

By Senator Young

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1 A bill to be entitled
2 An act relating to unlawful detention by a transient
3 occupant; amending s. 82.045, F.S.; revising factors
4 that establish a person as a transient occupant of
5 residential property; specifying circumstances when a
6 transient occupancy terminates; providing that a
7 transient occupancy is not extended by the presence of
8 personal belongings of a former transient occupant;
9 requiring the party entitled to possession of a
10 dwelling to allow a former transient occupant to
11 recover personal belongings at certain reasonable
12 times and under reasonable conditions; authorizing a
13 party entitled to possession of the dwelling, under
14 certain circumstances, to impose additional conditions
15 on access to the dwelling or personal belongings;
16 providing a presumption of when a former transient
17 occupant has abandoned his or her personal belongings;
18 specifying a reasonable time to recover personal
19 belongings and circumstances that may extend or
20 shorten the time; authorizing a former transient
21 occupant, under certain circumstances, to bring a
22 civil action for damages or recovery of personal
23 belongings; requiring a court to award the prevailing
24 party reasonable attorney fees and costs; providing
25 construction; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

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29 Section 1. Section 82.045, Florida Statutes, is amended to

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30 read:

31 82.045 Remedy for unlawful detention by a transient
32 occupant of residential property.-

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

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

40 1. The person does not have an ownership interest,
41 financial interest, or leasehold interest in the property
42 entitling him or her to occupancy of the property.

43 2. The person does not have any property utility
44 subscriptions.

45 3. Within the previous 12 months, the person did ~~does~~ not
46 use the property address as an address of record with any
47 governmental agency, including, but not limited to, the
48 Department of Highway Safety and Motor Vehicles or the
49 supervisor of elections.

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

51 ~~4.5.~~ The person pays minimal or no rent for his or her stay
52 at the property.

53 ~~5.6.~~ The person does not have a designated space of his or
54 her own, such as a room, at the property.

55 ~~6.7.~~ The person has minimal, if any, personal belongings at
56 the property.

57 ~~7.8.~~ The person has an apparent permanent residence
58 elsewhere.

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59 (b) Minor contributions made for the purchase of household
60 goods, or minor contributions towards other household expenses,
61 do not establish residency.

62 (2) A transient occupant unlawfully detains a residential
63 property if the transient occupant remains in occupancy of the
64 residential property after the party entitled to possession of
65 the property has directed the transient occupant to leave. A
66 transient occupancy terminates when a transient occupant begins
67 to reside elsewhere, surrenders the key to the dwelling, or
68 agrees to leave the dwelling when directed by a law enforcement
69 officer, the party entitled to possession, or a court. A
70 transient occupancy is not extended by the presence of personal
71 belongings of a former transient occupant.

72 (3) Any law enforcement officer may, upon receipt of a
73 sworn affidavit of the party entitled to possession that a
74 person who is a transient occupant is unlawfully detaining
75 residential property, direct a transient occupant to surrender
76 possession of residential property. The sworn affidavit must set
77 forth the facts, including the applicable factors listed in
78 paragraph (1)(a), which establish that a transient occupant is
79 unlawfully detaining residential property.

80 (a) A person who fails to comply with the direction of the
81 law enforcement officer to surrender possession or occupancy
82 violates s. 810.08. In any prosecution of a violation of s.
83 810.08 related to this section, whether the defendant was
84 properly classified as a transient occupant is not an element of
85 the offense, the state is not required to prove that the
86 defendant was in fact a transient occupant, and the defendant's
87 status as a permanent resident is not an affirmative defense.

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88 (b) A person wrongfully removed pursuant to this subsection
89 has a cause of action for wrongful removal against the person
90 who requested the removal, and may recover injunctive relief and
91 compensatory damages. However, a wrongfully removed person does
92 not have a cause of action against the law enforcement officer
93 or the agency employing the law enforcement officer absent a
94 showing of bad faith by the law enforcement officer.

95 (4) A party entitled to possession of a dwelling has a
96 cause of action for unlawful detainer against a transient
97 occupant pursuant to s. 82.04. The party entitled to possession
98 is not required to notify the transient occupant before filing
99 the action. If the court finds that the defendant is not a
100 transient occupant but is instead a tenant of residential
101 property governed by part II of chapter 83, the court may not
102 dismiss the action without first allowing the plaintiff to give
103 the transient occupant the notice required by that part and to
104 thereafter amend the complaint to pursue eviction under that
105 part.

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

109 (a) A reasonable time for the recovery of the former
110 transient occupant's personal belongings includes a convenient
111 time when the party entitled to possession of the dwelling or a
112 trusted third party can be present at the dwelling to supervise
113 the recovery of the belongings.

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

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117 alcohol abuse, it is reasonable for the party entitled to
118 possession of the dwelling to impose additional conditions on
119 access to the dwelling or the personal belongings. These
120 conditions may include, but are not limited to, the presence of
121 a law enforcement officer, the use of a mover registered with
122 the Department of Agriculture and Consumer Services, or the use
123 of a trusted third party to recover the personal belongings. For
124 purposes of this paragraph, misconduct includes, but is not
125 limited to:

126 1. Intentional damage to the dwelling, to property owned by
127 the party entitled to possession of the dwelling, or to property
128 owned by another occupant of the dwelling;

129 2. Physical or verbal abuse directed at the party entitled
130 to possession of the dwelling or another occupant of the
131 dwelling; or

132 3. Theft of property belonging to the party entitled to
133 possession of the dwelling or property of another occupant of
134 the dwelling.

135 (c) The person entitled to possession of a dwelling may
136 presume that the former transient occupant has abandoned
137 personal belongings left at the dwelling if the former transient
138 occupant does not seek to recover them within a reasonable time
139 after the transient occupant surrenders occupancy of the
140 dwelling. A reasonable time to recover personal belongings is
141 deemed to be 5 days after the termination of the transient
142 occupancy, but may be longer or shorter depending on the
143 specific circumstances. Circumstances that may extend the time
144 include an agreement to hold the property for longer than 5 days
145 or the unavailability of the party entitled to possession of the

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146 dwelling to supervise the recovery of the personal belongings.
147 Circumstances that may shorten the time include, but are not
148 limited to, the poor condition of or the perishable or hazardous
149 nature of the personal belongings, the intent of the former
150 transient occupant to abandon or discard the belongings, or the
151 significant impairment of the use of the dwelling by the storage
152 of the former transient occupant's personal belongings.

153 (d) If the person entitled to possession of the dwelling
154 unreasonably withholds access to a former transient occupant's
155 personal belongings, the former transient occupant may bring a
156 civil action for damages or the recovery of the property. The
157 court shall award the prevailing party reasonable attorney fees
158 and costs.

159 (6) This section is construed in recognition of the right
160 to exclude others as one of the most essential components of
161 property rights.

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