

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1305 Residential Tenancies

SPONSOR(S): Commerce Committee

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

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

SUMMARY ANALYSIS

The Residential Landlord and Tenant Act (Act), codified in part II of ch. 93, F.S., governs the rental of a dwelling unit in Florida. The Act provides that whenever money is deposited or advanced by a tenant on a rental agreement as security for performance of the rental agreement or as advance rent for other than the next immediate rental period, the landlord has the option of holding such money in a separate account in a “Florida banking institution” for the benefit of the tenant. The Act, however, does not define what constitutes a “Florida banking institution.”

In a recent court filing alleging violations of the Act (the Palm Beach County Case), the plaintiff relied on a repealed definition of the term “Florida banking institution.” The plaintiff was a limited liability company that had been assigned the rights to a security deposit by the defendant landlord’s former tenants. The plaintiff cited to the repealed statutory definition and alleged that the defendant landlord had violated the Act by depositing the tenants’ security deposit with JPMorgan Chase Bank, which is not a Florida chartered bank nor headquartered in Florida.

Although the definition of “Florida banking institution” relied upon by the plaintiff in the Palm Beach County Case has been repealed, a similar definition still exists in chapter 658, F.S. This fact, combined with the fact that the Act does not define “Florida banking institution,” suggests that similar lawsuits may be filed again in the future.

The bill amends the Act to define “Florida financial institution” as any bank, credit union, trust company, savings bank, or savings or thrift association doing business under the authority of a charter issued by the United States, this state, or any other state which is authorized to transact business in this state and whose deposits or share accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. The effect of this change is to expressly permit landlords to comply with the Act by depositing their tenants’ security deposits in any financial institution doing business in Florida, regardless of where the institution is chartered or headquartered.

The bill has an indeterminate positive impact on state and local government expenses but no impact on state and local government revenues. It has indeterminate positive impact on the private sector.

The bill shall take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Residential Landlord and Tenant Act

The Residential Landlord and Tenant Act (Act), codified in part II of ch. 83, F.S., governs the rental of a dwelling unit in Florida. A “dwelling unit” is defined as:

- A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household;
- A mobile home rented by a tenant; or
- A structure or part of a structure that is furnished, with or without rent, as an incident of employment for use as a home, residence, or sleeping place by one or more persons.

The Act provides that whenever money is deposited or advanced by a tenant on a rental agreement as security for performance of the rental agreement or as advance rent for other than the next immediate rental period, the landlord has the option of holding such money in a separate account in a “Florida banking institution” for the benefit of the tenant.¹ The Act, however, does not define what constitutes a “Florida banking institution.”

Litigation Over Violations of the Act

In a recent court filing in Palm Beach County alleging violations of the Act (the Palm Beach County Case), the plaintiff relied on a statutory definition of the term “Florida banking institution” that existed in ch. 658, F.S., relating to the regulation of banks and trust companies in Florida.² The statute relied upon, however, was repealed over a decade ago.³

The repealed statute defined “Florida banking institution” as “a bank whose home is this state,”⁴ and defined “home state” as:

- With respect to a state bank, the state by which the bank is chartered;
- With respect to a national bank, the state in which the main office of the bank is located; and
- With respect to a foreign bank, the state determined to be the home state of such foreign bank under 12 U.S.C. s. 3103(c).⁵

The plaintiff in the Palm Beach case was a limited liability company that had been assigned the rights to a \$500 deposit by the defendant landlord’s former tenants.⁶ The plaintiff cited to the repealed statutory definition of “Florida banking institution” and alleged that the defendant landlord had violated the Act by depositing the tenants’ security deposit with JPMorgan Chase Bank, which is not a Florida chartered bank nor headquartered in Florida.⁷ JPMorgan Chase, however, is the largest financial institution in the United States and has numerous branches in Florida.⁸ Based upon the alleged violation, the plaintiff

¹ Ss. 83.49(1)(a)-(b), F.S.

² *KAC 2021-1 LLC, as Assignee to Erole Emmanuel and Marie Joseph, v. Eatmira II LLC d/b/a Catalina at Miramar*, Uniform Case No. 50-2023-SC-005770-XXXX-WB (Small Claims Court for the Fifteenth Judicial Circuit, Palm Beach County, Apr. 13, 2023) (hereinafter referred to as the Palm Beach County Case).

