10:00am
24 HOB**

MEETING PACKET

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Committee on Constitution & Civil Law

Start Date and Time: Wednesday, March 12, 2008 09:00 am

End Date and Time: Wednesday, March 12, 2008 10:00 am

Location: 24 HOB

Duration: 1.00 hrs

Consideration of the following bill(s):

HB 737 Informed Consent for Spaceflight by Simmons

HB 823 Access to Dwelling Units by Kravitz

NOTICE FINALIZED on 03/10/2008 16:16 by Ingram.Michele

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 737



Informed Consent for Spaceflight

SPONSOR(S):

Simmons

TIED BILLS:

IDEN./SIM. BILLS: SB 2438

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Constitution & Civil Law</u>	_____	Thomas 	Birtman 
2) <u>Safety & Security Council</u>	_____	_____	_____
3) <u>Policy & Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill provides that a spaceflight entity is not liable for injury to or death of a spaceflight participant resulting from the inherent risks of spaceflight launch activities, so long as the required warning is given to and signed by the participant. The bill provides that a participant or participant's representative may not recover from a spaceflight entity for the loss, damage, or death of the participant resulting exclusively from any of the inherent risks of spaceflight activities if the spaceflight entity pleads the affirmative defense of assumption of the risk of spaceflight activities by the participant. The immunity provided by the bill does not apply if the spaceflight entity:

- Commits gross negligence or willful or wanton disregard for the safety of the participant;
- Has actual knowledge or reasonably should have known of a dangerous condition; or
- Intentionally injures the participant.

The limitation on liability provided by the bill is in addition to any other limitation of legal liability that might otherwise be provided by law.

This bill does not appear to have a fiscal impact on state or local government.

The bill takes effect on October 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility - The bill provides protection from civil liability to a spaceflight entity for injury to or death of a participant resulting from the inherent risks of spaceflight launch activities.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida has an infrastructure of \$7 billion in aerospace assets and an additional \$2 billion in assets at the proposed Jacksonville Spaceport. Florida's aerospace industry is comprised of some 1000 companies and thousands of workers across the state. Human space flight operations are a critical part of Florida's economy – bringing \$1.68 billion into the State annually and employing 30,000 people. However, there is growing competition from 13 other states, including nine states with spaceports. Florida has aerospace-related industry in 47 of its 67 counties. The global space industry is expected to bring in \$220 billion in revenue in 2007, up from \$207 billion last year. A concern for Florida is what will happen to the state's 9,300 aerospace workers between the retirement of the space shuttle fleet in 2010 and launches of the next-generation shuttle in 2013 to 2015.¹

Space Florida is the principal organization charged by the Florida Legislature with promoting and developing Florida's aerospace industry.² As reported by Space Florida:

Florida is the premier launch site for the aerospace industry. With our current infrastructure, competitive edge, and talented workforce, Florida is the natural state to establish an international aerospace spaceport. As home to one of only five commercially licensed spaceports in the United States, Florida has the ability to host commercial, civil and military space operations.

Increasing interest in capturing the aerospace business has some states stepping up their recruiting efforts and incentive plans. These states include California, Virginia, Colorado, Texas and New Mexico. We must aggressively retain and grow our state's aerospace industry to compete in this race.

In order to preserve the vibrant commercial aerospace industry and Florida's workforce, we must firmly position operations in Florida to capture the market of commercial launch business, and more importantly, service the International Space Station (ISS) for NASA. The United States portion of ISS has been designated a National Lab and offers Florida not only space-related support opportunities but also research opportunities in the unique space environment for Florida universities and companies.

[Florida must] maintain our competitive edge by recruiting new space and aerospace businesses to Florida, retaining those businesses being lured by other states, and

¹ This information was gleaned from the website of Space Florida at <http://www.spaceflorida.gov> (last visited on March 10, 2008).

