



260152

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/10/2018	.	
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The Committee on Judiciary (Young) recommended the following:

Senate Amendment (with title amendment)

Delete lines 32 - 159
and insert:
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.



260152

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

14 1. The person does not have an ownership interest,
15 financial interest, or leasehold interest in the property
16 entitling him or her to occupancy of the property.

17 2. The person does not have any property utility
18 subscriptions.

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

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

30 ~~4.5.~~ The person pays minimal or no rent for his or her stay
31 at the property.

32 ~~5.6.~~ The person does not have a designated space of his or
33 her own, such as a room, at the property.

34 ~~6.7.~~ The person has minimal, if any, personal belongings at
35 the property.

36 ~~7.8.~~ The person has an apparent permanent residence
37 elsewhere.

38 (b) Minor contributions made for the purchase of household
39 goods, or minor contributions towards other household expenses,
40 do not establish residency.



260152

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

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

60 (a) A person who fails to comply with the direction of the
61 law enforcement officer to surrender possession or occupancy
62 violates s. 810.08. In any prosecution of a violation of s.
63 810.08 related to this section, whether the defendant was
64 properly classified as a transient occupant is not an element of
65 the offense, the state is not required to prove that the
66 defendant was in fact a transient occupant, and the defendant's
67 status as a permanent resident is not an affirmative defense.

68 (b) A person wrongfully removed pursuant to this subsection
69 has a cause of action for wrongful removal against the person



260152

70 who requested the removal, and may recover injunctive relief and
71 compensatory damages. However, a wrongfully removed person does
72 not have a cause of action against the law enforcement officer
73 or the agency employing the law enforcement officer absent a
74 showing of bad faith by the law enforcement officer.

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

86 (5) The party entitled to possession of a dwelling shall
87 allow a former transient occupant to recover his or her personal
88 belongings at reasonable times and under reasonable conditions.

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

96 (b) If the party entitled to possession of the dwelling
97 reasonably believes that the former transient occupant has
98 engaged in misconduct or has a history of violence or drug or



260152

99 alcohol abuse, it is reasonable for the party entitled to
100 possession of the dwelling to impose additional conditions on
101 access to the dwelling or the personal belongings. These
102 conditions may include, but are not limited to, the presence of
103 a law enforcement officer, the use of a mover registered with
104 the Department of Agriculture and Consumer Services, or the use
105 of a trusted third party to recover the personal belongings. For
106 purposes of this paragraph, misconduct includes, but is not
107 limited to:

108 1. Intentional damage to the dwelling, to property owned by
109 the party entitled to possession of the dwelling, or to property
110 owned by another occupant of the dwelling;

111 2. Physical or verbal abuse directed at the party entitled
112 to possession of the dwelling or another occupant of the
113 dwelling; or

114 3. Theft of property belonging to the party entitled to
115 possession of the dwelling or property of another occupant of
116 the dwelling.

117 (c) The person entitled to possession of a dwelling may
118 presume that the former transient occupant has abandoned
119 personal belongings left at the dwelling if the former transient
120 occupant does not seek to recover them within a reasonable time
121 after the transient occupant surrenders occupancy of the
122 dwelling. The time period to recover personal belongings may be
123 extended due to the unavailability of the party entitled to
124 possession of the dwelling to supervise the recovery of the
125 personal belongings. Circumstances that may shorten the time
126 include, but are not limited to, the poor condition of or the
127 perishable or hazardous nature of the personal belongings, the



260152

128 intent of the former transient occupant to abandon or discard
129 the belongings, or the significant impairment of the use of the
130 dwelling by the storage of the former transient occupant's
131 personal belongings.

132 (d) If the person entitled to possession of the dwelling
133 unreasonably withholds access to a former transient occupant's
134 personal belongings, the former transient occupant may bring a
135 civil action for damages or the recovery of the property. The
136 court shall award the prevailing party reasonable attorney fees
137 and costs.

138 (6) This section shall be construed in recognition of the
139 right

140
141 ===== T I T L E A M E N D M E N T =====

142 And the title is amended as follows:

143 Delete lines 11 - 20

144 and insert:

145 recover personal belongings at reasonable times and
146 under reasonable conditions; specifying a reasonable
147 time to recover personal belongings; authorizing a
148 party entitled to possession of the dwelling, under
149 certain circumstances, to impose additional conditions
150 on access to the dwelling or personal belongings;
151 providing a presumption of when a former transient
152 occupant has abandoned his or her personal belongings;
153 providing circumstances in which the period for
154 recovering personal belongings may be extended or
155 shortened; authorizing a former transient