

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 385 Transient Occupants of Residential Property
SPONSOR(S): Judiciary Committee; Civil Justice & Claims Subcommittee; Toledo
TIED BILLS: None **IDEN./SIM. BILLS:** SB 566

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	10 Y, 0 N, As CS	Tuszynski	Bond
2) Agriculture & Property Rights Subcommittee	12 Y, 0 N	Thompson	Smith
3) Judiciary Committee	17 Y, 0 N, As CS	Tuszynski	Poche

SUMMARY ANALYSIS

A transient occupant is a person temporarily occupying a residential property as an invited guest. Where landlord-tenant law requires a court order to evict, current law allows a person entitled to possession of a dwelling to ask law enforcement to summarily direct a transient occupant to leave a property. The person entitled to possession must provide an affidavit that shows the other person to be a transient occupant. Where the law enforcement agency does not find the occupant to qualify as a transient occupant, the person may file an expedited lawsuit for removal.

CS/CS/HB 365 amends laws regarding transient occupants to:

- Alter the criteria establishing whether a person is considered a transient occupant by limiting the period that may be considered for address of record with a government agency to the previous 12 months and removing consideration of whether the transient has mail delivered to the residence;
- Specify that a transient occupancy ends when the person resides elsewhere, surrenders the key, or leaves the property;
- Require the person entitled to possession to allow a former transient occupant a reasonable opportunity to recover his or her personal belongings;
- Generally require the former transient to recover personal property within 5 days; and
- Create a civil cause of action against the person entitled to possession for unreasonably withholding access to the personal belongings of the former transient occupant, with prevailing party attorney fees.

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

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Transient Occupants of Residential Property

Florida residential property owners and tenants commonly allow relatives, friends, or acquaintances to temporarily reside in their home as guests without a formal rental agreement. These occupancies naturally terminate 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. Historically, the property owner or rightful resident would need to seek to have the unwanted guest criminally sanctioned for trespass¹ or file a civil action against the unwanted guest for unlawful detainer,² which takes time and requires payment of significant costs.³

In 2015, the Legislature created a remedy for unlawful detention by a transient occupant of residential property.⁴ Section 82.045, F.S., allows law enforcement to immediately direct an unwanted guest to surrender possession of the property upon receipt of a sworn affidavit from the owner or rightful resident which establishes that the unwanted guest is a “transient occupant.” Current law details eight factors to consider when determining whether a person is a transient occupant. The person:

1. Does not have an ownership interest, financial interest, or leasehold interest in the property entitling him or her to occupancy of the property;
2. Does not have any property utility subscriptions;
3. Does not use the property address as an address of record with any governmental agency, including, but not limited to, the Department of Highway Safety and Motor Vehicles or the supervisor of elections;
4. Does not receive mail at the property;
5. Pays minimal or no rent for his or her stay at the property;
6. Does not have a designated space of his or her own, such as a room, at the property;
7. Has minimal, if any, personal belongings at the property; and
8. Has an apparent permanent residence elsewhere.

Where a transient occupant refuses to leave upon request of a person entitled to possession of the dwelling, the person entitled to possession may file an affidavit setting forth why the occupant is a transient occupant subject to immediate removal. If the law enforcement officer agrees, the officer will direct the transient occupant to immediately leave or face criminal trespass charges. If the law enforcement officer does not agree, the person entitled to possession of the property may file a summary action for unlawful detainer.

¹ S. 810.08(1), 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.

² S. 82.04(1), F.S.

³ Filing fees for the civil action - \$180 [s. 34.041(1)(a)7, F.S.]; Service charge for issuance of each summons - \$10 [ss. 28.241(1)(d) and 34.041(1)(d), F.S.]; Service of each summons by the Sheriff - \$40 [s. 30.231(1)(a), F.S.]; Service and execution of the writ of possession by Sheriff - \$90 [s. 30.231, F.S.]; Fees charged by the Sheriff to be present and keep the peace in an action for possession - Varies [s. 30.231(2), F.S.]; Attorney Fees - Varies.

⁴ Ch. 2015-89, Laws of Fla.