² Section 331.302, F.S.

assisting existing businesses with incentives and other support to expand their presence in Florida; limit the liability of commercial launch firms and their subcontractors who provide human spaceflight services from Florida launch sites; and help Florida attract commercial launch providers and their subcontractors by limiting liability for human Space flight services from Florida launch sites.³

Federal Law

President Bush signed the Commercial Space Launch Amendments Act of 2004 (Space Launch Act) into law on December 23, 2004.⁴ The Space Launch Act enacted protections for space tourism businesses such as the “fly at your own risk” clause that allows a licensed party to carry space flight participants only if they “inform the space flight participant in writing about the risks of the launch and reentry, including the safety record of the launch or reentry vehicle type...”⁵ After being fully informed, the participant must also give written consent.⁶ The Space Launch Act includes the commercial human space flight industry in a temporary indemnification and insurance scheme that requires businesses to purchase insurance, but provides government indemnification up to \$1.5 billion beyond the insurance cap⁷ shielding them from high insurance costs due to the risk of a catastrophic event.

Other States

In 2007, Virginia adopted legislation⁸ that is the model for HB 737. The Virginia law⁹, however, is not limited to suborbital space activity, but includes all space activity – suborbital or beyond (orbital). The Virginia law applies to launch services or reentry services as defined by the federal Space Launch Act.¹⁰ The Space Launch Act defines these services as:

“launch services” means—

- (A) activities involved in the preparation of a launch vehicle, payload, crew (including crew training), or space flight participant for launch; and
- (B) the conduct of a launch.

“reentry services” means—

- (A) activities involved in the preparation of a reentry vehicle and payload, crew (including crew training), or space flight participant, if any, for reentry; and
- (B) the conduct of a reentry.¹¹

Further, the Virginia law does not provide immunity from “the inherent risks of spaceflight”, but rather “for a participant injury resulting from the risks of space flight activities.”¹²

³ From white paper submitted on March 7, 2008, by Space Florida and on file with the Committee on Constitution & Civil Law.

⁴ 49 U.S.C.A. §§ 70101-70305.

⁵ 49 U.S.C.A. § 70105(b)(5).

⁶ 49 U.S.C.A. § 70105(b)(5)(C).

⁷ 49 U.S.C.A. §§ 70112-13.

⁸ 2007 Va. Acts 893.

⁹ Va. Code § 8.01-227.8, § 8.01-227.9, and § 8.01-227.10.

¹⁰ Va. Code § 8.01-227.8.

¹¹ 49 U.S.C.A. § 70102(6) and (14).

¹² Va. Code § 8.01-227.9.

Exculpatory Clauses¹³

Exculpatory clauses extinguish or limit liability of a potentially culpable party through the use of disclaimer, assumption of risk and indemnification clauses as well as releases of liability. Exculpatory clauses will be enforced as long as the language is clear and unequivocal.¹⁴ These same concepts apply to indemnification agreements, which shift liability for damages to another party, and to releases of liability.¹⁵ On the other hand, exculpatory clauses that extinguish liability for intentional torts or reckless harm will generally be declared null and void.¹⁶

Effect of Proposed Changes

The bill provides that a spaceflight entity is not liable for injury to or death of a spaceflight participant resulting from the inherent risks of spaceflight launch activities, so long as the required warning is given to and signed by the participant. The bill provides that a participant or participant's representative may not recover from a spaceflight entity for the loss, damage, or death of the participant resulting exclusively from any of the inherent risks of spaceflight activities if the spaceflight entity pleads the affirmative defense¹⁷ of assumption of the risk of spaceflight activities by the participant. The immunity provided by the bill does not apply if the injury was proximately caused by the spaceflight entity and the spaceflight entity:

- Commits gross negligence or willful or wanton disregard for the safety of the participant;
- Has actual knowledge or reasonably should have known of a dangerous condition; or
- Intentionally injures the participant.

To receive the immunity provided by the bill, the spaceflight entity must have each participant sign the required warning statement. The warning statement must contain, at a minimum, the following statement:

"WARNING: Under Florida law, there is no liability for an injury to or death of a participant in a spaceflight activity provided by a spaceflight entity if such injury or death results from the inherent risks of the spaceflight activity. Inherent risks of spaceflight activities include, among others, risks of injury to land, equipment, persons, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this spaceflight activity."

