

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/HB 305	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Judiciary Committee; Civil Justice Subcommittee; Harrison and others	110 Y's	5 N's
<b>COMPANION BILLS:</b>	CS/CS/SB 656	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/CS/HB 305 passed the House on April 9, 2015, and subsequently passed the Senate on April 22, 2015. The bill establishes an additional remedy for the unlawful detention of residential property.

A person may establish a temporary residence in residential property as the invited guest of the owner or rightful resident. If the invited guest thereafter refuses to surrender possession of the property at the request of the owner or rightful resident, the guest unlawfully detains the property. Current law requires the owner or rightful resident to file an unlawful detainer action to remove the unwanted guest.

The bill establishes an additional remedy to remove an unwanted guest who unlawfully detains residential property. Upon receipt of a sworn affidavit from the owner or rightful resident which establishes that the unwanted guest is a "transient occupant," law enforcement may immediately direct the unwanted guest to surrender possession of the property. Failing to surrender possession at the direction of law enforcement constitutes a criminal trespass. The bill provides a list of factors to aid in determining if an unwanted guest is a "transient occupant" and subject to immediate removal by law enforcement, specifically whether the person:

- intended his or her occupancy to be temporary;
- resided in the property for only a brief period of time;
- has no ownership, financial, or leasehold interest in the property;
- has no utility subscriptions at the property;
- pays minimal, if any, rent;
- does not list the property as the address of record with governmental agencies;
- has minimal, if any, personal belongings at the property;
- does not receive mail at the property;
- has no designated personal space at the property; and
- has an apparent permanent residence elsewhere.

The bill also creates a cause of action for a wrongful removal.

The bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on June 2, 2015, ch. 2015-89, L.O.F., and will become effective on July 1, 2015.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### Background

Florida residential property owners commonly allow relatives, friends, or acquaintances to temporarily reside in their home as guests. These residencies are often terminated when the guest voluntarily vacates the property at the time agreed or, when the guest is no longer welcome, at the direction of the property owner or rightful resident. A guest who refuses to surrender possession of residential property at the request of the owner or rightful resident, unlawfully detains the property. Under current law, the property owner or rightful resident may seek to have the unwanted guest criminally sanctioned for trespass or may file a civil action against the unwanted guest for unlawful detainer.

### Criminal Trespass

Section 810.08, F.S., provides that a person commits the criminal offense of trespass in a structure or conveyance if the person:

willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so.<sup>1</sup>

However, where an unwanted guest has established a temporary residence in residential property at the initial invitation of the property owner or rightful resident, media reports indicate that law enforcement frequently decline to arrest or remove the person from the property for criminal trespass and view such disputes as a "civil matter".<sup>2</sup> Such reports also indicate that law enforcement will not force the unwanted guest to surrender possession of the property without a court order, even where there are no indicators of the intent to create a permanent residency.<sup>3</sup> Accordingly, property owners or rightful residents must often file an unlawful detainer action to remove an unwanted guest.

### Unlawful Detainer

An unlawful detention occurs when "any person enters or has entered in a peaceable manner into any lands or tenements when the entry is lawful and after the expiration of the person's right continues to hold them against the consent of the party entitled to possession."<sup>4</sup>

Under such circumstances, the person entitled to possession may bring a civil action for unlawful detainer. An unlawful detainer action must be filed in county court<sup>5</sup> and is entitled to the summary

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<sup>1</sup> s. 810.08(1), F.S.

<sup>2</sup> See, e.g. Marcus Franklin, *Law slanted in favor of unwelcome guests*, St. Petersburg Times, February 17, 2004, [http://www.sptimes.com/2004/02/17/Tampabay/Law\\_slanted\\_in\\_favor\\_.shtml](http://www.sptimes.com/2004/02/17/Tampabay/Law_slanted_in_favor_.shtml); Eileen Schulte, *Charity backfires on landlord*, The Columbus Dispatch, January 23, 2009, <http://www.dispatch.com/content/stories/insight/2009/01/23/squatters.html>; Shannon Behnken, *Only court order will rid you of unwanted house guest*, The Tampa Tribune, September 7, 2011, <http://tbo.com/news/business/only-court-order-will-rid-you-of-unwanted-house-guest-255859>; Ben Montgomery, *Hospitality cost couple dearly when guest refused to leave*, Tampa Bay Times, August 25, 2011, <http://www.tampabay.com/features/humaninterest/hospitality-cost-couple-dearly-when-guest-refused-to-leave/1187810>.

<sup>3</sup> For instance, a property appraiser considers all of the following factors in making his or her determination as to the intent of a person claiming a homestead exemption to establish a permanent residence: proof of payment of utilities at the property, address of record for purposes of voting and driver licenses, the location where bank statements and checking accounts are registered, and the address listed on a federal tax return. s. 196.015, F.S.

<sup>4</sup> s. 82.04(1), F.S.

