

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 that a person is a transient
24 occupant include, but 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 who is a transient occupant is unlawfully detaining
55 residential property, direct a transient occupant to surrender
56 possession of residential property. A person who fails to comply
57 with the direction of the law enforcement officer to surrender
58 possession violates 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 is not required 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, a wrongfully removed does not have a cause of
68 action against the law enforcement officer or the agency
69 employing the law enforcement officer absent a showing of bad
70 faith by the law enforcement officer.

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

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

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