

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 656

INTRODUCER: Regulated Industries Committee, Judiciary Committee, and Senator Latvala

SUBJECT: Unlawful Detention by a Transient Occupant

DATE: April 8, 2015

REVISED: \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
3.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 656 establishes a new remedy for homeowners or rightful residents to remove a transient occupant who has no legal right to the property.

This bill identifies a number of factors for a property owner, or other rightful resident, law enforcement, or the court to consider in determining whether a person is a transient occupant. These factors include whether the person:

- Has an ownership, financial, or leasehold interest in the property;
- Has property utility subscriptions;
- Lists the property as the address of record with governmental agencies;
- Receives mail at the property;
- Has designated space at the property; and
- Has no apparent permanent residence elsewhere.

Instead of pursuing legal action for unlawful detainer, a person who is rightfully in possession of a residence has the option of providing a law enforcement officer with a sworn affidavit that includes the required factors that establish that the person they wish to be removed is a transient occupant. If the transient occupant does not leave, the law enforcement officer may charge him or her with criminal trespassing. Alternatively, if a person pursues legal action and a court finds that a defendant is properly a tenant rather than a transient occupant, the court must allow the plaintiff the opportunity to provide notice and amend pleadings to pursue eviction.

## II. Present Situation:

### Unlawful Detainer

An unlawful detainer is the “unjustifiable retention of the possession of real property by one whose original entry was lawful . . . .”<sup>1</sup>

The party entitled to possession has a cause of action for unlawful detainer if a person enters a property in a peaceable manner and stays without consent.<sup>2</sup>

The party who is the rightful possessor is entitled to an action for unlawful retainer resolved through summary procedure under s. 51.011, F.S.,<sup>3</sup> for expedited review by the court.<sup>4</sup> The rightful possessor may bring an action for unlawful detainer any time within 3 years after the possession has been withheld from the party against his or her consent. 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>5</sup>

If the plaintiff prevails, the court must enter judgment that the plaintiff recover possession of the property described in the complaint, along with damages and costs, and award a writ of possession without delay.<sup>6</sup> Upon a showing that the defendant is willful and knowingly wrongful, damages are double the rental value of the premises from the time of the unlawful holding.<sup>7</sup>

An action for unlawful detainer is not available to residential tenancies.<sup>8</sup>

### The Florida Residential Landlord and Tenant Act

Residential tenancies are governed by the Florida Residential Landlord and Tenant Act (act).<sup>9</sup>

The landlord is the owner or lessor of a dwelling unit. The tenant is a person entitled to occupy a dwelling unit under a rental agreement, in which the tenant makes periodic payments of rent to the landlord.<sup>10</sup> When people enter into a landlord and tenant relationship, as evidenced by a

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<sup>1</sup> BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>2</sup> Section 82.04(1), F.S.

<sup>3</sup> Section 51.011, F.S., specifies a summary procedure for actions that specifically provide for this procedure by statute or rule. Under the summary procedure, all defenses of law or fact are required to be contained in the defendant’s answer which must be filed within 5 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 5 days after service of the counterclaim. (Fla. R. Civ. Pro. 1.140, requires an answer, including any counterclaims, within 20 days after service of the complaint.) 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>4</sup> Section 82.04(1), F.S.

<sup>5</sup> Section 82.061, F.S.

<sup>6</sup> Section 82.091, F.S.

<sup>7</sup> Section 82.071, F.S.

<sup>8</sup> Section 82.04(2), F.S.

<sup>9</sup> Part II of Chapter 83, F.S., s. 83.40, F.S.

<sup>10</sup> Sections 83.43(3), (4), and (6), F.S.

rental agreement, each party commits to abide by certain legal obligations and responsibilities. Rental agreements may be written or oral.<sup>11</sup> Oral rental agreements are for a duration of less than one year.<sup>12</sup> Every rental agreement carries with it an obligation of good faith in both performance and enforcement.<sup>13</sup> Landlords are entitled to collect security deposits from tenants and hold the deposits as security against the performance of the rental agreement.<sup>14</sup>

Landlords and tenants have different obligations to maintain the property. Landlords must comply with building, housing, and health codes, and for dwelling units other than a single-family home or a duplex, a landlord must provide for:

- The extermination of insects and rodents;
- Locks and keys;
- The clean and safe condition of common areas;
- Garbage removal; and
- Heat during winter, running water, and hot water.<sup>15</sup>

Tenants, in turn, must:

- Comply with building, housing and health codes that apply to tenants;
- Keep the premises clean and sanitary;
- Keep plumbing fixtures clean and sanitary and in repair;
- Use and operate electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other appliances in a reasonable manner;
- Not destroy or damage the premises or property or allow others to do so; and
- Not disturb the peace.<sup>16</sup>

A landlord or tenant may petition the court to enforce rights and duties through a civil action.<sup>17</sup>

If a tenant fails to materially comply with the rental agreement, or with his or her legal obligation to maintain the dwelling, a landlord may begin eviction proceedings. Prior to initiating eviction proceedings, for both residential and nonresidential tenancies, the landlord generally must provide the tenant written notice of the violation and an opportunity to correct the problem.<sup>18</sup>

If the tenant fails to correct the problem, the landlord may bring an action in the county court where the property is located.<sup>19</sup> The filing fee for the removal of a tenant is \$180.<sup>20</sup> If the court enters a judgment for the landlord, the clerk will issue a writ of possession to the sheriff.<sup>21</sup> After

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<sup>11</sup> Section 83.43(7), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Section 83.44, F.S.

<sup>14</sup> Section 83.43(12), F.S.

<sup>15</sup> Sections 83.51(1)(a) and (2)(a), F.S.

<sup>16</sup> Section 83.52, F.S.

<sup>17</sup> Section 83.54, F.S.

<sup>18</sup> Section 83.56(2), F.S.; *3618 Lantana Road Partners, LLC v. Palm Beach Pain Management, Inc.*, 57 So. 3d 966, 968 (Fla. 4th DCA 2011).

<sup>19</sup> Section 83.59(2), F.S.

<sup>20</sup> Section 34.041(1)(a)7., F.S.

<sup>21</sup> Section 83.62(1), F.S.

the sheriff provides 24 hours' notice to the tenant, through a posting on the premises, the landlord may remove the tenant's property and change the locks.<sup>22</sup>

### **Criminal Trespass**

Section 810.08, F.S., establishes the offense of trespass for anyone who:

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, commits the offense of trespass in a structure or conveyance.<sup>23</sup>

Charges range from a second degree misdemeanor for simple trespass to a first degree misdemeanor if a person is in the structure or conveyance at the time the offender trespassed or attempted to trespass.<sup>24</sup>

### **Media on Unwelcome House Guests**

News articles report that an increasing number of property owners or tenants are inviting guests into their homes and having difficulty getting them to leave.<sup>25</sup> If a law enforcement agency is called for assistance to remove guests who have overstayed their welcome, the property owner or person having a written lease is typically told that the law enforcement agency is not authorized to remove the guest because the matter is a civil matter, not criminal trespassing. Additionally, law enforcement agencies reportedly advise property owners and tenants that the law requires a court order prior to changing the locks on the property or taking other actions to remove the person from the home.

A legal action to remove a guest who has overstayed his or her welcome at a residence is known as an unlawful detainer action. In Hillsborough County alone, filings for unlawful detainer increased from 14 in 1999 to 67 in 2003.<sup>26</sup>

## **III. Effect of Proposed Changes:**

This bill establishes a new remedy for homeowners or rightful residents to remove a transient occupant from the residence.

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<sup>22</sup> Section 83.62(2), F.S.

<sup>23</sup> Section 810.08(1), F.S.

<sup>24</sup> Section 810.08(2)(a) and (b), F.S.; A second degree misdemeanor is punishable by a jail term of up to 60 days. A first degree misdemeanor is punishable by a jail term of up to 1 year. A third degree felony is punishable by a term of imprisonment of up to 5 years. Section 775.082 (4)(a) and (b), F.S. Section 775.083(1)(d) and (e), F.S., authorizes fines of up to \$500 for a second degree misdemeanor and up to \$1,000 for a first degree misdemeanor.

<sup>25</sup> Hayes, Stephanie, "In Florida, Evicting Unwelcome Guest is no Simple Matter," Tampa Bay Times (Apr. 2, 2009), available at: <http://www.tampabay.com/news/humaninterest/in-florida-evicting-unwelcome-guest-is-no-simple-matter/989264>, (last visited March 27, 2015); and Behnken, Shannon, "Only Court Order Will Rid You of Unwanted House Guest," Tampa Bay Online (Sept. 22, 2014), available at: <http://tbo.com/news/business/only-court-order-will-rid-you-of-unwanted-house-guest-255859> (last visited March 27, 2015).

<sup>26</sup> Franklin, Marcus, "Law Slanted in Favor of Unwanted Guests," *St. Petersburg Times Online* (Feb. 17, 2004); available at: [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) (last visited March 27, 2015).

