

By the Committee on Judiciary; and Senator Latvala

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1 A bill to be entitled
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.

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

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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 written 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 ownership or financial interest
26 in the property entitling him or her to occupancy of the
27 property.

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

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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
53 residential property, direct a transient occupant to surrender
54 possession of residential property. A person who fails to comply
55 with the direction of the law enforcement officer to surrender
56 possession or occupancy violates s. 810.08. In any prosecution
57 of a violation of s. 810.08 related to this section, whether the
58 defendant was properly classified as a transient occupant is not

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59 an element of the offense, the state is not required to prove
60 that the defendant was in fact a transient occupant, and the
61 status as a permanent resident is not an affirmative defense. A
62 person wrongfully removed pursuant to this subsection has a
63 cause of action for wrongful removal against the person who
64 requested the removal, and may recover injunctive relief and
65 compensatory damages. However, a wrongfully removed person does
66 not have a cause of action against the law enforcement officer
67 or the agency employing the law enforcement officer absent a
68 showing of bad faith by the law enforcement officer.

69 (4) A party entitled to possession of a dwelling has a
70 cause of action for unlawful detainer and removal of a transient
71 occupant. The party entitled to possession is entitled to the
72 summary procedure of s. 51.011 to remove a transient occupant.
73 The party entitled to possession is not required to notify the
74 transient occupant before filing the action. If the court finds
75 that the defendant is a transient occupant the court shall order
76 the clerk to issue a writ of possession placing the plaintiff in
77 possession of the premises, and may award compensatory damages.
78 If the court finds the defendant is not a transient occupant but
79 is instead a tenant of residential property entitled to the
80 protections of part II of chapter 83, the court may not dismiss
81 the action without first allowing the plaintiff to give notice
82 required by that part and to thereafter amend the complaint to
83 pursue eviction under that part. County courts have jurisdiction
84 over actions authorized under this subsection. The filing fee
85 for an action under this subsection is the fee established in s.
86 34.041(1)(a)7. for removal of a tenant.

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