¹³ The information under this heading was gleaned from "The Great Escape - HOW TO DRAFT EXCULPATORY CLAUSES THAT LIMIT OR EXTINGUISH LIABILITY," Steven B. Lesser, Fla. B. J., (Nov. 2001).

¹⁴ *University Plaza Shopping Center, Inc. v. Stewart*, 272 So. 2d 507 (Fla. 1973); *Theis v. J & J Racing Promotions*, 571 So.2d 92 (Fla. 2d D.C.A. 1990), *rev'd*, 581 So. 2d 168 (Fla. 1991); *Tout v. Hartford Accident and Indemnity Co.*, 390 So. 2d 155 (Fla. 3d D.C.A. 1980); *Ivey Plants, Inc. v. F.M.C. Corp.*, 282 So. 2d 205 (Fla. 4th D.C.A. 1973), *cert. denied*, 289 So. 2d 731 (Fla. 1974).

¹⁵ *Charles Poe Masonry, Inc. v. Spring Lock Scaffolding Rental Equipment Co.*, 374 So. 2d 487, 489 (Fla. 1979); *Middleton v. Lomaskin*, 266 So. 2d 678 (Fla. 3d D.C.A. 1972).

¹⁶ *Fuentes v. Owen*, 310 So. 2d 458 (Fla. 3d D.C.A. 1975); *Mankap Enterprises, Inc. v. Wells Fargo Alarm Services, Inc.*, 427 So. 2d 332 (Fla. 3d D.C.A. 1983).

¹⁷ An affirmative defense is "A defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim, even if all the allegations in the complaint are true. The defendant bears the burden of proving an affirmative defense. Examples of affirmative defenses are duress (in a civil case) and insanity and self-defense (in a criminal case). Black's Law Dictionary (8th ed. 2004).

The limitation on liability provided by the bill is in addition to any other limitation of legal liability that might otherwise be provided by law.

The bill defines the following terms:

"Participant" means any person, passenger, or crew member participating in spaceflight activities.

"Spaceflight activities" means any activities necessary or antecedent to preparing, launching, carrying, or landing a participant on a suborbital flight.

"Spaceflight entity" means any public or private entity holding a United States Federal Aviation Administration launch, reentry, operator, or launch site license for suborbital flight.

"Suborbital flight" means a flight that is not intended to complete an orbit around the earth and that has any portion of its intended flight path at altitude equal to or greater than 62.5 miles above the earth's mean sea level.

The bill has an effective date of October 1, 2008.

C. SECTION DIRECTORY:

Section 1: Creates Part III of Chapter 331, F.S., consisting of s. 331.501, F.S., relating to informed consent for suborbital spaceflight.

Section 2: Provides an effective date of October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is designed to encourage the expansion of the commercial space industry in Florida and therefore, serve as an economic stimulus to the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

Access to Courts

Article I, section 21 of the Florida Constitution provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." The Florida Constitution protects "only rights that existed at common law or by statute prior to the enactment of the Declaration of Rights of the Florida Constitution."¹⁸ In order to make a colorable claim of denial of access to courts, an aggrieved party must demonstrate that the Legislature has abolished a common-law right previously enjoyed by the people of Florida and, if so, that it has not provided a reasonable alternative for redress and that there is not an "overpowering public necessity" for eliminating the right.¹⁹ This right could be implicated if a court were to find that the bill abolishes a right of access to the courts that existed at common law or by statute prior to the enactment of the Declaration of Rights of the Florida Constitution.²⁰ However, it is unlikely that a cause of action exists presently for injury or death caused exclusively by the "inherent risks" of suborbital spaceflight.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Members may want to consider if the term "antecedent" on line 22 is too broad when applied to the definition of "spaceflight activities."

Members may want to consider removing the word "launch" on line 35. On line 35, the bill uses the term "space launch activities" - but elsewhere in the bill the term "spaceflight activities" is used. This appears to be inconsistent.

¹⁸ Fla. Jur. 2d., s. 360.

¹⁹ *Kluger v. White*, 281 So.2d 1, 4 (Fla. 1973).

