

**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 Rules

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BILL: CS/SB 566

INTRODUCER: Judiciary Committee and Senator Young

SUBJECT: Unlawful Detention by a Transient Occupant

DATE: January 24, 2018

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

|    | ANALYST       | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------------|----------------|-----------|------------------|
| 1. | <u>Little</u> | <u>McKay</u>   | <u>CM</u> | <b>Favorable</b> |
| 2. | <u>Davis</u>  | <u>Cibula</u>  | <u>JU</u> | <b>Fav/CS</b>    |
| 3. | <u>Little</u> | <u>Phelps</u>  | <u>RC</u> | <b>Favorable</b> |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 566 revises the laws governing a transient occupant who “unlawfully detains” a residential property. Under current law, a transient occupant is someone who initially possesses real property lawfully, such as a longer-term houseguest. A transient occupant, however, unlawfully detains the property after being directed to leave by the party entitled to possession. If the transient occupant refuses to leave the property after being directed to do so by a law enforcement officer, the transient occupant becomes a trespasser. Absent action by a law enforcement officer, the person entitled to possession of the dwelling must bring an unlawful detainer action against the transient occupant to have him or her removed.

The changes by the bill:

- Narrow the criteria defining whether an individual is a transient occupant whom the rightful possessor may remove through an unlawful detainer action.
- Identify events that terminate a transient occupancy and restore the right to possess a dwelling to the person having a right to possess the property. These events include surrendering a key to a dwelling, beginning to reside elsewhere, or agreeing to leave the dwelling.
- Generally require a former transient occupant to collect his or her personal belongings within 10 days after the termination of a transient occupancy. Otherwise, the personal property will be deemed abandoned.
- Authorize a former transient occupant to bring a civil action for damages or the recovery of his or her personal belongings that are unreasonably withheld by the person entitled to

possession of the dwelling. In that action, the court must award the prevailing party reasonable attorney fees and costs.

## II. Present Situation:

### Transient Occupant

Florida law provides for the removal of unwanted occupants from residential real property in several chapters. Section 82.045, however, outlines the remedies for an unlawful detention by a transient occupant. The term “transient” means temporary or impermanent and passing away after a short time.<sup>1</sup> A transient occupant is an individual whose residency in a residential dwelling has occurred for a brief length of time, is not pursuant to a lease, and whose occupancy was intended as transient in nature.<sup>2</sup>

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

An unlawful detention of residential property occurs when someone initially possesses real property lawfully but then unjustifiably retains possession of the property after the party entitled to possession has directed him or her to leave.<sup>3</sup> Legal actions to recover the property 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>4</sup>

A law enforcement officer may direct a transient occupant to surrender the residential property when the rightful possessor provides a sworn affidavit asserting that a transient occupant is unlawfully detaining the 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. An individual may be a transient occupant if the person:<sup>5</sup>

- 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>6</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>7</sup>

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<sup>1</sup> BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>2</sup> Section 82.045(1), F.S.

<sup>3</sup> BLACK’S LAW DICTIONARY (10th ed. 2014) and s. 82.045(1)(a), F.S.

<sup>4</sup> *See generally* chapter 82, F.S.

<sup>5</sup> Section 82.045(3), F.S.

<sup>6</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(1)(a)3., F.S.

<sup>7</sup> Section 82.045(1)(a), F.S.

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

A rightful possessor may bring an action against a transient occupant within 3 years after an unlawful detention.<sup>8</sup> The action does not involve a question of title. Instead, the action is an expeditious remedy in which the main issue is the right to immediate possession<sup>9</sup> and related damages.<sup>10</sup> According to the office of the Clerk of the Circuit Court and Comptroller for Leon County, the filing fee for an unlawful detainer action is \$300, plus an additional \$10 for issuance of a summons.<sup>11</sup>

Unlawful detainer actions are resolved through summary procedure under s. 51.011, F.S.<sup>12</sup> In order to establish an unlawful detention, the plaintiff must demonstrate that:

- He or she was in possession of the property at one time;
- The plaintiff was ousted or deprived of 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 for 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. No other pleadings are allowed.<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 the plaintiff by dismissing the complaint and awarding the defendant costs.<sup>16</sup>

### **Additional Causes of Action**

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

A transient occupant is subject to the criminal charge of trespass if he or she fails to surrender possession of the property when directed to do so by a law enforcement officer who has a sworn affidavit pursuant to s. 82.045(3), F.S.<sup>17</sup> Section 810.08, F.S., establishes the offense of trespass for anyone who:

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<sup>8</sup> Section 82.04, F.S.

<sup>9</sup> *Tollius v. Dutch Inns of America, Inc.*, 218 So. 2d 504 (Fla. 3rd DCA 1969).

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

<sup>11</sup> Telephone conversation with Pam Kristoph, Office of the Clerk of the Circuit Court and Comptroller for Leon County, Tallahassee, Fla. (Jan. 3, 2018).

<sup>12</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, 82.03, 82.04, 83.21, and 83.59, F.S.

<sup>13</sup> *Florida Athletic & Health Club v. Royce*, 33 So. 2d 222 (Fla. 1948); *Floro v. Parker*, 205 So. 2d 363, 367-368 (Fla. 2d DCA 1967).

