

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: SB 566

INTRODUCER: Senator Young

SUBJECT: Unlawful Detention by a Transient Occupant

DATE: December 1, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Little	McKay	CM	<b>Pre-meeting</b>
2.			JU	
3.			RC	

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**I. Summary:**

SB 566 modifies s. 82.045, F.S., which provides a remedy for the party entitled to possession of a residential property when a transient occupant unlawfully detains the residential property.

The bill:

- Modifies the factors used to determine whether an individual is a transient occupant;
- Establishes when a transient occupancy terminates;
- Requires the party entitled to possession to allow a former transient occupant to recover his or her personal belongings;
- Establishes the reasonable timeframe and conditions by which the former transient occupant must recover his or her personal belongings;
- Allows the party entitled to possession of the dwelling to impose additional conditions on the access to the dwelling or personal belongings under specific circumstances;
- Establishes the reasonable timeframe by which the personal belongings of a formal transient occupant are presumably considered abandoned; and
- Provides that a former transient occupant has the right to bring a civil action for damages or the recovery of the property, against a person entitled to possession that unreasonably withholds access to the personal belongings of the former transient occupant. In such action, the bill directs the court to award the prevailing party reasonable attorney fees and costs.

The bill takes effect on July 1, 2018.

**II. Present Situation:**

Florida law provides causes of action for the removal of unwanted occupants on real property. Chapter 82, F.S., governs forcible entry and unlawful detainer proceedings, ch. 66, F.S., governs

ejection proceedings, and The Florida Residential Landlord and Tenant Act (act)<sup>1</sup> governs residential tenancies and eviction proceedings when there is a dispute between a landlord and a tenant regarding the rental agreement.

Unlawful detainer actions are based on the premise that no individual who has lawfully entered the property of another may continue to occupy the property without the consent of the party entitled to possession.<sup>2</sup>

### **Unlawful Detention by a Transient Occupant of a Residential Property**

#### ***Transient Occupant***

A transient occupant is an individual whose residency has occurred for a brief length of time, is not pursuant to a lease, and whose occupancy was intended as transient in nature.<sup>3</sup> In addition, an individual may be a transient occupant if the person:

- Does not have ownership, financial, or leasehold interest in the property that entitles occupancy of the property;
- Does not have property utility subscriptions;
- Does not use the property address as an address of record with any governmental agency;<sup>4</sup>
- Does not receive mail at the property;
- Pays minimal or no rent for his or her stay at the property;
- Does not have a designated space of his or her own, such as a room, at the property;
- Has minimal, if any, personal belongings at the property; or
- Has an apparent permanent residence elsewhere.<sup>5</sup>

#### ***Unlawful Detention***

In Florida, an unlawful detention of a residential property occurs when a transient occupant remains in occupancy of the residential property after the party entitled to possession has directed the transient occupant to leave.<sup>6</sup>

To request the assistance of law enforcement officers in removing the transient occupant, the rightful possessor must provide a sworn affidavit asserting that a transient occupant is unlawfully detaining the residential property. The affidavit must set forth any relevant facts that establish the unwanted occupant is a transient occupant, including any applicable factors listed in s. 82.045(1)(a), F.S. Upon receipt of the sworn affidavit by the party entitled to possession, a law enforcement officer is authorized to direct the transient occupant to surrender possession of the residential property.<sup>7</sup>

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<sup>1</sup> Chapter 83, F.S.

<sup>2</sup> *See generally* ch. 82, F.S.

<sup>3</sup> Section 82.045(1), F.S.

<sup>4</sup> The Department of Highway Safety and Motor Vehicles and the supervisor of elections are listed as agencies included in the consideration of this factor. *See* s. 82.045(a)3., F.S.

<sup>5</sup> Section 82.045(1)(a), F.S.

<sup>6</sup> Section 82.045(2), F.S.

<sup>7</sup> Section 82.045(3), F.S.

### ***Unlawful Detainer Action***

Within the 3 years following an unlawful detention, the rightful possessor is entitled to a cause of action against the transient occupant under s. 82.04, F.S.<sup>8</sup> An action for unlawful detainer involves no question of title. Instead, unlawful detainer is an expeditious remedy in which the main issue for judicial determination is the right to immediate possession<sup>9</sup> and related damages.<sup>10</sup>

Unlawful detainer actions are resolved through summary procedure under s. 51.011, F.S.,<sup>11</sup> for expedited review by the court.<sup>12</sup> To establish an unlawful detention, the plaintiff must allege that:

- He or she was in possession of the property at one time;
- The plaintiff was deprived rightful possession of the property by the defendant;
- The defendant withheld possession from the plaintiff without consent; and
- The action has been filed within the 3-year statute of limitation on unlawful detainer actions.<sup>13</sup>

Within 5 days after service of process, the defendant must file an answer to the unlawful detainer complaint. If the defendant's answer incorporates a counterclaim, the plaintiff is required to serve any answer to the counterclaim within 5 days.<sup>14</sup>

If the plaintiff prevails, the court must enter judgment that the plaintiff is entitled to recover possession of the property described in the complaint, along with damages and costs, and a writ of possession without delay and execution.<sup>15</sup> If the defendant prevails, the court must enter judgment against plaintiff by dismissing the complaint and awarding the defendant an award of costs.<sup>16</sup>

### **Additional Causes of Action**

#### ***Criminal Trespass***

A transient occupant who fails to surrender possession of the property at the direction of a law enforcement officer in receipt of a sworn affidavit, pursuant to s. 82.045(3), F.S., is subject to the criminal charge of trespassing.<sup>17</sup> Section 810.08, F.S., establishes the offense of trespass for anyone who:

without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned

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<sup>8</sup> Section 82.045(4), F.S.

<sup>9</sup> *Tollius v. Dutch Ins. Of American, Inc.*, Fla.App. 1969, 218 So.2d 504

<sup>10</sup> Section 82.05, F.S.

<sup>11</sup> A summary proceeding under s. 51.011, F.S., is applicable to actions that specifically provide for this procedure by statute or rule, including actions for forcible entry, unlawful detainer, and certain tenant evictions. Sections 51.011, 82.04, 83.59, and 83.21, F.S.

<sup>12</sup> Section 82.04, F.S.

<sup>13</sup> *Florida Athletic & Health Club v. Royce*, 33 So. 2d 222 (Fla. 1948) and *Floro v. Parker*, 205 So. 2d 363, 367 (Fla. 2d DCA 1967).

<sup>14</sup> Section 51.011(1), F.S.

<sup>15</sup> Section 82.091, F.S.

<sup>16</sup> Section 82.091, F.S.

<sup>17</sup> Section 82.045(3)(a), F.S.

by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance.<sup>18</sup>

Criminal trespassing charges range from a second degree misdemeanor for simple trespass to a first degree misdemeanor if a person is in the structure or conveyance at the time the offender trespassed or attempted to trespass.<sup>19</sup>

### ***Wrongful Removal of an Individual***

A person who is wrongfully removed from a property under s. 82.045, F.S., has a cause of action for wrongful removal against the person that requested the removal, excluding the law enforcement officer and its employing agency.<sup>20</sup> If the court finds that a wrongful removal occurred, the court can award the plaintiff injunctive relief and compensatory damages.<sup>21</sup>

### ***Eviction***

If the court, in examining an action for unlawful detainer, finds the defendant is a tenant rather than a transient occupant, the court must allow the plaintiff to provide adequate notice to the defendant as required under the act and to amend the complaint to pursue an eviction.<sup>22</sup>

Generally, in eviction proceedings, a landlord is required to provide the tenant written notice of any violation of the rental agreement and must allow the tenant an opportunity to correct the problem.<sup>23</sup> If the tenant fails to correct the problem, the landlord may bring an action in the county court where the property is located.<sup>24</sup> The filing fee for the removal of a tenant is \$180.<sup>25</sup> If the court enters a judgment for the landlord, the clerk will issue a writ of possession to the sheriff.<sup>26</sup> After the sheriff provides 24 hours' notice to the tenant, through a posting on the premises, the landlord may remove the tenant's property and change the locks.<sup>27</sup>

### ***Ejectment and Trespass***

A judgment rendered in a cause of action for unlawful detainer does not bar any action of trespass for injury to the property or ejectment between the same parties with respect to the same

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<sup>18</sup> Section 810.08(1), F.S.

<sup>19</sup> Section 810.08(2)(a) and (b), F.S.; A second degree misdemeanor is punishable by a jail term of up to 60 days. A first degree misdemeanor is punishable by a jail term of up to 1 year. A third degree felony is punishable by a term of imprisonment of up to 5 years. Section 775.082 (4)(a) and (b), F.S. Section 775.083(1)(d) and (e), F.S., authorizes fines of up to \$500 for a second degree misdemeanor and up to \$1,000 for a first degree misdemeanor.

<sup>20</sup> However, the wrongfully removed individual may bring an action against a law enforcement officer or its employing agency upon a showing of bad faith. *See* s. 82.045(3)(b), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> Section 82.045(4), F.S.

<sup>23</sup> Section 83.56(2), F.S.; *3618 Lantana Road Partners, LLC v. Palm Beach Pain Management, Inc.*, 57 So. 3d 966, 968 (Fla. 4th DCA 2011).

<sup>24</sup> Section 83.59(2), F.S.

<sup>25</sup> Section 34.041(1)(a)7., F.S.

<sup>26</sup> Section 83.62(1), F.S.

<sup>27</sup> Section 83.62(2), F.S.

property. Additionally, the verdict in an action for unlawful detainer is not conclusive of the facts found in any subsequent proceeding.<sup>28</sup>

### **Recovery and Abandonment of Personal Belongings**

Current law does not address the recovery or abandonment of personal belongings after an unlawful detention by a former transient occupant.

Under landlord-tenant regulations, a landlord is required to provide written notice to a former tenant of the right to reclaim abandoned property when personal property remains on the premises after the tenancy has terminated or expired and the premises has been vacated by the tenant.<sup>29</sup> The written notice is required to include a description of the property at issue, state where the property may be claimed, and the date before which the claim must be made.<sup>30</sup> The notice must also advise the former tenant that reasonable costs of storage may be charged before the property is returned.<sup>31</sup>

## **III. Effect of Proposed Changes:**

### **Transient Occupancy**

The bill modifies the list of factors used to establish that a person is a transient occupant by:

- Providing a 12-month timeframe for the factor related to the person's address of record; and
- Removing the factor related to whether the person receives mail at the property.