²⁰ The enactment of the Declaration of Rights of the Florida Constitution was part of Florida's new constitution of 1968 and occurred when it was ratified by the electorate on November 5, 1968.

It appears that the phrase on lines 74 and 75 – “Inherent risks of spaceflight activities include, among others, risks of injury to land, equipment, persons, ...” – may be a bit confusing. A better phrase may be – “Injuries caused by the inherent risks of spaceflight activities may include, among others, injury to land, equipment, persons, ...”

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to informed consent for spaceflight;
 3 creating pt. III of ch. 331, F.S.; providing definitions;
 4 providing immunity from liability for injury to or death
 5 of certain suborbital flight participants if specified
 6 informed consent requirements are complied with; providing
 7 exceptions; requiring each participant to sign a warning
 8 statement; providing minimum requirements for a warning
 9 statement; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Part III of chapter 331, Florida Statutes,
 14 consisting of section 331.501, is created to read:

15 PART III

16 SPACEFLIGHT

17 331.501 Suborbital spaceflight; informed consent.--

18 (1) For purposes of this section, the term:

19 (a) "Participant" means any person, passenger, or crew
 20 member participating in spaceflight activities.

21 (b) "Spaceflight activities" means any activities
 22 necessary or antecedent to preparing, launching, carrying, or
 23 landing a participant on a suborbital flight.

24 (c) "Spaceflight entity" means any public or private
 25 entity holding a United States Federal Aviation Administration
 26 launch, reentry, operator, or launch site license for suborbital
 27 flight.

28 (d) "Suborbital flight" means a flight that is not
 29 intended to complete an orbit around the earth and that has any
 30 portion of its intended flight path at altitude equal to or
 31 greater than 62.5 miles above the earth's mean sea level.

32 (2) (a) Except as provided in paragraph (b), a spaceflight
 33 entity is not liable for injury to or death of a participant
 34 resulting from the inherent risks of spaceflight launch
 35 activities, so long as the warning contained in subsection (3)
 36 is distributed and signed as required. Except as provided in
 37 paragraph (b), no participant or participant's representative
 38 may maintain an action against or recover from a spaceflight
 39 entity for the loss, damage, or death of the participant
 40 resulting exclusively from any of the inherent risks of
 41 spaceflight activities; provided that, in any action for damages
 42 against a spaceflight entity for spaceflight activities, the
 43 spaceflight entity shall plead the affirmative defense of
 44 assumption of the risk of spaceflight activities by the
 45 participant.

46 (b) Nothing in paragraph (a) shall prevent or limit the
 47 liability of a spaceflight entity if the spaceflight entity does
 48 any one or more of the following:

49 1. Commits an act or omission that constitutes gross
 50 negligence or willful or wanton disregard for the safety of the
 51 participant and that act or omission proximately causes injury,
 52 damage, or death to the participant;

53 2. Has actual knowledge or reasonably should have known of
 54 a dangerous condition on the land or in the facilities or
 55 equipment used in the spaceflight activities and the danger

56 proximately causes injury, damage, or death to the participant;
 57 or

58 3. Intentionally injures the participant.

59 (c) Any limitation on legal liability afforded by this
 60 subsection to a spaceflight entity is in addition to any other
 61 limitation of legal liability otherwise provided by law.

62 (3)(a) Every spaceflight entity providing spaceflight
 63 activities to a participant, whether such activities occur on or
 64 off a facility capable of launching a suborbital flight, shall
 65 have each participant sign the warning statement specified in
 66 paragraph (b).

67 (b) The warning statement described in paragraph (a) shall
 68 contain, at a minimum, the following statement:

69
 70 "WARNING: Under Florida law, there is no liability for an
 71 injury to or death of a participant in a spaceflight
 72 activity provided by a spaceflight entity if such injury or
 73 death results from the inherent risks of the spaceflight
 74 activity. Inherent risks of spaceflight activities include,
 75 among others, risks of injury to land, equipment, persons,
 76 and animals, as well as the potential for you to act in a
 77 negligent manner that may contribute to your injury or
 78 death. You are assuming the risk of participating in this
 79 spaceflight activity."

