

PCS for HB 305

ORIGINAL

2015

1 A bill to be entitled

2 An act relating to unlawful detention by a transient
3 occupant; creating s. 82.045, F.S.; defining the term
4 "transient occupant"; providing factors that establish
5 a transient occupancy; providing for removal of a
6 transient occupant by a law enforcement officer;
7 providing a cause of action for wrongful removal;
8 limiting actions for wrongful removal; providing a
9 civil action for removal of a transient occupant;
10 providing an effective date.

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12 Be It Enacted by the Legislature of the State of Florida:

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14 Section 1. Section 82.045, Florida Statutes, is created to
15 read:

16 82.045 Remedy for unlawful detention by a transient
17 occupant of residential property.--

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

23 (a) Factors that establish transient occupancy include, but
24 are not limited to:

25 1. The person does not have ownership or financial interest
26 in the property entitling him or her to occupancy of the

27 property.

28 2. The person does not have any property utility
29 subscriptions.

30 3. The person does not use the property address as an
31 address of record with any governmental agency, including, but
32 not limited to, the Department of Highway Safety and Motor
33 Vehicles or the supervisor of elections.

34 4. The person does not routinely receive mail at the
35 property.

36 5. The person pays minimal or no rent for his or her stay
37 at the property.

38 6. The person does not have a designated space of his or
39 her own, such as a room, at the property.

40 7. The person has minimal, if any, personal belongings at
41 the property.

42 8. The person has an apparent permanent residence
43 elsewhere.

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

47 (2) A transient occupant unlawfully detains a residential
48 property if the transient occupant attempts to retain possession
49 of the residential property after the party entitled to
50 possession of the property has directed the transient occupant
51 to leave.

52 (3) Any law enforcement officer may, upon receipt of a

53 sworn affidavit of the party entitled to possession that a
54 person is a transient occupant unlawfully detaining residential
55 property, direct a transient occupant to surrender possession of
56 residential property. The failure of a person to comply with the
57 direction of the law enforcement officer to surrender possession
58 is a violation of s. 810.08. In any prosecution of a violation
59 of s. 810.08 related to this section, whether the defendant was
60 properly classified as a transient occupant is not an element of
61 the offense, the state shall not have to prove that the
62 defendant was in fact a transient occupant, and the status as a
63 permanent resident is not an affirmative defense. A person
64 wrongfully removed pursuant to this subsection has a cause of
65 action for wrongful removal against the person who requested the
66 removal, and may recover injunctive relief and compensatory
67 damages; however, such person shall not have a cause of action
68 against the law enforcement officer or the agency employing the
69 law enforcement officer absent a showing of bad faith by the law
70 enforcement officer.

71 (4) A party entitled to possession has a cause of action
72 for unlawful detainer and removal of a transient occupant. The
73 plaintiff is entitled to the summary procedure of s. 51.011 to
74 remove a transient occupant. The party entitled to possession
75 shall not be required to provide any form of notice to the
76 transient occupant prior to filing the action. If the court
77 finds that the defendant is a transient occupant the court shall
78 order the clerk to issue a writ of possession placing the

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79 plaintiff in possession of the premises, and may award
80 compensatory damages. If the court finds the defendant is not a
81 transient occupant but is instead a tenant of residential
82 property entitled to the protections of part II of ch. 83, the
83 court may not dismiss the action without first allowing the
84 plaintiff to give notice required by that part and to thereafter
85 amend the complaint to pursue eviction under that part.
86 Jurisdiction of an action pursuant to this subsection shall be
87 in the county court. The filing fee for an action pursuant to
88 this subsection shall be the fee for removal of a tenant
89 pursuant to s. 34.041(1)(a)7.

90 Section 2. This act shall take effect July 1, 2015.