

SUBJECT: Family violence issues and military service affecting residential leases

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — Giddings, Elkins, Solomons, Taylor, Vo, Zedler

0 nays

3 absent — Bailey, Bohac, Martinez

SENATE VOTE: On final passage, April 28 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

DIGEST: SB 1186 would amend Property Code secs. 92.016 and 92.017 to include provisions on a tenant's right to terminate a lease and vacate following family violence or a decision or orders related to military service.

Right to vacate and avoid liability following family violence. A tenant could terminate the tenant's rights and obligations under a lease and could vacate the dwelling and avoid liability for future rent and any other sums due for terminating the lease and vacating before the end of the lease term if the tenant complied with specified provisions and obtained and provided to the landlord or the landlord's agent a copy of one or more of the following orders protecting the tenant or an occupant from family violence committed by a cotenant or occupant of the dwelling:

- temporary injunction issued under Family Code, subch. F, ch. 6; or
- a protective order issued under Family Code, ch. 85.

A tenant could exercise the rights to terminate the lease, vacate the dwelling before the end of the lease term, and avoid liability beginning on the date after the following events had occurred:

- a judge signed an order specified above;
- the tenant had delivered a copy of the order to the landlord; and
- the tenant had vacated the dwelling.

A landlord who violated this provision would be liable to the tenant for actual damages, a civil penalty equal to one month's rent plus \$500, and attorney's fees.

A tenant who terminated a lease under the provision on family violence would be released from all liability for any delinquent, unpaid rent owed to the landlord by the tenant on the effective date of termination if the lease did not contain language substantially equivalent to the following:
"Tenants may have special statutory rights to terminate the lease early in certain situations involving family violence or a military deployment or transfer."

A tenant's right to terminate a lease before the end of the lease term, vacate the dwelling, and avoid liability under this legislation could not be waived by the tenant.

Right to vacate and avoid liability following decisions related to military service. A tenant who was a military service member or a dependent of a service member could vacate the dwelling leased by the tenant and avoid liability for future rent and all other sums due under the lease for terminating the lease and vacating the dwelling before the end of the lease term if:

- the lease had been executed by or on behalf of a person who, after executing the lease or during the term of the lease, entered military service; or
- a service member, while in military service, executed the lease and after executing it received orders for a permanent change of station or for deployment with a military unit for 90 days or more.

A tenant who terminated a lease under these terms would have to deliver to the landlord:

- a written notice of termination of the lease; and
- a copy of an appropriate government document providing evidence of the tenant's entrance into military service or a copy of the service member's military order.

The bill would specify dates or a time period for terminating a lease obligation. It also would set the deadline for the landlord to refund any rent or other amounts paid in advance, such as a security deposit.

The termination of the lease by the tenant would not affect a tenant's liability for delinquent unpaid rent, or other sums owed before the termination. A tenant who terminated a lease due to a decision or orders related to military service would be released from all liability for any delinquent unpaid rent owed to the landlord by the tenant on the effective date of the lease termination if the lease did not contain language substantially equivalent to the following: "Tenants may have special statutory rights to terminate the lease early in certain situations involving family violence or military deployment or transfer."

A landlord who violated this provision would be liable to the tenant for actual damages of the equivalent of one month's rent, plus \$500, and attorney's fees.

A tenant could not waive the right to terminate a lease before the end of the lease term, vacate the dwelling, and avoid liability. A tenant and a landlord could agree that the tenant waived a tenant's rights if the tenant or any dependent living with the tenant moved into base housing or other housing within 30 miles of the dwelling. Such a waiver would have to be signed and in a separate written document from the lease and would have to comply with federal law. A waiver would not apply if the tenant or the tenant's dependent moved into housing owned or occupied by family or relatives or if the tenant and the tenant's dependent moved because of a significant financial loss of income caused by the tenant's military service.

SB 1186 would define "significant financial loss of income" to mean a reduction of 10 percent or more of the tenant's household income caused by the tenant's military service. A landlord would be entitled to verify the significant financial loss of income in order to determine whether a tenant was entitled to terminate a lease if the tenant had signed a waiver and moved within 30 miles into housing that was not owned or occupied by family or relatives or the tenant's dependent. A pay stub or other statement of earning issued by the tenant's employer would be sufficient verification.

The bill would amend Property Code, sec. 92.006(g), to state that a tenant's right to vacate a dwelling and avoid liability under sec. 92.016 or 92.017 could not be waived by a tenant or a landlord.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

The provisions added by Property Code, sec. 92.016, on the right to vacate a lease following family violence, and sec. 92.017(g), which would contain a specific declaration of the tenant's special statutory right to terminate the lease following a decision related to military service, would take effect January 1, 2006. Any changes in the law made by secs. 92.016, 92.017, and 92.006(g) would apply only to a lease that was executed or renewed on or after that date.

**SUPPORTERS
SAY:**

SB 1186 would establish a safeguard for victims of family violence (with an injunction or protective order) and a mechanism for military service members to terminate leases without future liability. The bill represents a consensus among stakeholders to protect those vulnerable to family violence and to facilitate moving or changing residence in association with military service. The bill is identical to HB 211 by Guillen, Noriega, and Martinez, which passed the House last week.

Current state law provides no right or remedy to terminate a lease and vacate a residence and avoid liability following domestic violence. The only options for victims of family violence subject to residential leases is to flee the premises and risk fines and an unfavorable rental history for breaking a lease or to remain in a potentially dangerous situation where they could be at risk for more abuse and possible death. This bill would offer a remedy to allow victims of family violence to escape further danger without being sued or suffering significant financial loss. Further, if a landlord violated the provisions of this bill, the tenant would be entitled to actual damages, a civil penalty equal to one month's rent plus \$500, and attorney's fees.

The portion of the bill affecting decisions related to military service would track federal law — the Servicemembers Civil Relief Act (SCRA) — to allow service men and women or military families to terminate leases in certain circumstances. The bill would permit termination of a lease without liability if an individual entered military service, received orders for a permanent change of station, or was deployed for 90 days or more. The bill would establish a time by which a landlord would refund the individual affected by military service. In addition, SB 1186 would contain remedies like those affecting victims of family violence if a landlord violated the provisions.

A tenant and a landlord could agree that a tenant waived rights if the tenant or any dependent living with the tenant moved into base house or

other housing within 30 miles of the dwelling. Such a waiver would have to be in writing and would not apply if the tenant or tenant's dependent moved into housing owned or occupied by family or relatives. The waiver also would not apply if it were because of a significant financial loss of income caused by the tenant's military service.

SB 1186 would permit military families to terminate their residential lease agreements when a husband or wife was called for active duty. Even though the SCRA allows military service members to terminate a lease without liability, a spouse could be listed on the lease and still be bound. This bill would grant military families, not just individual service members, the right to terminate leases without liability.

This legislation not only would implement the spirit of the SCRA and eliminate a loophole that restricts military families but also would offer victims of family violence with protective orders a means of escape without fear of retribution from landlords.

**OPPONENTS
SAY:**

The federal SCRA revised in December 2004 allows any contract to which a service member is a party to be waived by mutual agreement. Arguably, since SB 1186 would provide narrower waiver provisions, a business, for example, should not have to give up the right to terminate mutually a contract or agreement involving a member of the military.

NOTES:

HB 211 by Guillen, Noriega, and Martinez, which is identical to SB 1186, passed the House on May 12 and has been referred to the Senate Business and Commerce Committee.