80
 81 (c) Failure to comply with the warning statement
 82 requirements in this section shall prevent a spaceflight entity

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83 | from invoking the privileges of immunity provided by this
84 | section.

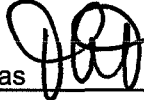

85 | Section 2. This act shall take effect October 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 823 Access to Dwelling Units

SPONSOR(S): Kravitz

TIED BILLS: IDEN./SIM. BILLS: SB 1530

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Constitution & Civil Law		Thomas 	Birtman 
2) Safety & Security Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

The bill amends the Florida Residential Landlord and Tenant Act to require all landlords to maintain a written record that includes the names of all direct employees of the landlord who have access to a dwelling unit and the dates and times that any direct employee of the landlord has entered a dwelling unit. The written record is subject to inspection by a unit owner upon the unit owner's request.

The bill requires all landlords to obtain from the Florida Department of Law Enforcement criminal history information for all employees who have access to the interior portion of a dwelling unit that is under a rental agreement. The landlord may not permit an employee who has been convicted of a felony in this state to have access to the interior portion of a dwelling unit that is under a rental agreement unless the tenant has consented in writing to such access or the landlord supervises the employee during such access. A landlord who fails to conform to these provisions commits a misdemeanor of the second degree.

While the Florida Department of Law Enforcement reports that the bill will increase workload, it could be absorbed within existing resources. It does not appear that the bill will have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - the bill increases the responsibilities and obligations of landlords.

Maintain Public Security – the bill affects landlord participation in providing for physical security of tenants.

B. EFFECT OF PROPOSED CHANGES:

Florida Landlord - Tenant Law

The Florida Residential Landlord and Tenant Act, first enacted in 1973, governs the relationship between landlords and tenants in a residential lease agreement.¹ A rental agreement specifies the terms and conditions of a tenant's occupation in a dwelling unit for a specific period of time.² The provisions of the Act specifically address the payment of rent,³ duration of leases,⁴ security deposits,⁵ maintenance of the dwelling and premises,⁶ termination of rental agreements,⁷ liquidated damages for failure to provide notice before vacating,⁸ penalty for holding over,⁹ and a landlord's remedies for the breach of a lease.¹⁰

Landlord's Access to Dwelling Unit

A tenant may not unreasonably withhold consent to the landlord to enter the dwelling unit in order to inspect the premises, make repairs, or improvements; supply agreed services; or show the unit to prospective purchasers, tenants, workers, or contractors.¹¹ The landlord may enter the unit at any time for the protection or preservation of the premises or upon reasonable notice¹² and at a reasonable time for the purpose of repair of the premises.¹³ The landlord is, however, bound by the provisions of the

¹ Part II of ch. 83, F.S. 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 Section 83.43(7), F.S., provides that: "Rental agreement" means any written agreement, or oral agreement if for less duration than 1 year, providing for use and occupancy of premises.

³ Section 83.46, F.S.

⁴ *Id.*

⁵ Section 83.49, F.S.

⁶ Sections 83.51 and 83.52, F.S.

⁷ Section 83.56, F.S.

⁸ Section 83.58, F.S.

⁹ Section 83.575, F.S.

¹⁰ Section 83.595, F.S.

¹¹ Section 83.53(1), F.S.

¹² "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 the hours of 7:30 a.m. and 8:00 p.m. Section 83.53(2), F.S.

¹³ Section 83.53(2), F.S.

lease for reentry.¹⁴ The landlord may not abuse the right of access nor use it to harass the tenant.¹⁵ Absent abandonment or voluntary relinquishment, the landlord's right to enter prior to taking possession must be pursuant to the lease or be established by legal process.¹⁶

Landlord's Duty to Protect Tenants From Third Parties

While a landlord has a duty to exercise reasonable care to maintain a leased premises in a reasonably safe condition, generally, there is no duty to protect a tenant from criminal attacks by third persons.¹⁷ In order to acquire such a duty, a tenant must allege and prove that the landlord had actual or constructive knowledge of prior similar acts committed on invitees on the premises.¹⁸

