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CS/CS/HB 305

2015 Legislature

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 2 An act relating to unlawful detention by a transient  
 3 occupant; creating s. 82.045, F.S.; defining the term  
 4 "transient occupant"; providing factors that establish  
 5 a transient occupancy; providing for removal of a  
 6 transient occupant by a law enforcement officer;  
 7 providing a cause of action for wrongful removal;  
 8 limiting actions for wrongful removal; providing a  
 9 civil action for removal of a transient occupant;  
 10 providing an effective date.

11  
 12 Be It Enacted by the Legislature of the State of Florida:

13  
 14 Section 1. Section 82.045, Florida Statutes, is created to  
 15 read:

16 82.045 Remedy for unlawful detention by a transient  
 17 occupant of residential property.-

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

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

25 1. The person does not have an ownership interest,  
 26 financial interest, or leasehold interest in the property

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27 entitling him or her to occupancy of the property.

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

30 3. The person does not use the property address as an  
 31 address of record with any governmental agency, including, but  
 32 not limited to, the Department of Highway Safety and Motor  
 33 Vehicles or the supervisor of elections.

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

35 5. The person pays minimal or no rent for his or her stay  
 36 at the property.

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

39 7. The person has minimal, if any, personal belongings at  
 40 the property.

41 8. The person has an apparent permanent residence  
 42 elsewhere.

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

46 (2) A transient occupant unlawfully detains a residential  
 47 property if the transient occupant remains in occupancy of the  
 48 residential property after the party entitled to possession of  
 49 the property has directed the transient occupant to leave.

50 (3) Any law enforcement officer may, upon receipt of a  
 51 sworn affidavit of the party entitled to possession that a  
 52 person who is a transient occupant is unlawfully detaining

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53 residential property, direct a transient occupant to surrender  
54 possession of residential property. The sworn affidavit must set  
55 forth the facts, including the applicable factors listed in  
56 paragraph (1)(a), which establish that a transient occupant is  
57 unlawfully detaining residential property.

58 (a) A person who fails to comply with the direction of the  
59 law enforcement officer to surrender possession or occupancy  
60 violates s. 810.08. In any prosecution of a violation of s.  
61 810.08 related to this section, whether the defendant was  
62 properly classified as a transient occupant is not an element of  
63 the offense, the state is not required to prove that the  
64 defendant was in fact a transient occupant, and the defendant's  
65 status as a permanent resident is not an affirmative defense.

66 (b) A person wrongfully removed pursuant to this  
67 subsection has a cause of action for wrongful removal against  
68 the person who requested the removal, and may recover injunctive  
69 relief and compensatory damages. However, a wrongfully removed  
70 person does not have a cause of action against the law  
71 enforcement officer or the agency employing the law enforcement  
72 officer absent a showing of bad faith by the law enforcement  
73 officer.

74 (4) A party entitled to possession of a dwelling has a  
75 cause of action for unlawful detainer against a transient  
76 occupant pursuant to s. 82.04. The party entitled to possession  
77 is not required to notify the transient occupant before filing  
78 the action. If the court finds that the defendant is not a

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79 transient occupant but is instead a tenant of residential  
80 property governed by part II of chapter 83, the court may not  
81 dismiss the action without first allowing the plaintiff to give  
82 the transient occupant the notice required by that part and to  
83 thereafter amend the complaint to pursue eviction under that  
84 part.

85 Section 2. This act shall take effect July 1, 2015.