



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB5109

Introduced 2/8/2024, by Rep. Daniel Didech

SYNOPSIS AS INTRODUCED:

735 ILCS 5/Art. Art. XXIII heading new
735 ILCS 5/23-105 new
735 ILCS 5/23-110 new
735 ILCS 5/23-115 new
735 ILCS 5/23-120 new
735 ILCS 5/23-125 new
735 ILCS 5/23-130 new

Amends the Code of Civil Procedure by adding a new Article regarding forcible entry and unlawful detainer. Sets forth factors establishing when a person is a transient occupant. Provides that 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. Provides that a transient occupancy terminates when a transient occupant begins to reside elsewhere, surrenders the key to the dwelling, or leaves the dwelling when directed by a law enforcement officer in receipt of an affidavit. Allows, upon receipt of a sworn affidavit by the party entitled to possession, any law enforcement officer to direct a transient occupant to surrender possession of residential property. Provides that a person who fails to comply with the direction of the law enforcement officer to surrender possession or occupancy violates a provision related to criminal trespass to a residence. Provides remedies for a person wrongfully removed and for a party entitled to possession of the real property. Allows for the recovery of personal belongings by a former transient occupant after the former transient occupant has vacated the property.

LRB103 33372 LNS 63184 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by
5 adding the heading of Article Art. XXIII as follows:

6 (735 ILCS 5/Art. Art. XXIII heading new)

7 ARTICLE XXIII. FORCIBLE ENTRY AND UNLAWFUL DETAINER

8 (735 ILCS 5/23-105 new)

9 Sec. 23-105. Transient occupant defined; factors
10 establishing transient occupant.

11 (a) As used in this Article, "transient occupant" means a
12 person whose residency in real property intended for
13 residential use has occurred for a brief length of time, is not
14 pursuant to a lease, and whose occupancy was intended as
15 transient in nature.

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

18 (1) The person does not have an ownership interest,
19 financial interest, or leasehold interest in the property
20 entitling the person to occupancy of the property.

21 (2) The person does not have any property utility
22 subscriptions.

1 (3) The person cannot produce documentation,
2 correspondence, or identification cards sent or issued by
3 a government agency, including, but not limited to, the
4 Secretary of State or the State Board of Elections, which
5 show that the person used the property address as an
6 address of record with the agency within the previous 12
7 months.

8 (4) The person pays minimal or no rent for the
9 person's stay at the property.

10 (5) The person does not have a designated space of the
11 person's own, such as a room, at the property.

12 (6) The person has minimal, if any, personal
13 belongings at the property.

14 (7) The person has an apparent permanent residence
15 elsewhere.

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

19 (735 ILCS 5/23-110 new)

20 Sec. 23-110. Occupancy and termination of occupancy by
21 transient occupant. A transient occupant unlawfully detains a
22 residential property if the transient occupant remains in
23 occupancy of the residential property after the party entitled
24 to possession of the property has directed the transient
25 occupant to leave. A transient occupancy terminates when a

1 transient occupant begins to reside elsewhere, surrenders the
2 key to the dwelling, or leaves the dwelling when directed by a
3 law enforcement officer in receipt of an affidavit under
4 Section 23-115, the party entitled to possession, or a court.
5 A transient occupancy is not extended by the presence of
6 personal belongings of a former transient occupant.

7 (735 ILCS 5/23-115 new)

8 Sec. 23-115. Sworn affidavit for surrender of residential
9 property; violation; wrongful removal remedy.

10 (a) Any law enforcement officer may, upon receipt of a
11 sworn affidavit of the party entitled to possession that a
12 person who is a transient occupant is unlawfully detaining
13 residential property, direct a transient occupant to surrender
14 possession of residential property. The sworn affidavit must
15 set forth the facts, including the applicable factors listed
16 in subsection (b) of Section 23-105, which establish that a
17 transient occupant is unlawfully detaining residential
18 property.

19 (b) A person who fails to comply with the direction of the
20 law enforcement officer to surrender possession or occupancy
21 violates Section 19-4 of the Criminal Code of 2012. In any
22 prosecution of a violation of Section 19-4 of the Criminal
23 Code of 2012 related to this Article, whether the defendant
24 was properly classified as a transient occupant is not an
25 element of the offense, the State is not required to prove that

1 the defendant was in fact a transient occupant, and the
2 defendant's status as a permanent resident is not an
3 affirmative defense.