Negligent Hiring by Landlords

In Florida, a landlord may be liable for its negligence in hiring an employee that may be dangerous to others.¹⁹ An employer is liable for negligent hiring when the employer was in some way responsible for bringing a third person into contact with an employee whom the employer knew or should have known was predisposed to commit a wrong if given the opportunity.²⁰ For example, if an employer provides an employee with the "indicia of authority" to enter into the living quarters of others, the employer has the responsibility of first making some inquiry with respect to whether it is safe to facilitate the employee's access.²¹

In civil actions premised upon the death or injury of a third person as a result of intentional conduct of an employee, the employer is presumed not to have been negligent in hiring the employee, if prior to hiring, the employer conducted a background check on the employee which revealed no information that would cause an employer to conclude that the employee was unfit for work.²² Pursuant to statute, the background investigation must include:

- A criminal background check obtained from the Department of Law Enforcement (FDLE);²³
- Reasonable efforts to contact references and former employers;
- A job application form that includes questions requesting detailed information regarding previous criminal convictions;
- A written authorization allowing a check of the applicant's driver's license record if relevant to the work to be performed; or
- An interview of the prospective employee.²⁴

If the employer elects not to conduct an investigation prior to hiring, there is no presumption that the employer failed to use reasonable care in hiring an employee.²⁵

¹⁴ *Id.*

¹⁵ Section 83.53(3), F.S.

¹⁶ *Van Hoose v. Robbins*, 165 So.2d 209 (Fla. 2d DCA 1964).

¹⁷ *See Paterson v. Deeb*, 472 So.2d 1210 (Fla. 1st DCA 1985); *Menendez v. The Palms West Condominium Ass'n, Inc.*, 736 So.2d 58 (Fla. 1st DCA 1999).

¹⁸ *Id.*

¹⁹ *Phillips v. Edwin P. Stimpson Co.*, 588 So.2d 1071 (Fla. 4th DCA 1991).

²⁰ *Brown v. Zaveri*, 164 F. Supp. 2d 1354 (S.D. Fla. 2001).

²¹ *Williams v. Feather Sound, Inc.*, 386 So.2d 1238 (Fla. 2d DCA 1980); *Tallahassee Furniture Co., Inc. v. Harrison*, 583 So.2d 744 (Fla. 1st DCA 1991).

²² Section 768.096(1), F.S.

²³ The employer must request and obtain from FDLE a check of the information as reported in the Florida Crime Information Center system as of the date of the request. Section 768.096(2), F.S.

²⁴ Section 768.096(1)(a)-(e), F.S.

²⁵ Section 768.096(3), F.S.

Civil Liability

Florida law provides that violations of statutes or ordinances, other than those imposing strict liability, may constitute negligence per se or evidence of negligence.²⁶ For a violation of statute to constitute negligence per se, the injury must be to an individual who is a member of a class the statute was designed to protect, and the injury must be of a type the statute was intended to prevent.²⁷

A landlord's duty to protect a tenant can be based on requirements set forth by statute. For example, in *Paterson*, the tenant alleged that the landlord had failed to provide a working lock on the exterior bathroom to her apartment, in violation of s. 83.51, F.S.²⁸ The tenant was raped in the bathroom by an intruder who might not have been able to gain entry had the room been locked.²⁹ The court held that, while the landlord in *Paterson* had no general duty to protect the tenant from a criminal attack by a third person, he did have a specific duty to provide the tenant with a working lock.³⁰ The breach of this duty exposed the landlord to civil liability for negligence.

Effect of Proposed Changes

The bill requires all landlords to maintain a written record that includes the names of all direct employees of the landlord who have access to the dwelling unit and the dates and times that any direct employee of the landlord has entered the dwelling unit. This record is to be subject to inspection by a unit owner upon the unit owner's request.

The bill creates a new section of Florida Statutes that requires all landlords to obtain from FDLE criminal history information for all employees who have access to the interior portion of a dwelling unit that is under a rental agreement.³¹ The landlord may not permit an employee who has been convicted of a felony in this state to have access to the interior portion of a dwelling unit that is under a rental agreement unless the tenant has consented in writing to such access or the landlord supervises the employee during such access. A landlord who fails to conform to the provisions of this new statute commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.³²

The bill has an effective date of July 1, 2008.

