

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>    </u>	(Y/N)
ADOPTED AS AMENDED	<u>    </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>    </u>	(Y/N)
FAILED TO ADOPT	<u>    </u>	(Y/N)
WITHDRAWN	<u>    </u>	(Y/N)
OTHER	<u>      </u>	

---

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Toledo offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Section 82.045, Florida Statutes, is amended to read:

82.045 Remedy for unlawful detention by a transient occupant of residential property; recovery of transient occupant's personal belongings.-

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

(a) Factors that establish that a person is a transient

Amendment No.

17 occupant include, but are not limited to:

18 1. The person does not have an ownership interest,  
19 financial interest, or leasehold interest in the property  
20 entitling him or her to occupancy of the property.

21 2. The person does not have any property utility  
22 subscriptions.

23 3. The person cannot produce documentation,  
24 correspondence, or identification cards sent or issued by a  
25 government agency, including, but not limited to, the Department  
26 of Highway Safety and Motor Vehicles or the supervisor of  
27 elections, which show that the person used the property address  
28 as an address of record with the agency within the previous 12  
29 months ~~does not use the property address as an address of record~~  
30 ~~with any governmental agency, including, but not limited to, the~~  
31 ~~Department of Highway Safety and Motor Vehicles or the~~  
32 ~~supervisor of elections.~~

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

34 ~~4.5.~~ The person pays minimal or no rent for his or her  
35 stay at the property.

36 ~~5.6.~~ The person does not have a designated space of his or  
37 her own, such as a room, at the property.

38 ~~6.7.~~ The person has minimal, if any, personal belongings  
39 at the property.

40 ~~7.8.~~ The person has an apparent permanent residence  
41 elsewhere.

182057 - h0385-strike.docx

Published On: 1/24/2018 7:42:06 PM

Amendment No.

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

45 (2) A transient occupant unlawfully detains a residential  
46 property if the transient occupant remains in occupancy of the  
47 residential property after the party entitled to possession of  
48 the property has directed the transient occupant to leave. A  
49 transient occupancy terminates when a transient occupant begins  
50 to reside elsewhere, surrenders the key to the dwelling, or  
51 leaves the dwelling when directed by the party entitled to  
52 possession, a law enforcement officer in receipt of an affidavit  
53 under subsection (3), or a court. A transient occupancy is not  
54 extended by the presence of personal belongings of a former  
55 transient occupant.

56 (3) Any law enforcement officer may, upon receipt of a  
57 sworn affidavit of the party entitled to possession that a  
58 person who is a transient occupant is unlawfully detaining  
59 residential property, direct a transient occupant to surrender  
60 possession of residential property. The sworn affidavit must set  
61 forth the facts, including the applicable factors listed in  
62 paragraph (1) (a), which establish that a transient occupant is  
63 unlawfully detaining residential property.

64 (a) A person who fails to comply with the direction of the  
65 law enforcement officer to surrender possession or occupancy  
66 violates s. 810.08. In any prosecution of a violation of s.

182057 - h0385-strike.docx

Published On: 1/24/2018 7:42:06 PM

Amendment No.

67 810.08 related to this section, whether the defendant was  
68 properly classified as a transient occupant is not an element of  
69 the offense, the state is not required to prove that the  
70 defendant was in fact a transient occupant, and the defendant's  
71 status as a permanent resident is not an affirmative defense.

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

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

91 (5) The party entitled to possession of a dwelling shall

182057 - h0385-strike.docx

Published On: 1/24/2018 7:42:06 PM

Amendment No.

92 allow a former transient occupant to recover his or her personal  
93 belongings at reasonable times and under reasonable conditions.

94 (a) Unless otherwise agreed to, a reasonable time for the  
95 recovery of the former transient occupant's personal belongings  
96 generally means a time period within 10 days after termination  
97 of the transient occupancy, when the party entitled to  
98 possession of the dwelling or a trusted third party can be  
99 present at the dwelling to supervise the recovery of the  
100 belongings.

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

113 1. Intentional damage to the dwelling, to property owned  
114 by the party entitled to possession of the dwelling, or to  
115 property owned by another occupant of the dwelling;

116 2. Physical or verbal abuse directed at the party entitled

182057 - h0385-strike.docx

Published On: 1/24/2018 7:42:06 PM

Amendment No.

117 to possession of the dwelling or another occupant of the  
118 dwelling; or

119 3. Theft of property belonging to the party entitled to  
120 possession of the dwelling or property of another occupant of  
121 the dwelling.

122 (c) The person entitled to possession of a dwelling may  
123 presume that the former transient occupant has abandoned  
124 personal belongings left at the dwelling if the former transient  
125 occupant does not seek to recover them within a reasonable time  
126 after the transient occupant surrenders occupancy of the  
127 dwelling. The time period to recover personal belongings may be  
128 extended due to the unavailability of the party entitled to  
129 possession of the dwelling to supervise the recovery of the  
130 personal belongings. Circumstances that may shorten the time  
131 include, but are not limited to, the poor condition of or the  
132 perishable or hazardous nature of the personal belongings, the  
133 intent of the former transient occupant to abandon or discard  
134 the belongings, or the significant impairment of the use of the  
135 dwelling by the storage of the former transient occupant's  
136 personal belongings.

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

182057 - h0385-strike.docx

Published On: 1/24/2018 7:42:06 PM

Amendment No.

142 and costs.

143 (6) This section shall be construed in recognition of the  
144 right to exclude others as one of the most essential components  
145 of property rights.

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

147

148 -----

149 **T I T L E A M E N D M E N T**

150 Remove everything before the enacting clause and insert:  
151 An act relating to transient occupants of residential property;  
152 amending s. 82.045, F.S.; revising criteria for determination of  
153 whether a person is a transient occupant; specifying when a  
154 transient occupancy ends; providing that a party entitled to  
155 possession of a dwelling must allow a former transient occupant  
156 to recover his or her personal belongings at a reasonable time  
157 under reasonable conditions; specifying that additional  
158 conditions may be imposed in certain circumstances; creating a  
159 presumption that personal belongings are abandoned in certain  
160 circumstances; authorizing civil actions for recovery of  
161 personal property by former transient occupants; providing  
162 construction; providing an effective date.