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

11 (735 ILCS 5/23-120 new)

12 Sec. 23-120. Remedies for party entitled to possession.

13 (a) A party entitled to possession of real property has a
14 cause of action for unlawful detainer against a transient
15 occupant under subsection (b). The party entitled to
16 possession is not required to notify the transient occupant
17 before filing the action. If the court finds that the
18 defendant is not a transient occupant but is instead a tenant
19 of residential property, the court may not dismiss the action
20 without first allowing the plaintiff to give the transient
21 occupant the notice required by that part and to thereafter
22 amend the complaint to pursue eviction under that part.

23 (b) A person entitled to possession of real property,
24 including constructive possession by a record titleholder, has
25 a cause of action against a person who obtained possession of

1 that real property by forcible entry, unlawful entry, or
2 unlawful detention and may recover possession and damages. The
3 person entitled to possession is not required to notify the
4 prospective defendant before filing the action.

5 If the court finds that the entry or detention by the
6 defendant is willful and knowingly wrongful, the court must
7 award the plaintiff damages equal to double the reasonable
8 rental value of the real property from the beginning of the
9 forcible entry, unlawful entry, or unlawful detention until
10 possession is delivered to the plaintiff. The plaintiff may
11 also recover other damages, including, but not limited to,
12 damages for waste.

13 (735 ILCS 5/23-125 new)

14 Sec. 23-125. Recovery of personal belongings.

15 (a) The party entitled to possession of a dwelling shall
16 allow a former transient occupant to recover his or her
17 personal belongings at reasonable times and under reasonable
18 conditions.

19 (b) Unless otherwise agreed to, a reasonable time for the
20 recovery of the former transient occupant's personal
21 belongings generally means a time period within 10 days after
22 termination of the transient occupancy, when the party
23 entitled to possession of the dwelling or a trusted third
24 party can be present at the dwelling to supervise the recovery
25 of the belongings.

1 (c) If the party entitled to possession of the dwelling
2 reasonably believes that the former transient occupant has
3 engaged in misconduct or has a history of violence or drug or
4 alcohol abuse, it is reasonable for the party entitled to
5 possession of the dwelling to impose additional conditions on
6 access to the dwelling or the personal belongings. These
7 conditions may include, but are not limited to, the presence
8 of a law enforcement officer, the use of a mover, or the use of
9 a trusted third party to recover the personal belongings. As
10 used in this subsection, "misconduct" includes, but is not
11 limited to:

12 (1) the intentional damage to the dwelling, to
13 property owned by the party entitled to possession of the
14 dwelling, or to property owned by another occupant of the
15 dwelling;

16 (2) the physical or verbal abuse directed at the party
17 entitled to possession of the dwelling or another occupant
18 of the dwelling; or

19 (3) the theft of property belonging to the party
20 entitled to possession of the dwelling or property of
21 another occupant of the dwelling.

22 (d) The person entitled to possession of a dwelling may
23 presume that the former transient occupant has abandoned
24 personal belongings left at the dwelling if the former
25 transient occupant does not seek to recover them within a
26 reasonable time after the transient occupant surrenders

1 occupancy of the dwelling. The time period to recover personal
2 belongings may be extended due to the unavailability of the
3 party entitled to possession of the dwelling to supervise the
4 recovery of the personal belongings. Circumstances that may
5 shorten the time include, but are not limited to, the poor
6 condition of or the perishable or hazardous nature of the
7 personal belongings, the intent of the former transient
8 occupant to abandon or discard the belongings, or the
9 significant impairment of the use of the dwelling by the
10 storage of the former transient occupant's personal
11 belongings.

12 (e) If the person entitled to possession of the dwelling
13 unreasonably withholds access to a former transient occupant's
14 personal belongings, the former transient occupant may bring a
15 civil action for damages or the recovery of the property. The
16 court shall award the prevailing party reasonable attorney's
17 fees and costs.

18 (735 ILCS 5/23-130 new)

19 Sec. 23-130. Application. This Article shall be construed
20 in recognition of the right to exclude others as one of the
21 most essential components of property rights.