C. SECTION DIRECTORY:

Section 1: Amends section s. 83.53, F.S., relating to a landlord's access to a dwelling unit.

Section 2: Creates s. 83.531, F.S., relating to access to dwelling units; prohibitions; penalties.

Section 3: Provides an effective date of July 1, 2008.

²⁶ *Lingle v. Dion*, 776 So.2d 1073 (Fla. 4th DCA 2001).

²⁷ *deJesus v. Seaborad Coast Line R. Co.*, 281 So.2d 198 (Fla. 1973); *Griffith v. Dep't of Health and Rehabilitative Serv.*, 624 So.2d 813 (Fla. 4th DCA 1993).

²⁸ *Paterson*, 472 So. 2d at 1213 and 1214.

²⁹ *Id.*

³⁰ *Id.*

³¹ Section 943.053, F.S., authorizes FDLE to perform background checks for the public. The fee per record for criminal history information provided to the public is \$23. Section 943.053(3)(b), F.S. These fees are deposited into the FDLE Administrative Trust Fund. Section 943.367(2), F.S.

³² Penalties for a second degree misdemeanor include a term of imprisonment not exceeding 60 days and a fine not to exceed \$500.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Each background check required by the bill will generate a \$23 fee collected by FDLE.³³ The Florida Apartment Association estimates that there are approximately 30,000 to 40,000 employees that will need to be checked in the first year. Therefore, the bill could generate \$920,000 in revenue in the first year of implementation. However, this estimate cannot be confirmed. Revenues in following years would be substantially smaller since only new employees would need to be checked.

2. Expenditures:

The bill has a minimal impact on state expenditures. See D. Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires landlords to incur the costs for performing state criminal background checks. The fee for each check is \$23. The Florida Apartment Association estimates that there are approximately 30,000 to 40,000 employees that will need to be checked. It is uncertain how many additional employees will need to be checked after the first year of implementation of the bill. Future costs will depend on turnover of employees and growth.

D. FISCAL COMMENTS:

The Florida Department of Law Enforcement reports that they are currently at 70% to 75% processing capacity on the database server for performing and maintaining criminal backgrounds checks and that adding a mandate of additional checks may require the Department to replace the server at an approximate cost of \$12,000. The Department stated that while it could absorb this workload within existing resources, it will monitor the impact of the additional checks and if necessary, request an appropriation through a future Legislative Budget Request.

³³ Section 943.053(3)(b), F.S. These fees are deposited into the FDLE Administrative Trust Fund. Section 943.367(2), F.S.
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III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

FDLE recommends including a reference to a statewide criminal history record check on line 28 in the legislation.

The term "conviction" may need to be expanded to include pleas of no contest and cases where adjudication was withheld.

The term "direct employee" is used in section 1 of the bill and the term "employee" is used in section 2 of the bill. These terms appear to have the same meaning and should perhaps be made consistent. Whatever term is used, it perhaps needs to be defined to clarify whether the bill applies to contractors that are not actually employees under Internal Revenue Code regulations.

The bill applies to employees that have been convicted of a felony in Florida. Members may wish to consider if a) the bill should be more expansive to cover felonies outside of Florida, and b) whether the bill is too expansive in that it may cover crimes not related to safety of tenants.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to access to dwelling units; amending s.
3 83.53, F.S.; providing recordkeeping requirements for
4 landlords relating to access to dwelling units by direct
5 employees; creating s. 83.531, F.S.; requiring landlords
6 to obtain criminal history information on certain
7 employees; prohibiting landlords from allowing certain
8 employees access to dwelling units; providing exceptions;
9 providing penalties; providing an effective date.

10

11 Be It Enacted by the Legislature of the State of Florida:

12

13 Section 1. Subsection (4) is added to section 83.53,
14 Florida Statutes, to read:

15 83.53 Landlord's access to dwelling unit.--

16 (4) The landlord shall maintain a written record, subject
17 to inspection by a unit owner upon the unit owner's request,
18 that includes:

19 (a) The names of all direct employees of the landlord who
20 have access to the dwelling unit.

