

By the Committee on Judiciary; and Senator Young

590-01988-18

2018566c1

A bill to be entitled

An act relating to unlawful detention by a transient occupant; amending s. 82.045, F.S.; revising factors that establish a person as a transient occupant of residential property; specifying circumstances when a transient occupancy terminates; providing that a transient occupancy is not extended by the presence of personal belongings of a former transient occupant; requiring the party entitled to possession of a dwelling to allow a former transient occupant to recover personal belongings at reasonable times and under reasonable conditions; specifying a reasonable time to recover personal belongings; authorizing a party entitled to possession of the dwelling, under certain circumstances, to impose additional conditions on access to the dwelling or personal belongings; providing a presumption of when a former transient occupant has abandoned his or her personal belongings; providing circumstances in which the period for recovering personal belongings may be extended or shortened; authorizing a former transient occupant, under certain circumstances, to bring a civil action for damages or recovery of personal belongings; requiring a court to award the prevailing party reasonable attorney fees and costs; providing construction; providing an effective date.

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

590-01988-18

2018566c1

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

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

(1) As used in this section, the term “transient occupant” means a person whose residency in a dwelling intended for residential use has occurred for a brief length of time, is not pursuant to a lease, and whose occupancy was intended as transient in nature.

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

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

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

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

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

4.5. The person pays minimal or no rent for his or her stay

590-01988-18

2018566c1

at the property.

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

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

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

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

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

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

590-01988-18

2018566c1

88 (a) A person who fails to comply with the direction of the
89 law enforcement officer to surrender possession or occupancy
90 violates s. 810.08. In any prosecution of a violation of s.
91 810.08 related to this section, whether the defendant was
92 properly classified as a transient occupant is not an element of
93 the offense, the state is not required to prove that the
94 defendant was in fact a transient occupant, and the defendant's
95 status as a permanent resident is not an affirmative defense.

96 (b) A person wrongfully removed pursuant to this subsection
97 has a cause of action for wrongful removal against the person
98 who requested the removal, and may recover injunctive relief and
99 compensatory damages. However, a wrongfully removed person does
100 not have a cause of action against the law enforcement officer
101 or the agency employing the law enforcement officer absent a
102 showing of bad faith by the law enforcement officer.

103 (4) A party entitled to possession of a dwelling has a
104 cause of action for unlawful detainer against a transient
105 occupant pursuant to s. 82.04. The party entitled to possession
106 is not required to notify the transient occupant before filing
107 the action. If the court finds that the defendant is not a
108 transient occupant but is instead a tenant of residential
109 property governed by part II of chapter 83, the court may not
110 dismiss the action without first allowing the plaintiff to give
111 the transient occupant the notice required by that part and to
112 thereafter amend the complaint to pursue eviction under that
113 part.

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

590-01988-18

2018566c1

117 (a) Unless otherwise agreed to, a reasonable time for the
118 recovery of the former transient occupant's personal belongings
119 generally means a time period within 10 days after termination
120 of the transient occupancy, when the party entitled to
121 possession of the dwelling or a trusted third party can be
122 present at the dwelling to supervise the recovery of the
123 belongings.

124 (b) If the party entitled to possession of the dwelling
125 reasonably believes that the former transient occupant has
126 engaged in misconduct or has a history of violence or drug or
127 alcohol abuse, it is reasonable for the party entitled to
128 possession of the dwelling to impose additional conditions on
129 access to the dwelling or the personal belongings. These
130 conditions may include, but are not limited to, the presence of
131 a law enforcement officer, the use of a mover registered with
132 the Department of Agriculture and Consumer Services, or the use
133 of a trusted third party to recover the personal belongings. For
134 purposes of this paragraph, misconduct includes, but is not
135 limited to:

136 1. Intentional damage to the dwelling, to property owned by
137 the party entitled to possession of the dwelling, or to property
138 owned by another occupant of the dwelling;

139 2. Physical or verbal abuse directed at the party entitled
140 to possession of the dwelling or another occupant of the
141 dwelling; or

142 3. Theft of property belonging to the party entitled to
143 possession of the dwelling or property of another occupant of
144 the dwelling.

145 (c) The person entitled to possession of a dwelling may

590-01988-18

2018566c1

146 presume that the former transient occupant has abandoned
147 personal belongings left at the dwelling if the former transient
148 occupant does not seek to recover them within a reasonable time
149 after the transient occupant surrenders occupancy of the
150 dwelling. The time period to recover personal belongings may be
151 extended due to the unavailability of the party entitled to
152 possession of the dwelling to supervise the recovery of the
153 personal belongings. Circumstances that may shorten the time
154 include, but are not limited to, the poor condition of or the
155 perishable or hazardous nature of the personal belongings, the
156 intent of the former transient occupant to abandon or discard
157 the belongings, or the significant impairment of the use of the
158 dwelling by the storage of the former transient occupant's
159 personal belongings.

160 (d) If the person entitled to possession of the dwelling
161 unreasonably withholds access to a former transient occupant's
162 personal belongings, the former transient occupant may bring a
163 civil action for damages or the recovery of the property. The
164 court shall award the prevailing party reasonable attorney fees
165 and costs.

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

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