

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 305 Unlawful Detention by a Transient Occupant

SPONSOR(S): Judiciary Committee; Civil Justice Subcommittee; Harrison and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 656

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 0 N, As CS	Robinson	Bond
2) Judiciary Committee	17 Y, 1 N, As CS	Robinson	Havlicak

SUMMARY ANALYSIS

Florida residential property owners commonly allow relatives, friends, or acquaintances to temporarily reside in their home as guests. These residencies are often terminated when the guest voluntarily vacates the property at the time agreed or, when the guest is no longer welcome, at the direction of the property owner. However, the process of removing an unwanted guest who refuses to leave can be frustrating and costly for property owners. In the absence of a crime, where a person has established even a temporary residence in residential property, law enforcement frequently will not force the person to surrender possession of the premises without a court order.

The bill authorizes law enforcement officers to direct certain guests to surrender possession of residential property without a court order upon the filing of a sworn affidavit by the person entitled to possession of the property. Failing to surrender possession at the direction of law enforcement constitutes a criminal trespass.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida residential property owners commonly allow relatives, friends, or acquaintances to temporarily reside in their home as guests. These residencies are often terminated when the guest voluntarily vacates the property at the time agreed or, when the guest is no longer welcome, at the direction of the property owner. However, the process of removing an unwanted guest who refuses to leave can be frustrating and costly for property owners. In the absence of a crime, where a person has established a temporary residence in residential property, law enforcement frequently will not force the person to surrender possession of the premises without a court order, even where there are no indicators of the intent to create a permanent residency.¹

A property owner seeking a court order for removal of a guest must file an action for possession in county or civil court. If the owner prevails in the action, the clerk of court will issue a writ of possession to the Sheriff describing the premises and commanding the Sheriff to put the owner in possession of the property.²

Actions for Possession

Property owners possess three separate, yet somewhat overlapping, judicial remedies for removing an unwanted guest from their home.

Eviction

Part II of ch. 83, F.S., the "Florida Residential Landlord and Tenant Act" (FRLATA), governs the relationship between landlords and tenants under a residential lease agreement. A rental agreement includes any written or oral agreement regarding the duration and conditions of a tenant's occupation of a dwelling unit.³ Section 83.57, F.S., provides that a tenancy without a specific term may be terminated upon written notice of either party. The amount of notice required may range from 7 to 60 days.⁴ A landlord may recover possession of a dwelling unit if the tenant does not vacate the premises after the rental agreement is terminated by filing an action for possession.⁵ The FRLATA may apply to situations in which an invited guest made some minor contributions for the purchase of household goods or the payment of household expenses while residing in the property with the consent of the owner if a court decides that such an arrangement is a residential tenancy based on an agreement to pay "rent" in exchange for occupancy. However, if the court determines that possession is not based on residential tenancy (a landlord-tenant relationship), eviction is not the proper remedy and procedures under FRLATA not available.⁶

Unlawful Detainer

An unlawful detainer action can be filed to remove an unwanted guest who occupied residential property with the consent of the owner but who has refused to surrender possession of the property

¹ For instance, a property appraiser considers all of the following factors in making his or her determination as to the intent of a person claiming a homestead exemption to establish a permanent residence: proof of payment of utilities at the property, address of record for purposes of voting and driver licenses, the location where bank statements and checking accounts are registered, and the address listed on a federal tax return. Section 196.015, F.S.

² ss. 66.021(3), 82.091, and 83.62(1), F.S.

³ s. 83.43(7), F.S. ("A rental agreement "means any written ... or oral agreement for a duration of less than 1 year, providing for use and occupancy of premises.")

⁴ s. 83.57, F.S.

⁵ s. 83.59, F.S.