³ See ch. 2011-194, s. 24, Laws of Fla. (repealing s. 658.295, F.S. (2010)).

⁴ S. 658.295(2)(m), F.S. (2010).

⁵ S. 658.295(2)(o), F.S. (2010).

⁶ Palm Beach County Case, *supra* note 2, Count II.

⁷ *Id.*

⁸ As of September 30, 2023, JPMorgan Chase had \$3.38 trillion in assets, 80 million customer accounts, and 4,700 branches. See Christopher Murray, *The Biggest Banks in 2024*, Market Watch Guides (updated Jan. 16, 2024), <https://www.marketwatch.com/guides/banking/largest-banks-in-the-us/> (last visited Jan. 27, 2024).

sought to recover its attorney fees and court costs from the defendant landlord as permitted under the Act.⁹ As of January 29, 2024, the case is still pending resolution.¹⁰

Although the definition of “Florida banking institution” relied upon by the plaintiff in the Palm Beach County Case has been repealed, a similar definition still exists in chapter 658, F.S.¹¹ This fact, combined with the fact that the Act does not define “Florida banking institution,” suggests that similar lawsuits may be filed again in the future.

Effect of the Bill

The bill amends the “Definitions” section of the Act to create a definition for “Florida financial institution.” Under the bill, “Florida banking institution” is defined as any bank, credit union, trust company, savings bank, or savings or thrift association doing business under the authority of a charter issued by the United States, this state, or any other state which is authorized to transact business in this state and whose deposits or share accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.¹²

The effect of this change is to expressly permit landlords to comply with the Act by depositing their tenants’ security deposits in any financial institution doing business in Florida, regardless of where the institution is chartered or headquartered.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

- Section 1.** Amends s. 84.43, F.S., relating to definitions.
- Section 2.** Amends s. 84.49, F.S., relating to deposit money or advance rent; duty of landlord and tenant.
- Section 3.** Amends s. 83.491, F.S., relating to fee in lieu of security deposit.
- Section 4.** Amends s. 553.895, F.S., relating to firesafety.
- Section 5.** Provides the bill shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁹ Palm Beach County Case, *supra* note 2, Count II. See also s. 83.48, F.S., which entitles prevailing parties to recover attorney fees and court costs in civil actions to enforce the provisions of the Act.

¹⁰ See Clerk of the Circuit Court & Comptroller for Palm Beach County, *Case Info: Uniform Case No. 50-2023-SC-005770-XXXX-WB*, <https://appsgp.mypalmbeachclerk.com/eCaseView/search.aspx> (last visited Jan. 29, 2024).

¹¹ S. 658.2953(3)(c), F.S., defines “Florida bank” as “a bank whose home state in this state.”

¹² The addition of the proposed definition changes the numbering of other defined terms. As such, the bill updates certain cross-references to conform with such changes.

2. Expenditures:

The bill has an indeterminate positive impact on state courts' expenses to the extent the proposed definition of "Florida banking institution" decreases the amount of litigation over the rights to security deposits in Florida. As a result, the bill is likely to reduce the caseload burden on circuit courts.¹³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill has an indeterminate positive impact on local courts' expenses to the extent the proposed definition of "Florida banking institution" decreases the amount of litigation over the rights to security deposits in Florida. As a result, the bill is likely to reduce the caseload burden on small claims and county courts.¹⁴

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate positive impact on the private sector to the extent the proposed definition of "Florida banking institution" decreases the amount of litigation over the rights to security deposits in Florida. The decrease in litigation will reduce costs to both plaintiffs and defendants in landlord-tenant disputes. Further, banking institutions that are not chartered or headquartered in Florida may benefit from receiving additional security deposits.

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:

Not applicable. The bill does not amend or create rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

¹³ Under Florida law, circuit courts have concurrent jurisdiction with county courts to consider cases involving landlord-tenant disputes. S. 34.011(1), F.S.

¹⁴ Under Florida law, county courts have concurrent jurisdiction with circuit courts to consider cases involving landlord-tenant disputes. County courts have exclusive jurisdiction of proceedings relating to the right of possession of real property and to the forcible or unlawful detention of lands and tenements, except that the circuit court also has jurisdiction if the amount in controversy exceeds the jurisdictional limits of the county court or the circuit court otherwise has jurisdiction. S. 34.011(1), F.S.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES