

## **BILL ANALYSIS**

Senate Research Center  
78R13313 KCR-F

H.B. 2180  
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Business & Commerce  
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Engrossed

### **DIGEST AND PURPOSE**

In 2001, Section 93.004 of the Property Code was enacted to prohibit commercial landlords from assessing tenants any charges unless (1) the charge was authorized in the lease and (2) either the dollar amount or the method of computing the charge was contained in the lease. The bill applied to all commercial leases that were executed or renewed after that date. Some issues with the bill have come to light since its passage:

- Some leases that clearly authorized a charge are silent as to the exact dollar amount or the manner of computing the dollar amount--but the method of computation was nonetheless implied under common law. An example is a lease that states the tenant is liable for its prorata share of common area expenses but the lease omits stating that the prorata formula is a square footage basis. Prior to the bill, when there was such an omission, the common law would imply a commercially reasonable method or the courts could look to the intent of the parties at the time of signing or to how the parties actually handled the charge after the lease was signed. The 2001 bill contained no provision to address this occasional omission.
- Many leases that were signed before the effective date of the 2001 bill contained a unilateral right on the part of the tenant to renew after 2001. In those situations, when the tenant exercises its renewal option, the landlord has no power to rewrite the renewed lease so that the lease can comply with the statutory requirement of an express computation method—yet the statute applies to such renewal. Therefore, a post-2001 lease renewal of a pre-2001 lease could be in violation of the statute, but the landlord would have no opportunity to avoid the violation.

H.B. 2180 amends Chapter 93 of the Property Code relating to the computation of charges assessed against a tenant in certain commercial leases.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Renumbers Section 93.004, Property Code, as added by Chapter 1397, Acts of the 77th Legislature, Regular Session, 2001, as Section 93.012, Property Code, and amends it as follows:

Sec. 93.012. ASSESSMENT OF CHARGES. (a) Provides an exception.

(a-1) Authorizes a landlord to assess a charge to a tenant if the charge is permitted by the lease but the method by which the charge is to be computed and the amount of the charge are not stated in the lease, an exhibit or attachment that is part of the lease, or an amendment to the lease only if the method by which the charge is computed is reasonable and is a method customarily used by landlords in commercial leases of a similar duration and for a similar type of commercial property as the lease signed or entered into by the landlord and tenant.

(b) Provides that this section does not affect a landlord's right to assess a charge or obtain a remedy allowed under a statute or common law.

SECTION 2. (a) Effective date: September 1, 2003.

(b) Provides that, except as provided by Subsection (c), the change in law made by this Act applies only to a commercial lease that is signed, entered into, renewed, or extended by negotiation on or after the effective date of this Act.

(c) Provides that a commercial lease that was signed before September 1, 2003, and is renewed or extended by the exercise of a tenant's option that existed in the lease signed before September 1, 2003, regardless of the date of renewal or extension, is governed by the law in effect at the time the lease was signed, and the former law is continued in effect for that purpose.

(d) Provides that a commercial lease that is signed or entered into before the effective date of this Act is governed by the law in effect at the time the lease was signed or entered into, and the former law is continued in effect for that purpose.