

BILL ANALYSIS

S.B. 1186
By: Nelson
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The federal Servicemember Civil Relief Act grants servicemembers the right to terminate lease agreements upon entering the military or being called to duty. However, this federal Act allows for the servicemember to waive his or her rights. There are some apartment associations that include this waiver in form contracts, effectively erasing the benefits of the Act.

Senate Bill No. 1186 allows servicemembers to terminate lease agreements if and when they are transferred for military service, prohibits those rights from being waived, and requires the lease agreement to contain a provision describing a servicemember's rights to termination.

Senate Bill No. 1186 also allows a victim of family violence to terminate a residential lease agreement under certain circumstances.

RULEMAKING AUTHORITY

It is the opinion of the Committee on Business and Industry that this bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION-BY-SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 92, Property Code, by adding Sections 92.016 and 92.017, as follows:

Sec. 92.016. RIGHT TO VACATE AND AVOID LIABILITY FOLLOWING FAMILY VIOLENCE. (a) Defines "family violence and "occupant."

(b) Authorizes a tenant to terminate the tenant's rights and obligations under a lease and to vacate the dwelling and avoid liability for future rent and any other sums due under the lease for terminating the lease and vacating the dwelling before the end of the lease term if the tenant complies with Subsection (c) and obtains and provides the landlord or the landlord's agent a copy of certain orders protecting the tenant or an occupant from family violence committed by a cotenant or occupant of the dwelling.

(c) Authorizes a tenant to exercise the rights to terminate the lease under Subsection (b), vacate the dwelling before the end of the lease term, and avoid liability beginning on the date after certain events have occurred.

(d) Provides that, except as provided by Subsection (f), this section does not affect a tenant's liability for delinquent, unpaid rent, or other sums owed to the landlord before the lease was terminated by the tenant under this section.

(e) Provides that a landlord who violates this section is liable to the tenant for actual damages, a civil penalty equal in amount to the amount of one month's rent plus \$500, and attorney's fees.

(f) Provides that a tenant who terminates a lease under Subsection (b) is released from all liability for any delinquent, unpaid rent owed to the landlord by the

tenant on the effective date of the lease termination if the lease does not contain language substantially equivalent to the following:

"Tenants may have special statutory rights to terminate the lease early in certain situations involving family violence or a military deployment or transfer."

(g) Prohibits a tenant's right to terminate a lease before the end of the lease term, vacate the dwelling, and avoid liability under this section from being waived by a tenant.

Sec. 92.017. RIGHT TO VACATE AND AVOID LIABILITY FOLLOWING CERTAIN DECISIONS RELATED TO MILITARY SERVICE. (a) Defines "dependent," "military service," and "servicemember."

(b) Authorizes a residential tenant who is a servicemember or a dependent of a servicemember to vacate the dwelling leased by the tenant and avoid liability for rent and all other sums due under the lease for terminating the lease and vacating the dwelling before the end of the lease term if certain conditions apply.

(c) Requires a tenant who terminates a lease under Subsection (b) to deliver to the landlord or landlord's agent a written notice of termination of the lease and a copy of an appropriate government document providing evidence of the entrance into military service or a copy of the servicemember's military orders, as applicable.

(d) Sets forth conditions under which the termination of a lease under this section is effective.

(e) Requires a landlord, not later than the 30th day after the effective date of the termination of a lease under this section, to refund to the residential tenant terminating the lease all rent or other amounts paid in advance under the lease for any period after the effective date of the termination of the lease.

(f) Provides that, except as provided by Subsection (g), this section does not affect a tenant's liability for delinquent, unpaid rent or other sums owed to the landlord before the lease was terminated by the tenant under this section.

(g) Provides that a tenant who terminates a lease under Subsection (b) is released from all liability for any delinquent, unpaid rent owed to the landlord by the tenant on the effective date of the lease termination if the lease does not contain language substantially equivalent to the following:

"Tenants may have special statutory rights to terminate the lease early in certain situations involving family violence or a military deployment or transfer."

(h) Provides that a landlord who violates this section is liable to the tenant for actual damages, a civil penalty equal in amount to the amount of one month's rent plus \$500, and attorney's fees.

(i) Prohibits a tenant's right to terminate a lease before the end of the lease term, vacate the dwelling, and avoid liability under this section from being waived by a tenant.

(j) Authorizes a tenant and a landlord to agree that the tenant waives a tenant's rights under this section if the tenant or any dependent living with the tenant moves into base housing or other housing within 30 miles of the dwelling. Requires a waiver under this section to be signed and in writing in a document separate from the lease and to comply with federal law. Provides that a waiver under this section does not apply if certain circumstances are present.

(k) Defines "significant financial loss of income."

SECTION 2. Amends Section 92.006, Property Code, by adding Subsection (g), to prohibit a tenant's right to vacate a dwelling and avoid liability under Section 92.016 or 92.017 from being waived by a tenant or landlord, except as provided by those sections.

SECTION 3. Makes application of this Act prospective.

SECTION 4. (a) Effective date: upon passage or September 1, 2005, except as provided by Subsections (b) and (c).

(b) Provides that Section 92.017(g), Property Code, as added by this Act, takes effect January 1, 2006.

(c) Provides that Section 92.016, Property Code, as added by this Act, takes effect January 1, 2006.

EFFECTIVE DATE

Subsections (b) and (c) would not take effect until January 1, 2006; the remainder of the bill would take effect September 1, 2005.