

## CHAPTER 2015-89

### Committee Substitute for Committee Substitute for House Bill No. 305

An act relating to unlawful detention by a transient occupant; creating s. 82.045, F.S.; defining the term “transient occupant”; providing factors that establish a transient occupancy; providing for removal of a transient occupant by a law enforcement officer; providing a cause of action for wrongful removal; limiting actions for wrongful removal; providing a civil action for removal of a transient occupant; providing an effective date.

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

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

82.045 Remedy for unlawful detention by a transient occupant of residential property.—

(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.

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

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

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

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

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

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

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

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

8. The person has an apparent permanent residence elsewhere.

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

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

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

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

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

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

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

Approved by the Governor June 2, 2015.

Filed in Office Secretary of State June 2, 2015.