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CS/CS/HB 305

2015 Legislature

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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 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 an ownership interest,
26 financial interest, or leasehold interest in the property

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27 | entitling him or her to occupancy of the 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 receive mail at the property.

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

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

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

41 | 8. The person has an apparent permanent residence
42 | elsewhere.

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

46 | (2) A transient occupant unlawfully detains a residential
47 | property if the transient occupant remains in occupancy of the
48 | residential property after the party entitled to possession of
49 | the property has directed the transient occupant to leave.

50 | (3) Any law enforcement officer may, upon receipt of a
51 | sworn affidavit of the party entitled to possession that a
52 | person who is a transient occupant is unlawfully detaining

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53 residential property, direct a transient occupant to surrender
54 possession of residential property. The sworn affidavit must set
55 forth the facts, including the applicable factors listed in
56 paragraph (1)(a), which establish that a transient occupant is
57 unlawfully detaining residential property.

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

66 (b) A person wrongfully removed pursuant to this
67 subsection has a cause of action for wrongful removal against
68 the person who requested the removal, and may recover injunctive
69 relief and compensatory damages. However, a wrongfully removed
70 person does not have a cause of action against the law
71 enforcement officer or the agency employing the law enforcement
72 officer absent a showing of bad faith by the law enforcement
73 officer.

74 (4) A party entitled to possession of a dwelling has a
75 cause of action for unlawful detainer against a transient
76 occupant pursuant to s. 82.04. The party entitled to possession
77 is not required to notify the transient occupant before filing
78 the action. If the court finds that the defendant is not a

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79 transient occupant but is instead a tenant of residential
 80 property governed by part II of chapter 83, the court may not
 81 dismiss the action without first allowing the plaintiff to give
 82 the transient occupant the notice required by that part and to
 83 thereafter amend the complaint to pursue eviction under that
 84 part.

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