

1                                   A bill to be entitled  
 2           An act relating to transient occupants of residential  
 3           property; amending s. 82.045, F.S.; revising criteria  
 4           for determination of whether a person is a transient  
 5           occupant; specifying when a transient occupancy ends;  
 6           providing that a party entitled to possession of a  
 7           dwelling must allow a former transient occupant to  
 8           recover his or her personal belongings at a reasonable  
 9           time under reasonable conditions; specifying that  
 10          additional conditions may be imposed in certain  
 11          circumstances; creating a presumption that personal  
 12          belongings are abandoned in certain circumstances;  
 13          authorizing civil actions for recovery of personal  
 14          property by former transient occupants; providing  
 15          construction; providing an effective date.

16  
 17 Be It Enacted by the Legislature of the State of Florida:

18  
 19           Section 1. Section 82.045, Florida Statutes, is amended to  
 20           read:

21           82.045 Remedy for unlawful detention by a transient  
 22           occupant of residential property; recovery of transient  
 23           occupant's property.—

24           (1) As used in this section, the term "transient occupant"  
 25           means a person whose residency in a dwelling intended for

26 residential use has occurred for a brief length of time, is not  
27 pursuant to a lease, and whose occupancy was intended as  
28 transient in nature.

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

31 1. The person does not have an ownership interest,  
32 financial interest, or leasehold interest in the property  
33 entitling him or her to occupancy of the property.

34 2. The person does not have any property utility  
35 subscriptions.

36 3. The person does not use the property address as an  
37 address of record with any governmental agency, including, but  
38 not limited to, the Department of Highway Safety and Motor  
39 Vehicles or the supervisor of elections within the past 12  
40 months.

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

42 ~~4.5.~~ The person pays minimal or no rent for his or her  
43 stay at the property.

44 ~~5.6.~~ The person does not have a designated space of his or  
45 her own, such as a room, at the property.

46 ~~6.7.~~ The person has minimal, if any, personal belongings  
47 at the property.

48 ~~7.8.~~ The person has an apparent permanent residence  
49 elsewhere.

50 (b) Minor contributions made for the purchase of household

51 goods, or minor contributions towards other household expenses,  
52 do not establish residency.

53 (2) A transient occupant unlawfully detains a residential  
54 property if the transient occupant remains in occupancy of the  
55 residential property after the party entitled to possession of  
56 the property has directed the transient occupant to leave. A  
57 transient occupancy terminates when a transient occupant begins  
58 to reside elsewhere, surrenders the key to the dwelling, or  
59 agrees to leave the dwelling when directed by a law enforcement  
60 officer, the party entitled to possession, or a court. A  
61 transient occupancy is not extended by the presence of personal  
62 belongings of a former transient occupant.

63 (3) Any law enforcement officer may, upon receipt of a  
64 sworn affidavit of the party entitled to possession that a  
65 person who is a transient occupant is unlawfully detaining  
66 residential property, direct a transient occupant to surrender  
67 possession of residential property. The sworn affidavit must set  
68 forth the facts, including the applicable factors listed in  
69 paragraph (1)(a), which establish that a transient occupant is  
70 unlawfully detaining residential property.

71 (a) A person who fails to comply with the direction of the  
72 law enforcement officer to surrender possession or occupancy  
73 violates s. 810.08. In any prosecution of a violation of s.  
74 810.08 related to this section, whether the defendant was  
75 properly classified as a transient occupant is not an element of

76 | the offense, the state is not required to prove that the  
77 | defendant was in fact a transient occupant, and the defendant's  
78 | status as a permanent resident is not an affirmative defense.

79 |       (b) A person wrongfully removed pursuant to this  
80 | subsection has a cause of action for wrongful removal against  
81 | the person who requested the removal, and may recover injunctive  
82 | relief and compensatory damages. However, a wrongfully removed  
83 | person does not have a cause of action against the law  
84 | enforcement officer or the agency employing the law enforcement  
85 | officer absent a showing of bad faith by the law enforcement  
86 | officer.

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

98 |       (5) The party entitled to possession of a dwelling must  
99 | allow a former transient occupant to recover his or her personal  
100 | belongings at a reasonable time and under reasonable conditions.

101        (a) A reasonable time for the recovery of the former  
102 transient occupant's personal belongings includes a convenient  
103 time when the party entitled to possession of the dwelling or a  
104 trusted third party can be present at the dwelling to supervise  
105 the recovery of the belongings.

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

118            1. Intentional damage to the dwelling, property owned by  
119 the party entitled to possession of the dwelling, or property  
120 owned by another occupant of the dwelling;

121            2. Physical or verbal abuse directed at the party entitled  
122 to possession of the dwelling or directed at another occupant of  
123 the dwelling; or

124            3. Theft of property belonging to the party entitled to  
125 possession of the dwelling or property of another occupant of

126 the dwelling.

127 (c) The person entitled to possession of a dwelling may  
128 presume that the former transient occupant has abandoned  
129 personal belongings left at the dwelling if the former transient  
130 occupant does not seek to recover them within a reasonable time  
131 after the transient occupant surrenders occupancy of the  
132 dwelling. A reasonable time to recover personal belongings is  
133 generally at least 5 days after the termination of the transient  
134 occupancy, but may be longer or shorter depending on the  
135 specific circumstances. Circumstances that may extend the time  
136 period include an agreement to hold the property for longer than  
137 5 days or the unavailability of the party entitled to possession  
138 of the dwelling to supervise the recovery of the personal  
139 belongings. Circumstances that may shorten the time period  
140 include, but are not limited to, the poor condition or  
141 perishable or hazardous nature of the personal belongings, the  
142 intent of the former transient occupant to abandon or discard  
143 the belongings, or the significant impairment of the use of the  
144 dwelling by the storage of the former transient occupant's  
145 personal belongings.

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

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151 | and costs.

152 |       (6) This section shall be construed to recognize that the  
153 | right to exclude others is one of the most essential property  
154 | rights.

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