

By: Dutton

H.B. No. 1012

A BILL TO BE ENTITLED

AN ACT

relating to access to a residence or former residence to retrieve certain personal property.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 24A.002, Property Code, is amended to read as follows:

Sec. 24A.002. WRIT AUTHORIZING ENTRY AND PROPERTY RETRIEVAL; PEACE OFFICER TO ACCOMPANY. (a) If a person is unable to enter the person's residence or former residence to retrieve personal property belonging to the person or the person's dependent because the current occupant is denying the person entry, the person may apply [~~to the justice court~~] for a writ authorizing the person to enter the residence accompanied by a peace officer to retrieve specific items of personal property.

(a-1) A person applying for a writ under this section must apply:

(1) if the person and the current occupant are parties to a pending suit under Title 1, Family Code, to the court in which the suit is pending;

(2) if the person's right to possession of the items described in the application is subject to a decree of divorce or annulment to which the person and the current occupant are parties, to the court having jurisdiction of the divorce or annulment action; or

1           (3) if Subdivision (1) or (2) does not apply, to a  
2 justice court.

3           (b) An application under Subsection (a) must:

4           (1) certify that the applicant is unable to enter the  
5 residence because the current occupant of the residence:

6           (A) has denied the applicant access to the  
7 residence; or

8           (B) poses a clear and present danger of family  
9 violence to the applicant or the applicant's dependent;

10          (2) certify that, to the best of the applicant's  
11 knowledge, the applicant is not:

12          (A) the subject of an active protective order  
13 under Title 4, Family Code, a magistrate's order for emergency  
14 protection under Article 17.292, Code of Criminal Procedure, or  
15 another court order prohibiting entry to the residence; or

16          (B) otherwise prohibited by law from entering the  
17 residence;

18          (3) certify whether, to the best of the applicant's  
19 knowledge:

20                 (A) the applicant and the current occupant are  
21 parties to a pending suit under Title 1, Family Code; or

22                 (B) the applicant's right to possession of the  
23 items described in the application is subject to a decree of divorce  
24 or annulment to which the applicant and the current occupant are  
25 parties;

26          (4) allege that the applicant or the applicant's  
27 dependent requires personal items located in the residence that are

1 only of the following types:

2 (A) medical records;

3 (B) medicine and medical supplies;

4 (C) clothing;

5 (D) child-care items;

6 (E) legal or financial documents;

7 (F) checks or bank or credit cards in the name of  
8 the applicant;

9 (G) employment records;

10 (H) personal identification documents; ~~or~~

11 (I) copies of electronic records containing  
12 legal or financial documents;

13 (J) assistance animals or service animals, as  
14 defined by Section 121.002, Human Resources Code, used by the  
15 applicant or the applicant's dependent;

16 (K) wireless communication devices, as defined  
17 by Section 545.425(a), Transportation Code, of the applicant or the  
18 applicant's dependent; or

19 (L) tools, equipment, books, and apparatus used  
20 by the applicant in the applicant's trade or profession;

21 (5) [~~4~~] describe with specificity the items that the  
22 applicant intends to retrieve;

23 (6) [~~5~~] allege that the applicant or the applicant's  
24 dependent will suffer personal harm if the items listed in the  
25 application are not retrieved promptly; and

26 (7) [~~6~~] include a lease or other documentary  
27 evidence that shows the applicant is currently or was formerly

1 authorized to occupy the residence.

2 (c) Before the court [~~justice of the peace~~] may issue a writ  
3 under this section, the applicant must execute a bond that:

4 (1) has two or more good and sufficient non-corporate  
5 sureties or one corporate surety authorized to issue bonds in this  
6 state;

7 (2) is payable to the occupant of the residence;

8 (3) is in an amount required by the court [~~justice~~];

9 and

10 (4) is conditioned on the applicant paying all damages  
11 and costs adjudged against the applicant for wrongful property  
12 retrieval.

13 (d) The applicant shall deliver the bond to the court  
14 [~~justice of the peace~~] issuing the writ for the court's [~~justice's~~]  
15 approval. The bond shall be filed with the [~~justice~~] court.

16 (e) On sufficient evidence of urgency and potential harm to  
17 the health and safety of any person and after sufficient notice to  
18 the current occupant and an opportunity to be heard, the court  
19 [~~justice of the peace~~] may grant the application under this section  
20 and issue a writ authorizing the applicant to enter the residence  
21 accompanied by a peace officer and retrieve the property listed in  
22 the application if the court [~~justice of the peace~~] finds that:

23 (1) the applicant is unable to enter the residence  
24 because the current occupant of the residence has denied the  
25 applicant access to the residence to retrieve the applicant's  
26 personal property or the personal property of the applicant's  
27 dependent;

1 (2) the applicant is not:

2 (A) the subject of an active protective order  
3 under Title 4, Family Code, a magistrate's order for emergency  
4 protection under Article 17.292, Code of Criminal Procedure, or  
5 another court order prohibiting entry to the residence; or

6 (B) otherwise prohibited by law from entering the  
7 residence;

8 (3) there is a risk of personal harm to the applicant  
9 or the applicant's dependent if the items listed in the application  
10 are not retrieved promptly;

11 (4) the applicant is currently or was formerly  
12 authorized to occupy the residence according to a lease or other  
13 documentary evidence; and

14 (5) the current occupant received notice of the  
15 application and was provided an opportunity to appear before the  
16 court to contest the application.

17 SECTION 2. Sections 24A.0021(a), (b), and (c), Property  
18 Code, are amended to read as follows:

19 (a) A court [~~justice of the peace~~] may issue a writ under  
20 Section 24A.002 without providing notice and hearing under Section  
21 24A.002(e)(5) if the court [~~justice~~] finds at a hearing on the  
22 application that:

23 (1) the conditions of Sections 24A.002(e)(1)-(4) are  
24 established;

25 (2) the current occupant poses a clear and present  
26 danger of family violence to the applicant or the applicant's  
27 dependent; and

1           (3) the personal harm to be suffered by the applicant  
2 or the applicant's dependent will be immediate and irreparable if  
3 the application is not granted.

4           (b) A court [~~justice of the peace~~] issuing a writ under this  
5 section may waive the bond requirements under Sections 24A.002(c)  
6 and (d).

7           (c) The court [~~justice of the peace~~] may recess a hearing  
8 under Subsection (a) to notify the current occupant by telephone  
9 that the current occupant may attend the hearing or bring to the  
10 court the personal property listed in the application. The court  
11 [~~justice of the peace~~] shall reconvene the hearing before 5 p.m.  
12 that day regardless of whether the current occupant attends the  
13 hearing or brings the personal property to the court.

14           SECTION 3. Section 24A.003(a), Property Code, is amended to  
15 read as follows:

16           (a) If the court [~~justice of the peace~~] grants an  
17 application under Section 24A.002 or Section 24A.0021, a peace  
18 officer shall accompany and assist the applicant in making the  
19 authorized entry and retrieving the items of personal property  
20 listed in the application.

21           SECTION 4. The changes in law made by this Act apply only to  
22 an application filed on or after the effective date of this Act. An  
23 application filed before the effective date of this Act is governed  
24 by the law in effect on the date the application was filed, and the  
25 former law is continued in effect for that purpose.

26           SECTION 5. This Act takes effect September 1, 2021.