

1 A bill to be entitled
 2 An act relating to transient occupants of residential
 3 property; amending s. 82.045, F.S.; revising criteria
 4 for determination of whether a person is a transient
 5 occupant; specifying when a transient occupancy ends;
 6 providing that a party entitled to possession of a
 7 dwelling must allow a former transient occupant to
 8 recover his or her personal belongings at a reasonable
 9 time under reasonable conditions; specifying that
 10 additional conditions may be imposed in certain
 11 circumstances; creating a presumption that personal
 12 belongings are abandoned in certain circumstances;
 13 authorizing civil actions for recovery of personal
 14 property by former transient occupants; providing
 15 construction; providing an effective date.

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

18
 19 Section 1. Section 82.045, Florida Statutes, is amended to
 20 read:

21 82.045 Remedy for unlawful detention by a transient
 22 occupant of residential property; recovery of transient
 23 occupant's personal belongings.—

24 (1) As used in this section, the term "transient occupant"
 25 means a person whose residency in a dwelling intended for

26 residential use has occurred for a brief length of time, is not
27 pursuant to a lease, and whose occupancy was intended as
28 transient in nature.

29 (a) Factors that establish that a person is a transient
30 occupant include, but are not limited to:

31 1. The person does not have an ownership interest,
32 financial interest, or leasehold interest in the property
33 entitling him or her to occupancy of the property.

34 2. The person does not have any property utility
35 subscriptions.

36 3. The person cannot produce documentation,
37 correspondence, or identification cards sent or issued by a
38 government agency, including, but not limited to, the Department
39 of Highway Safety and Motor Vehicles or the supervisor of
40 elections, which show that the person used the property address
41 as an address of record with the agency within the previous 12
42 months ~~does not use the property address as an address of record~~
43 ~~with any governmental agency, including, but not limited to, the~~
44 ~~Department of Highway Safety and Motor Vehicles or the~~
45 ~~supervisor of elections.~~

46 ~~4. The person does not receive mail at the property.~~

47 ~~4.5.~~ The person pays minimal or no rent for his or her
48 stay at the property.

49 ~~5.6.~~ The person does not have a designated space of his or
50 her own, such as a room, at the property.

51 ~~6.7.~~ The person has minimal, if any, personal belongings
52 at the property.

53 ~~7.8.~~ The person has an apparent permanent residence
54 elsewhere.

55 (b) Minor contributions made for the purchase of household
56 goods, or minor contributions towards other household expenses,
57 do not establish residency.

58 (2) A transient occupant unlawfully detains a residential
59 property if the transient occupant remains in occupancy of the
60 residential property after the party entitled to possession of
61 the property has directed the transient occupant to leave. A
62 transient occupancy terminates when a transient occupant begins
63 to reside elsewhere, surrenders the key to the dwelling, or
64 leaves the dwelling when directed by the party entitled to
65 possession, a law enforcement officer in receipt of an affidavit
66 under subsection (3), or a court. A transient occupancy is not
67 extended by the presence of personal belongings of a former
68 transient occupant.

69 (3) Any law enforcement officer may, upon receipt of a
70 sworn affidavit of the party entitled to possession that a
71 person who is a transient occupant is unlawfully detaining
72 residential property, direct a transient occupant to surrender
73 possession of residential property. The sworn affidavit must set
74 forth the facts, including the applicable factors listed in
75 paragraph (1) (a), which establish that a transient occupant is

76 | unlawfully detaining residential property.

77 | (a) A person who fails to comply with the direction of the
78 | law enforcement officer to surrender possession or occupancy
79 | violates s. 810.08. In any prosecution of a violation of s.
80 | 810.08 related to this section, whether the defendant was
81 | properly classified as a transient occupant is not an element of
82 | the offense, the state is not required to prove that the
83 | defendant was in fact a transient occupant, and the defendant's
84 | status as a permanent resident is not an affirmative defense.

85 | (b) A person wrongfully removed pursuant to this
86 | subsection has a cause of action for wrongful removal against
87 | the person who requested the removal, and may recover injunctive
88 | relief and compensatory damages. However, a wrongfully removed
89 | person does not have a cause of action against the law
90 | enforcement officer or the agency employing the law enforcement
91 | officer absent a showing of bad faith by the law enforcement
92 | officer.

93 | (4) A party entitled to possession of a dwelling has a
94 | cause of action for unlawful detainer against a transient
95 | occupant pursuant to s. 82.04. The party entitled to possession
96 | is not required to notify the transient occupant before filing
97 | the action. If the court finds that the defendant is not a
98 | transient occupant but is instead a tenant of residential
99 | property governed by part II of chapter 83, the court may not
100 | dismiss the action without first allowing the plaintiff to give

101 the transient occupant the notice required by that part and to
102 thereafter amend the complaint to pursue eviction under that
103 part.

104 (5) The party entitled to possession of a dwelling shall
105 allow a former transient occupant to recover his or her personal
106 belongings at reasonable times and under reasonable conditions.

107 (a) Unless otherwise agreed to, a reasonable time for the
108 recovery of the former transient occupant's personal belongings
109 generally means a time period within 10 days after termination
110 of the transient occupancy, when the party entitled to
111 possession of the dwelling or a trusted third party can be
112 present at the dwelling to supervise the recovery of the
113 belongings.

114 (b) If the party entitled to possession of the dwelling
115 reasonably believes that the former transient occupant has
116 engaged in misconduct or has a history of violence or drug or
117 alcohol abuse, it is reasonable for the party entitled to
118 possession of the dwelling to impose additional conditions on
119 access to the dwelling or the personal belongings. These
120 conditions may include, but are not limited to, the presence of
121 a law enforcement officer, the use of a mover registered with
122 the Department of Agriculture and Consumer Services, or the use
123 of a trusted third party to recover the personal belongings. For
124 purposes of this paragraph, misconduct includes, but is not
125 limited to:

126 1. Intentional damage to the dwelling, to property owned
127 by the party entitled to possession of the dwelling, or to
128 property owned by another occupant of the dwelling;

129 2. Physical or verbal abuse directed at the party entitled
130 to possession of the dwelling or another occupant of the
131 dwelling; or

132 3. Theft of property belonging to the party entitled to
133 possession of the dwelling or property of another occupant of
134 the dwelling.

135 (c) The person entitled to possession of a dwelling may
136 presume that the former transient occupant has abandoned
137 personal belongings left at the dwelling if the former transient
138 occupant does not seek to recover them within a reasonable time
139 after the transient occupant surrenders occupancy of the
140 dwelling. The time period to recover personal belongings may be
141 extended due to the unavailability of the party entitled to
142 possession of the dwelling to supervise the recovery of the
143 personal belongings. Circumstances that may shorten the time
144 include, but are not limited to, the poor condition of or the
145 perishable or hazardous nature of the personal belongings, the
146 intent of the former transient occupant to abandon or discard
147 the belongings, or the significant impairment of the use of the
148 dwelling by the storage of the former transient occupant's
149 personal belongings.

150 (d) If the person entitled to possession of the dwelling

151 unreasonably withholds access to a former transient occupant's
152 personal belongings, the former transient occupant may bring a
153 civil action for damages or the recovery of the property. The
154 court shall award the prevailing party reasonable attorney fees
155 and costs.

156 (6) This section shall be construed in recognition of the
157 right to exclude others as one of the most essential components
158 of property rights.

159 Section 2. This act shall take effect July 1, 2018.