

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.

16
 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 property.—

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 does not use the property address as an
37 address of record with any governmental agency, including, but
38 not limited to, the Department of Highway Safety and Motor
39 Vehicles or the supervisor of elections within the past 12
40 months.

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

42 ~~4.5.~~ The person pays minimal or no rent for his or her
43 stay at the property.

44 ~~5.6.~~ The person does not have a designated space of his or
45 her own, such as a room, at the property.

46 ~~6.7.~~ The person has minimal, if any, personal belongings
47 at the property.

48 ~~7.8.~~ The person has an apparent permanent residence
49 elsewhere.

50 (b) Minor contributions made for the purchase of household

51 goods, or minor contributions towards other household expenses,
52 do not establish residency.

53 (2) A transient occupant unlawfully detains a residential
54 property if the transient occupant remains in occupancy of the
55 residential property after the party entitled to possession of
56 the property has directed the transient occupant to leave. A
57 transient occupancy terminates when a transient occupant begins
58 to reside elsewhere, surrenders the key to the dwelling, or
59 agrees to leave the dwelling when directed by a law enforcement
60 officer, the party entitled to possession, or a court. A
61 transient occupancy is not extended by the presence of personal
62 belongings of a former transient occupant.

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

71 (a) A person who fails to comply with the direction of the
72 law enforcement officer to surrender possession or occupancy
73 violates s. 810.08. In any prosecution of a violation of s.
74 810.08 related to this section, whether the defendant was
75 properly classified as a transient occupant is not an element of

76 | the offense, the state is not required to prove that the
77 | defendant was in fact a transient occupant, and the defendant's
78 | status as a permanent resident is not an affirmative defense.

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

87 | (4) A party entitled to possession of a dwelling has a
88 | cause of action for unlawful detainer against a transient
89 | occupant pursuant to s. 82.04. The party entitled to possession
90 | is not required to notify the transient occupant before filing
91 | the action. If the court finds that the defendant is not a
92 | transient occupant but is instead a tenant of residential
93 | property governed by part II of chapter 83, the court may not
94 | dismiss the action without first allowing the plaintiff to give
95 | the transient occupant the notice required by that part and to
96 | thereafter amend the complaint to pursue eviction under that
97 | part.

98 | (5) The party entitled to possession of a dwelling must
99 | allow a former transient occupant to recover his or her personal
100 | belongings at a reasonable time and under reasonable conditions.

101 (a) A reasonable time for the recovery of the former
102 transient occupant's personal belongings includes a convenient
103 time when the party entitled to possession of the dwelling or a
104 trusted third party can be present at the dwelling to supervise
105 the recovery of the belongings.

106 (b) If the party entitled to possession of the dwelling
107 reasonably believes that the former transient occupant has
108 engaged in misconduct or has a history of violence or drug or
109 alcohol abuse, it is not unreasonable for the party entitled to
110 possession of the dwelling to impose additional conditions on
111 access to the dwelling or the personal belongings. These
112 conditions may include, for example, the presence of a law
113 enforcement officer or the use of a mover that is registered
114 with the Department of Agriculture and Consumer Services or the
115 use of a trusted third party to recover the personal belongings.
116 For purposes of this paragraph, misconduct includes, but is not
117 limited to:

118 1. Intentional damage to the dwelling, property owned by
119 the party entitled to possession of the dwelling, or property
120 owned by another occupant of the dwelling;

121 2. Physical or verbal abuse directed at the party entitled
122 to possession of the dwelling or directed at another occupant of
123 the dwelling; or

124 3. Theft of property belonging to the party entitled to
125 possession of the dwelling or property of another occupant of

126 the dwelling.

127 (c) The person entitled to possession of a dwelling may
128 presume that the former transient occupant has abandoned
129 personal belongings left at the dwelling if the former transient
130 occupant does not seek to recover them within a reasonable time
131 after the transient occupant surrenders occupancy of the
132 dwelling. A reasonable time to recover personal belongings is
133 generally at least 5 days after the termination of the transient
134 occupancy, but may be longer or shorter depending on the
135 specific circumstances. Circumstances that may extend the time
136 period include an agreement to hold the property for longer than
137 5 days or the unavailability of the party entitled to possession
138 of the dwelling to supervise the recovery of the personal
139 belongings. Circumstances that may shorten the time period
140 include, but are not limited to, the poor condition or
141 perishable or hazardous nature of the personal belongings, the
142 intent of the former transient occupant to abandon or discard
143 the belongings, or the significant impairment of the use of the
144 dwelling by the storage of the former transient occupant's
145 personal belongings.

146 (d) If the person entitled to possession of the dwelling
147 unreasonably withholds access to a former transient occupant's
148 personal belongings, the former transient occupant may bring a
149 civil action for damages or the recovery of the property. The
150 court shall award the prevailing party reasonable attorney fees

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151 | and costs.

152 | (6) This section shall be construed to recognize that the
153 | right to exclude others is one of the most essential property
154 | rights.

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