<sup>5</sup> s. 34.011(2), F.S.

procedure of s. 51.011, F.S. for expedited review by the court.<sup>6</sup> The action may be brought any time within 3 years after possession has been withheld against the property owner's or rightful resident's consent.<sup>7</sup> If the person to be served is not found at the usual place of residence, the process server may serve a summons by posting a copy in a conspicuous place on the property.<sup>8</sup>

If the owner or rightful resident prevails in the action, the clerk of court will issue a writ of possession to the Sheriff describing the premises and commanding the Sheriff to put him or her in possession of the property.<sup>9</sup> In addition to the delay caused by the time it takes to obtain and serve a writ of possession, the property owner or rightful resident must pay a number of fees and costs, including, but not limited to:

- Filing fees for the civil action - \$180<sup>10</sup>
- Service charge for issuance of each summons - \$10.<sup>11</sup>
- Service of each summons by the Sheriff - \$40.<sup>12</sup>
- Service and execution of the writ of possession by Sheriff - \$90.<sup>13</sup>
- Fees charged by the Sheriff to stand by and to keep the peace in an action for possession - Varies.<sup>14</sup>
- Attorney Fees - Varies.

### **Effect of Proposed Changes**

The bill creates s. 82.045, F.S., to provide an additional remedy in ch. 82, F.S. for the unlawful detention of residential property by "transient occupants."

The bill defines a transient occupant as a person whose residency in residential property has been for a brief period of time, the residency is not pursuant to a lease, and the residency was intended as temporary. Factors that establish whether a person is a transient occupant include:

- The absence of an ownership, financial, or leasehold interest in the property entitling the person to occupancy of the property.
- The lack of utility subscriptions at the property.
- Failure to use the property as the address of record with governmental agencies.
- Failure to receive mail at the property.
- A minimal amount of personal belongings, if any, at the property.
- Payment of minimal, if any, rent.
- The lack of a designated personal space, such as a private room, at the property.
- An apparent permanent residence elsewhere.

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<sup>6</sup> s. 82.04(1), F.S.; Under the summary procedure of s. 51.011, F.S., all defenses of law or fact are required to be contained in the defendant's answer which must be filed within five days after service of process of the plaintiff's complaint. If the answer incorporates a counterclaim, the plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and serve it within five days after service of the counterclaim. No other pleadings are permitted, and all defensive motions, including motions to quash, are heard by the court prior to trial. Postponements are not permitted for discovery, and the procedure also provides for an immediate trial, if requested.

<sup>7</sup> *Id.*

<sup>8</sup> s. 82.061, F.S.

<sup>9</sup> s. 82.091, F.S.

<sup>10</sup> s. 34.041(1)(a)7., F.S.

<sup>11</sup> ss. 28.241(1)(d) and 34.041(1)(d), F.S.

<sup>12</sup> s. 30.231(1)(a), F.S.

<sup>13</sup> s. 30.231, F.S.

<sup>14</sup> s. 30.231(2), F.S.; For example, the Miami-Dade Police Department charges \$57.94 per hour, <http://www.miamidade.gov/police/fees-procedure.asp> (last visited May 2, 2015), the Jacksonville Sheriff's Office charges \$46.00 per hour, <http://www.coj.net/departments/sheriffs-office/civil-process-unit/writ-of-possession-procedures.aspx> (last visited May 2, 2015) and the Sarasota County Sheriff's Office charges \$31 per hour, <http://www.sarasotasheriff.org/services/civil-procedures.html> (last visited May 2, 2015).

Minor contributions made for the purchase of household goods, or minor contributions towards other household expenses do not establish residency for the purposes of determining a transient occupancy.

If an unwanted guest refuses to leave residential property at the direction of the person entitled to possession of the property, which may be the owner or lessee of the property, such person may file a sworn affidavit with any law enforcement officer that the unwanted guest is a transient occupant and unlawfully detaining the property. A knowingly false statement in the sworn affidavit constitutes perjury, a first degree misdemeanor.<sup>15</sup>

Upon receipt of the sworn affidavit the law enforcement officer may direct the guest to surrender possession of the residential property. A person who fails to comply with the direction of the officer violates s. 810.08, F.S., and commits a criminal trespass in a structure or conveyance. In any prosecution of a violation of s. 810.08, F.S, whether the defendant was properly classified as a transient occupant is not an element of the offense, the state is not required to prove that the defendant was in fact a transient occupant, and the defendant's status as a permanent resident is not an affirmative defense. A person who is wrongfully removed by law enforcement as a transient occupant has a cause of action for wrongful removal against the person who requested the removal. A law enforcement officer and the agency employing the officer may also be civilly liable for a wrongful removal if the officer acted in bad faith.

The bill also affirms the existing right of the property owner or rightful resident to effect removal of the unwanted guest pursuant to a civil action for unlawful detainer. If the court determines the defendant is not a transient occupant but a tenant of residential property governed by part II of ch. 83, F.S., the court may not dismiss the unlawful detainer action. The court must allow the plaintiff time to give the defendant the pre-eviction notices required by ch. 83, F.S., and thereafter amend the complaint to pursue eviction.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

#### **2. Expenditures:**

The bill does not appear to have any impact on state expenditures.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill does not appear to have any impact on local government revenues.

#### **2. Expenditures:**

The bill does not appear to have any impact on local government expenditures.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

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<sup>15</sup> s. 837.012, F.S. A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. See ss. 775.082 and 775.083, F.S.

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.