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

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

<sup>16</sup> *Id.*

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

without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned 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 trespass penalties range from a second degree misdemeanor for simple trespass to a first degree misdemeanor if a person was 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 who requested the removal, excluding the law enforcement officer and his or her employing agency.<sup>20</sup> If the court finds that a wrongful removal occurred, the court may 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 under the Landlord and Tenant Act.<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, plus an additional \$10 for the issuance of a summons.<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>

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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. Section 775.082(4)(a) and (b), F.S. Section 775.083(1)(d) and (e), F.S., authorize 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 his or her 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. and verified in a phone conversation with the Office of the Clerk of the Circuit Court and Comptroller for Leon County, Tallahassee, Fla. (Jan. 3, 2018).

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

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

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

A judgment rendered in an unlawful detainer case does not bar any action of trespass for injury to the property or ejectment. Additionally, the verdict in an action for unlawful detainer is not conclusive of the facts found in any subsequent proceeding of trespass or ejectment.<sup>28</sup>

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

The statutes do not provide a process for recovering abandoned personal belongings that remain on a property after an unlawful detention has ended.

Under landlord-tenant regulations, a landlord is required to provide written notice to a former tenant of the right to reclaim abandoned property when it remains on the premises after the tenancy has terminated or expired and the premises have been vacated by the tenant.<sup>29</sup> The written notice must describe the property at issue, state where the property may be claimed, and specify the date by 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 revises the factors used in determining whether an occupant of a residential dwelling is a transient occupant who is entitled to some procedural protections from removal or a tenant who is entitled to the protections of the Landlord and Tenant Act or a trespasser.

The bill modifies two of the existing factors detailed in the Present Situation that may be used to determine whether someone is a transient occupant. The factors are narrowed in a way that makes occupants who are not tenants less likely to have the status of transient occupants. Under the existing factors, one might argue that the use of an address as an address of record with a government agency in the distant past, indicates that he or she presently has the status of a transient occupant at that address. The intent of the bill, by changing the factor, appears to require that a person claiming the status of a transient occupant have used the address as an address of record within the past 12 months. The current factor of whether the person received mail at the property is deleted and therefore the receipt of mail at a particular address may not be used to establish a person's status as a transient occupant. As a result, property owners and leaseholders and others entitled to possession of a residential property will have more control over their properties.

The bill provides that a transient occupancy terminates when a transient occupant:

- Begins to reside elsewhere;
- Surrenders the key to the dwelling; or

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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 less than 10 days after the notice is personally delivered or less than 15 days after the notice is mailed. Section 715.104(2), F.S.

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

- 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 the former transient occupants' personal belongings. By identifying events terminating a transient occupancy, those entitled to possession of a residential property may have certainty as to when their rights to control property and exclude unwanted guests is restored.

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

A transient occupant must collect his or her belongings or they may be presumed abandoned. 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 he or she reasonably believes that the former transient occupant has engaged in misconduct or has a history of violence or drug or alcohol abuse.

The additional conditions that may be imposed on access to the dwelling or personal belongings 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 (DACs),<sup>32</sup> or the use of a trusted third party to recover the personal belongings.

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.

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

The bill provides that the person who is entitled to possession of a dwelling can presume that the former transient occupant has abandoned any personal belongings left at the dwelling if he or she does not seek to recover the belongings within a "reasonable time" after surrendering occupancy of the dwelling. A reasonable time for a former transient occupant to recover personal belongings is 10 days after the termination of the transient occupancy, unless specific circumstances require a reasonable time to be shorter or longer than 10 days. If the party entitled to possession of the property is unavailable to supervise the recovery of the personal belongings, the time may be extended.

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

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<sup>32</sup> Ch. 507, F.S. requires any person who is engaged in intrastate moving for compensation to register with the DACs.

- 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.

### **Unreasonably Withheld Access to Personal Belongings**

The bill provides that a former transient occupant may bring a civil action for damages or the recovery of the property 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.

### **Construction Language**

Subsection (6) states that the entire section relating to the remedy for unlawful detention by a transient occupant should be "construed in recognition of the right to exclude others as one of the most essential components of property rights." This statement paraphrases language found in a U.S. Supreme Court decision which discusses property rights.<sup>33</sup> According to the Court, it has "repeatedly held that, as to property reserved by its owner for private use, 'the right to exclude [others is] 'one of the most essential sticks in the bundle of rights that are commonly characterized as property.'"<sup>34</sup>

### **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,

<sup>33</sup> *Nollan v. California Coastal Com'n*, 483 U.S. 825, 831 (1987) (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 433 (1982) quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979)).

<sup>34</sup> *Id.*

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 the belongings are presumed abandoned if the former transient occupant does not seek to recover the personal belongings within 10 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.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By narrowing the criteria used to determine whether a person is a transient occupant and clarifying when a transient occupancy ends, the bill may reduce the time and legal expenses that a property owner, leaseholder, or other person entitled to possession would incur to remove an occupant or former transient occupant.

C. Government Sector Impact:

This bill may reduce the expenses associated with the county courts because it may result in fewer unlawful detainer actions.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 82.045 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Judiciary on January 10, 2018:**

The committee substitute makes several small changes that are consistent with the bill’s underlying purposes. Those changes include:



- Limiting documents or identification cards used to support a claim of transient occupancy to have been issued or sent within the previous 12 months and not the distant past.
- Increasing the time to recover personal belongings after the transient occupancy ends to 10 days from 5 days.
- Making stylistic changes for clarity or consistency throughout the bill.

B. Amendments:

None.