The bill provides that a transient occupancy terminates under the following circumstances:

- When a transient occupant begins to reside elsewhere;
- When a transient occupant surrenders the key to the dwelling; or
- When a transient occupant agrees to leave the dwelling when directed by a law enforcement officer, the party entitled to possession, or a court.

The bill also specifies that a transient occupancy is not extended by the presence of personal belongings of a former transient occupant.

### **Recovery of Former Transient Occupant's Personal Belongings**

The bill provides a mechanism by which a former transient occupant is able to recover his or her personal belongings. The bill requires the party entitled to possession of the dwelling to allow the former transient occupant to recover his or her personal belongings at reasonable times and under reasonable conditions.

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<sup>28</sup> Section 82.101, F.S.

<sup>29</sup> Section 715.104, F.S.

<sup>30</sup> The date specified in the notice cannot be fewer than 10 days after the notice is personally delivered or no less than 15 days after the notice is deposited in the mail. Section 715.104(2), F.S.

<sup>31</sup> *Id.*

The bill provides that a reasonable time for the recovery of the personal belongings includes a convenient time when the party entitled to possession of the dwelling or a trusted third party can be present at the dwelling to supervise the recovery of the belongings.

The bill establishes that it is reasonable for the party entitled to possession of the dwelling to impose additional conditions on access to the dwelling or personal belongings if the party entitled to possession reasonably believes the former transient occupant has engaged in misconduct or has a history of violence or drug or alcohol abuse.

Misconduct includes, but is not limited to:

- Intentional damage to the dwelling, to the property owned by the party entitled to possession of the dwelling, or to property owned by another occupant of the dwelling;
- Physical or verbal abuse directed at the party entitled to possession of the dwelling or another occupant of the dwelling; or
- Theft of property belonging to the party entitled to possession of the dwelling or property of another occupant of the dwelling.

The bill identifies additional conditions that may be imposed on access to the dwelling or personal belongings. These conditions include, but are not limited to, the presence of a law enforcement officer, the use of a mover registered with the Department of Agriculture and Consumer Services (DACCS),<sup>32</sup> or the use of a trusted third party to recover the personal belongings.

### **Abandonment of Former Transient Occupant's Personal Belongings**

The bill provides that the person entitled to possession of a dwelling can presume the former transient occupant has abandoned any personal belongings left at the dwelling if the former transient occupant does not seek to recover the belongings within a reasonable time after surrendering occupancy of the dwelling.

The bill deems that a reasonable time for a former transient occupant to recover personal belongings is 5 days after the termination of the transient occupancy, unless specific circumstances require a reasonable time to be shorter or longer than 5 days.

Circumstances that extend the length of reasonable time include:

- An agreement to hold the property for longer than 5 days; or
- The unavailability of the party entitled to possession of the property to supervise the recovery of the personal belongings.

Circumstances that shorten the length of reasonable time include, but are not limited to:

- The poor condition of or the perishable or hazardous nature of the personal belongings;
- The intent of the former transient occupant to abandon or discard the belongings; or
- The significant impairment of the use of the dwelling by the storage of the former transient occupant's personal belongings.

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<sup>32</sup> Ch. 507, F.S. requires any person engaged in intrastate moving to register with the DACCS.

**Unreasonably Withheld Access to Personal Belongings**

The bill provides that a former transient occupant may bring a civil action for damages against a person entitled to possession of the dwelling if that person unreasonably withholds access to the former transient occupant's personal belongings. In such action, the bill directs the court to award reasonable attorney fees and costs to the prevailing party.

**Effective Date**

The bill provides an effective date of July 1, 2018.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

The State Constitution addresses the property rights of citizens in two pertinent provisions. Article 1, section 2 provides that all natural persons have the right to acquire, possess, and protect property. Article 1, section 9 provides that "No person shall be deprived of life, liberty or property without due process of law..."

The bill requires the party entitled to possession of the dwelling to allow a former transient occupant to recover his or her personal belongings and provides that such belongings are presumed abandoned if the former transient occupant does not seek to recover the personal belongings within 5 days of surrendering occupancy of the dwelling. However, the bill does not address whether the former transient occupant will receive notice of his or her opportunity to recover the personal belongings, making it unclear whether the bill, by establishing a presumption of abandonment, allows property rights to be taken in violation of the State Constitution.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Indeterminate.

**C. Government Sector Impact:**

Indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 82.045, F.S., more frequently refers to “property” or “residential property” when describing transient occupancy, while the bill uses the term “dwelling.”

The bill authorizes the party entitled to possession of the property to impose additional conditions on access to the dwelling or personal belongings, including the use of a mover registered with the DACS. The bill does not address whether the party entitled to possession of the dwelling or the former transient occupant is responsible for the cost of the mover services.

**VIII. Statutes Affected:**

This bill substantially amends section 82.045 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.