## **Transient Occupancy and Unlawful Detention**

The bill defines a transient occupant as a person whose residency in a residential dwelling is not subject to a lease, is intended to be transient, and has occurred for a brief length of time.

Transient occupancy can be shown by the following:

- The person has no ownership or financial interest in the property;
- The person has no property utility subscriptions;
- The person does not list the property address as an address of record with any governmental agency, including the Department of Highway Safety and Motor Vehicles or the supervisor of elections;
- The person does not get mail at the property;
- The person pays little or no rent;
- The person has no designated space of his or her own or keeps minimal personal belongings at the property; or
- The person has an apparent permanent residence somewhere else.

The bill provides that minor contributions towards household goods or expenses do not establish residency.

The stay at the property becomes an unlawful detention if the transient occupant remains at the property after the party rightfully in possession has asked the transient occupant to leave.

## **Process to Remove Transient Occupant**

The party entitled to possession must provide to a law enforcement officer a sworn affidavit that a transient occupant is unlawfully detaining residential property. The sworn affidavit must set forth the facts, including the applicable factors listed in s. 82.045(1)(a), F.S., which establish that a transient occupant is unlawfully detaining the residential property. The law enforcement officer may then order the transient occupant to surrender possession of the residential property.

A transient occupant who fails to surrender possession of property is subject to the criminal charge of trespassing. In any prosecution for trespassing, the state only need prove the elements of trespass and not that the defendant is actually a transient occupant.

Additionally, the bill creates a cause of action for unlawful detainer and removal of a transient occupant pursuant to s. 82.04, F.S. Under existing s. 82.07, F.S., a court in an unlawful detainer action may award a prevailing plaintiff damages equal to double the rental value of the premises if the detention is willful and knowingly wrongful.<sup>27</sup> Whether the damages available under the bill are intended to be less than those under existing s. 82.07, F.S., is unclear.

If the court finds that the defendant is not a transient occupant but is instead a tenant, the court must allow the plaintiff an opportunity to proceed under an eviction action.

The bill takes effect July 1, 2015.

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<sup>27</sup> Section 82.071, F.S.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

This bill provides an option to a rightful owner or possessor of property to provide a sworn affidavit with a law enforcement officer to have the transient occupant removed from the property. In situations in which a transient occupant is financially unable to pay the plaintiff's legal costs or damages, this bill provides a financial advantage to a rightful possessor plaintiff in avoiding the need for costly litigation.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Legislature may wish to clarify whether the damages available under existing s. 82.071, F.S., apply to the unlawful detainer actions authorized by the bill.

**VIII. Statutes Affected:**

This bill creates section 82.045 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Regulated Industries on March 31, 2015:**

The CS/CS:

- Amends s. 82.045(1), F.S., to delete the condition of not being subject to a written lease as one of the conditions of transient occupancy. Instead, it provides that a transient occupant is not subject to a lease;
- Amends s. 82.045(1)(a)1., F.S., to include not having a leasehold in the property among factors that establish that a person is a transient occupant;
- Amends s. 82.045(3), F.S., to require that the sworn affidavit must set forth the facts, including the applicable factors listed in s. 82.045(1)(a), F.S., which establish that a transient occupant is unlawfully detaining residential property; and
- Does not amend s. 82.045(4), F.S., to provide that:
  - The party entitled to possession may use the summary procedure in s. 51.011, F.S., to remove a transient occupant;
  - The court may award the plaintiff compensatory damages if it determines that the defendant is a transient occupant;
  - The county courts jurisdiction over action for unlawful detainer; and
  - That the filing fee for an action under s. 82.045(4), F.S., is the fee established in s. 34.041(1)(a)7., F.S., for removal of a tenant.

**CS by Judiciary Committee on March 10, 2015:**

This CS:

- Provides a remedy for persons who are in rightful possession of a residential property to have transient occupants removed based on unlawful detainer;
- Provides a process for a law enforcement officer, upon receipt of a sworn affidavit from a person in rightful possession of a property to remove a transient occupant or charge that person with criminal trespass;
- Authorizes persons the option to pursue legal action against a transient occupant or file a sworn affidavit with a law enforcement officer to have the person removed or charged with criminal trespass; and
- Authorizes a plaintiff who pursues legal action based on unlawful detainer law the opportunity to provide notice to the defendant and amend pleadings to pursue eviction if the court finds that the defendant is a tenant.

- B. **Amendments:**

None.