

BILL ANALYSIS

C.S.H.B. 2180
By: Baxter
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2001, Section 93.004 of the Property Code was enacted to prohibit commercial landlords from charging their 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.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Chapter 93, Property Code, as follows:

Sec. 93.004 is renumbered as Sec. 9012 since two bills adding a "Section 93.004" were enacted in 2001.

Sec. 93.012(a)(2) states that if the charge is permitted in the lease and the dollar amount or method of computation was omitted, the computation must be by a method provided in Subsection (b) of the bill.

Sec. 93.012(b) provides that any fee that was authorized in the lease without stating the exact dollar amount or computation formula, must be computed by a method customarily used by landlords in commercial leases of a similar duration and for a similar type of commercial property.

SECTION 2. Provides for an effective date of September 1, 2003 and states that if a lease was

executed prior to that effective date, all renewals of the lease after that date that are not “negotiated” renewals will be governed by the law in effect at the time the lease was originally signed.

EFFECTIVE DATE

September 1, 2003

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute does not make any substantive changes from the original bill as introduced. It has simply been rewritten to conform to Legislative Council drafting guidelines