⁶ *Grimm v. Huckabee*, 891 So. 2d 608 (Fla. 1st DCA 2005).

upon the expiration or revocation of the property owner's consent.⁷ The person unlawfully detaining the property is not a tenant and claims no other right or interest in the property. Media reports indicate that residential property owners most commonly file an unlawful detainer action to remove unwanted guests.⁸

Ejectment

An ejectment action can be filed to eject an unwanted guest who once may have had permission to live upon the property, but subsequently claimed that they had a legal right to be there and refused to leave when asked by the property owner. To prevail in an ejectment action, the plaintiff must prove that he or she has good title to the property and has been deprived of its possession by the unwanted guest.⁹

The actions are similar, but a number of their pleading requirements differ, as may the forum in which the property owner is required file the appropriate complaint. An eviction or unlawful detainer action must be filed in county court¹⁰ and is entitled to the summary procedure of s. 51.011, F.S., which provides that a defendant must answer the action within 5 days.¹¹ Thus, an action for possession based upon eviction or unlawful detainer may only take several weeks before entry of a judgment. Ejectment actions, however, are subject to the exclusive original jurisdiction of the circuit court¹² and governed by the Florida Rules of Civil Procedure which results in a longer court process before a property owner may obtain a judgment for possession.

Fees and Costs Associated with an Action for Possession

In addition to the delay caused by the time it takes to obtain and serve a writ of possession pursuant to one of the above actions for possession, property owners must also pay a number of fees and costs, including, but not limited to:

- Filing fees - \$180 (county court)¹³ or \$395 (civil court).¹⁴
- Service charge for issuance of each summons - \$10.¹⁵
- Service of each summons by the Sheriff - \$40.¹⁶
- Service and execution of the writ of possession by Sheriff - \$90.¹⁷
- Fees charged by the Sheriff to stand by and to keep the peace in an action for possession - Varies.¹⁸

⁷ s. 82.04, F.S.

⁸ Marcus Franklin, *Law slanted in favor of unwelcome guests*, St. Petersburg Times, February 17, 2004, http://www.sptimes.com/2004/02/17/Tampabay/Law_slanted_in_favor_.shtml (last visited March 27, 2015); Ben Montgomery, *Hospitality cost couple dearly when guest refused to leave*, Tampa Bay Times, August 25, 2011, <http://www.tampabay.com/features/humaninterest/hospitality-cost-couple-dearly-when-guest-refused-to-leave/1187810> (last visited March 27, 2015).

⁹ s. 66.021, F.S.

¹⁰ s. 34.011(2), F.S.

¹¹ ss. 82.04(1) and 83.59(2), F.S.; Under the summary procedure of s. 51.011, F.S., all defenses of law or fact are required to be contained in the defendant's answer which must be filed within five days after service of process of the plaintiff's complaint. If the answer incorporates a counterclaim, the plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and serve it within five days after service of the counterclaim. No other pleadings are permitted, and all defensive motions, including motions to quash, are heard by the court prior to trial. Postponements are not permitted for discovery, and the procedure also provides for an immediate trial, if requested.

¹² s. 26.012(2)(f), F.S.

¹³ s. 34.041(1)(a)7., F.S.

¹⁴ s. 28.241(1)(a)1.a., F.S.

¹⁵ ss. 28.241(1)(d) and 34.041(1)(d), F.S.

¹⁶ s. 30.231(1)(a), F.S.

¹⁷ s. 30.231, F.S.

¹⁸ s. 30.231(2), F.S.; For example, the Miami-Dade Police Department charges \$57.94 per hour, <http://www.miamidade.gov/police/fees-procedure.asp> (last visited March 27, 2015), the Jacksonville Sheriff's Office charges \$46.00 per hour, <http://www.coj.net/departments/sheriffs-office/civil-process-unit/writ-of-possession-procedures.aspx> (last visited March 27, 2015) and the Sarasota County Sheriff's Office charges \$31 per hour, <http://www.sarasotasheriff.org/services/civil-procedures.html> (last visited March 27, 2015).

- Attorney Fees - Varies.