Effect of Proposed Changes

Status as a Transient Occupant

CS/CS/HB 385 modifies the factors that establish whether a person is considered a transient occupant. The factor looking at whether the person has used the property address as an address of record with a governmental agency is limited to use within the past 12 months and requires the alleged transient occupant to produce documents showing the use of the property as an address of record. The bill also deletes the provision related to receiving mail at the property.

Termination of Transient Occupancy

Current law does not define or establish when a transient occupancy is terminated. The bill defines termination of a transient occupancy as when the transient occupant:

- Begins to reside elsewhere;
- Surrenders the key to the dwelling; or
- Leaves the dwelling as directed by the party entitled to possession of the dwelling, a law enforcement officer in possession of an affidavit from the property owner establishing a transient occupancy, or a court.

Termination of the transient occupancy defines the point at which the transient occupant's belongings are at issue. The presence of a transient occupant's personal belongings does not extend a transient occupancy.

Recovery of Personal Property

Upon termination, current law regarding transient occupancy does not say what to do with belongings left behind.

In general, the bill requires the party entitled to possession of the dwelling to allow a former transient occupant to recover his or her personal belongings at a reasonable time and under reasonable conditions. Reasonable time and conditions are to include a convenient time when the party entitled to possession or trusted third party can be present. Additional conditions, such as the presence of a law enforcement officer during recovery, the use of a registered mover, or the use of a trusted third party are not considered unreasonable if the party entitled to possession of a dwelling reasonably believes the former transient occupant has a history of violence, drug or alcohol abuse, or has engaged in misconduct. Misconduct for the purposes of the bill includes, but is not limited to:

- Intentional damage to the dwelling or property of the party entitled to possession of a dwelling or another occupant of the dwelling;
- Physical or verbal abuse directed at the party entitled to possession of a dwelling or another occupant of the dwelling; or
- Theft of property of the party entitled to possession of a dwelling or another occupant of the dwelling.

The bill allows a person entitled to possession of a dwelling to presume personal belongings left at the dwelling are abandoned if the former transient occupant has not recovered them within a reasonable time after surrendering occupancy of the dwelling. The bill defines a reasonable time to be within 10 days after termination of the transient occupancy, unless otherwise agreed to by the parties. However, this may be longer or shorter depending on specific circumstances, such as the unavailability of the party entitled to possession of the dwelling to be present within 10 days. Circumstances that may shorten the 10-day period include:

- Poor condition or perishable or hazardous nature of the personal belongings;
- Intent of the former transient occupant to abandon or discard the personal belongings; or
- Significant impairment of the use of the dwelling by the storage of the personal belongings.

The bill creates a civil cause of action to allow the former transient occupant to sue the person entitled to possession of the dwelling for unreasonably withholding access to the personal belongings of the former transient occupant. The prevailing party is entitled to an award of attorney fees and costs.

Other

The bill retitles s. 82.045, F.S., "Remedy for unlawful detention by a transient occupant of residential property; recovery of transient occupant's personal belongings."

The bill adds that the law on transient occupants must "be construed to recognize that the right to exclude others is one of the most essential property rights."

The bill is effective July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 82.045, F.S., relating to remedy for unlawful detention by a transient occupant of residential property.

Section 2: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 6, 2017, the Civil Justice & Claims Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Applied the 12-month limit on the time period to be considered for an address of record with a government agency to apply to all government agencies, not just the supervisor of elections; and
- Specified that a transient occupancy ends when a person leaves the dwelling if directed by the party entitled to possession, a law enforcement officer, or a court, removing the requirement that the transient occupant must agree to leave.

On January 25, 2018, the Judiciary Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Retitled s. 82.045, F.S., "Remedy for unlawful detention by a transient occupant of residential property; recovery of transient occupant's personal belongings."
- Required an alleged transient occupant to produce documents showing use of the property as an address of record within the past 12 months.
- Required a law enforcement officer who directs a transient occupant to leave a property to have an affidavit from the property owner establishing the transient occupancy.
- Extended the reasonable time for a transient occupancy to recover personal belongings to 10 days from 5 days.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.