21 (b) The dates and times that any direct employee of the
22 landlord has entered the dwelling unit pursuant to this section.

23 Section 2. Section 83.531, Florida Statutes, is created to
24 read:

25 83.531 Access to dwelling units; prohibitions;
26 penalties.--

27 (1) A landlord shall obtain from the Department of Law
28 Enforcement criminal history information concerning any employee

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29 who has access to the interior portion of a dwelling unit that
 30 is under a rental agreement.

31 (2) A landlord shall not permit an employee of the
 32 landlord who has been convicted of a felony in this state to
 33 have access to the interior portion of a dwelling unit that is
 34 under a rental agreement unless:

35 (a) The tenant has consented in writing to such access; or

36 (b) The landlord supervises the employee during such
 37 access.

38 (2) Any landlord who violates this section commits a
 39 misdemeanor of the second degree, punishable as provided in s.
 40 775.082 or s.' 775.083.

41 Section 3. This act shall take effect July 1, 2008.

HB 823: Access to Dwelling Units

Explanation of Amendment

Amendment 1 by Rep. Kravitz (remove everything):

The amendment is a strike-all amendment and does not make any substantive changes.

The amendment:

- changes the term “unit owner” to “tenant”
- changes the term “direct employee” to “employee”
- defines the term “employee”
- clarifies that the criminal history check is for “statewide” criminal history

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 823**

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Constitution & Civil Law
2 Representative Kravitz offered the following:

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsection (4) is added to section 83.53,
7 Florida Statutes, to read:

8 83.53 Landlord's access to dwelling unit.--

9 (4) The landlord shall maintain a written record, subject
10 to inspection by a tenant upon the tenant's request, that
11 includes:

12 (a) The names of all employees of the landlord who have
13 access to the dwelling unit.

14 (b) The dates and times that any employee of the landlord
15 has entered the dwelling unit pursuant to this section.

16
17 For the purposes of this subsection, the term "employee" means a
18 person who receives compensation from, and is under the
19 supervision and control of, a landlord who regularly deducts the
20 F.I.C.A. and withholding tax and provides workers' compensation,
21 all as prescribed by law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

22 Section 2. Section 83.531, Florida Statutes, is created to
23 read:

24 83.531 Criminal history check of landlord's employees;
25 access to dwelling units; penalties.--

26 (1) For the purposes of this section, the term "employee"
27 means a person who receives compensation from, and is under the
28 supervision and control of, a landlord who regularly deducts the
29 F.I.C.A. and withholding tax and provides workers' compensation,
30 all as prescribed by law.

31 (2) A landlord shall obtain from the Department of Law
32 Enforcement a statewide criminal history record check concerning
33 any employee who has access to the interior portion of a
34 dwelling unit that is under a rental agreement.

35 (3) A landlord shall not permit an employee of the
36 landlord who has been convicted of, or pled guilty or nolo
37 contendere to, regardless of adjudication, any felony offense in
38 this state to have access to the interior portion of a dwelling
39 unit that is under a rental agreement unless:

40 (a) The tenant has consented in writing to such access; or

41 (b) The landlord supervises the employee during such
42 access.

43 (4) Any landlord who violates this section commits a
44 misdemeanor of the second degree, punishable as provided in s.
45 775.082 or s. 775.083.

46 Section 3. This act shall take effect July 1, 2008.

47
48
49
50
51

T I T L E A M E N D M E N T

Remove the entire title and insert:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

52 An act relating to access to dwelling units; amending s. 83.53,
53 F.S.; providing recordkeeping requirements for landlords
54 relating to access to dwelling units by employees; defining the
55 term "employee"; creating s. 83.531, F.S.; defining the term
56 "employee"; requiring landlords to obtain criminal history
57 information on certain employees; prohibiting landlords from
58 allowing certain employees access to dwelling units; providing
59 exceptions; providing penalties; providing an effective date.
60