Effect of Proposed Changes

The bill creates s. 82.045, F.S., to provide an additional remedy in ch. 82, F.S. for the unlawful detention of residential property by "transient occupants."

The bill defines a transient occupant as a person whose residency in residential property has been for a brief period of time, the residency is not pursuant to a lease, and the residency was intended as temporary. Factors that establish whether a person is a transient occupant include:

- The absence of an ownership, financial, or leasehold interest in the property entitling the person to occupancy of the property.
- No utility subscriptions at the property.
- Failure to use the property as the address of record with governmental agencies.
- Failure to receive mail at the property.
- A minimal amount of personal belongings at the property, if any.
- Payment of minimal, if any, rent.
- Lack of a designated personal space, such as a private room, at the property.
- An apparent permanent residence elsewhere.

Similar factors indicate the lack of intent to establish a permanent residence under current law.¹⁹ Minor contributions made for the purchase of household goods, or minor contributions towards other household expenses do not establish residency for the purposes of determining a transient occupancy.

If an unwanted guest refuses to leave residential property at the direction of the person entitled to possession of the property, which may be the owner or lessee of the property, such person may file a sworn affidavit with any law enforcement officer that the unwanted guest is a transient occupant and unlawfully detaining the property. A knowingly false statement in the sworn affidavit constitutes perjury, a first degree misdemeanor.²⁰

Upon receipt of the sworn affidavit the law enforcement officer may direct the guest to surrender possession of the residential property. A person who fails to comply with the direction of the officer violates s. 810.08, F.S., and commits a criminal trespass in a structure or conveyance. In any prosecution of a violation of s. 810.08, F.S, 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. A person who is wrongfully removed by law enforcement as a transient occupant has a civil action for wrongful removal against the person who requested the removal, and, if acting in bad faith, against the law enforcement officer and the agency employing the officer.

The bill also provides that the person entitled to possession of the property may bring an action against the transient occupant for unlawful detainer pursuant to ch. 82, F.S. Additionally, the bill specifies that unlike the notices required under ch. 83, F.S. to a tenant prior to filing an eviction action, a transient occupant is not entitled to any notice of non-compliance prior to the person entitled to possession filing an action for unlawful detainer.

If the court determines the defendant is not a transient occupant but a tenant of residential property governed by part II of ch. 83, F.S., the court may not dismiss the action without first allowing the plaintiff to give the defendant the pre-eviction notices required by that chapter and thereafter amend the complaint to pursue eviction.

B. SECTION DIRECTORY:

¹⁹ See e.g. s. 196.015, F.S.

²⁰ s. 837.012, F.S.

Section 1 creates s. 82.045, F.S., relating to a remedy for unlawful detention by a transient occupant of residential property.

Section 2 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 11, 2015, the Civil Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by:

- Removing the exclusion of transient occupancies in a dwelling unit or premises from the Florida Residential Landlord and Tenant Act, and instead specifying when a transient occupant unlawfully detains residential real property.
- Authorizing law enforcement to direct a transient occupant unlawfully detaining residential real property to surrender possession upon the filing of a sworn affidavit by the person entitled to possession and providing that failure to surrender possession constitutes a criminal trespass.
- Revising the factors that determine whether a person is a transient occupant.
- Creating a civil cause of action for persons wrongfully removed as a transient occupant.
- Specifying that a civil unlawful detainer action applies to the removal of transient occupants unless a court determines that the residency is governed by the FRLATA, in which case the defendant is entitled to the protections of ch. 83, F.S. A court must allow the plaintiff an opportunity to comply with the FRLATA before dismissing the unlawful detainer action.

On March 26, 2015, the Judiciary Committee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Provide that a person with a leasehold interest in property, oral or written, is not a transient occupant.
- Specify the information required in a sworn affidavit to establish that a person is a transient occupant unlawfully detaining real property.
- Clarify that the person entitled to possession of real property may bring an existing civil cause of action for unlawful detainer against a transient occupant.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.