

1-1 By: McClendon (Senate Sponsor - Eltife) H.B. No. 62
1-2 (In the Senate - Received from the House May 10, 2005;
1-3 May 12, 2005, read first time and referred to Committee on Business
1-4 and Commerce; May 20, 2005, reported favorably by the following
1-5 vote: Yeas 9, Nays 0; May 20, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to procedures for appealing a residential eviction suit.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Chapter 24, Property Code, is amended by adding
1-11 Sections 24.0052, 24.0053, and 24.0054 to read as follows:

1-12 Sec. 24.0052. TENANT APPEAL ON PAUPER'S AFFIDAVIT. (a) If
1-13 a tenant in a residential eviction suit is unable to pay the costs
1-14 of appeal or file an appeal bond as required by the Texas Rules of
1-15 Civil Procedure, the tenant may appeal the judgment of the justice
1-16 court by filing with the justice court, not later than the fifth day
1-17 after the date the judgment is signed, a pauper's affidavit sworn
1-18 before the clerk of the justice court or a notary public that states
1-19 that the tenant is unable to pay the costs of appeal or file an
1-20 appeal bond. The affidavit must contain the following information:

1-21 (1) the tenant's identity;
1-22 (2) the nature and amount of the tenant's employment
1-23 income;

1-24 (3) the income of the tenant's spouse, if applicable
1-25 and available to the tenant;

1-26 (4) the nature and amount of any governmental
1-27 entitlement income of the tenant;

1-28 (5) all other income of the tenant;

1-29 (6) the amount of available cash and funds available
1-30 in savings or checking accounts of the tenant;

1-31 (7) real and personal property owned by the tenant,
1-32 other than household furnishings, clothes, tools of a trade, or
1-33 personal effects;

1-34 (8) the tenant's debts and monthly expenses; and

1-35 (9) the number and age of the tenant's dependents and
1-36 where those dependents reside.

1-37 (b) The justice court shall make available an affidavit form
1-38 that a person may use to comply with the requirements of Subsection
1-39 (a).

1-40 (c) The justice court shall promptly notify the landlord if
1-41 a pauper's affidavit is filed by the tenant.

1-42 (d) A landlord may contest a pauper's affidavit on or before
1-43 the fifth day after the date the affidavit is filed. If the
1-44 landlord contests the affidavit, the justice court shall notify the
1-45 parties and hold a hearing to determine whether the tenant is unable
1-46 to pay the costs of appeal or file an appeal bond. The hearing shall
1-47 be held not later than the fifth day after the date the landlord
1-48 notifies the court clerk of the landlord's contest. At the hearing,
1-49 the tenant has the burden to prove by competent evidence, including
1-50 documents or credible testimony of the tenant or others, that the
1-51 tenant is unable to pay the costs of appeal or file an appeal bond.

1-52 (e) If the justice court approves the pauper's affidavit of
1-53 a tenant, the tenant is not required to pay the county court filing
1-54 fee or file an additional affidavit in the county court under
1-55 Subsection (a).

1-56 Sec. 24.0053. PAYMENT OF RENT DURING APPEAL OF EVICTION.

1-57 (a) If the justice court enters judgment for the landlord in a
1-58 residential eviction case based on nonpayment of rent, the court
1-59 shall determine the amount of rent to be paid each rental pay period
1-60 during the pendency of any appeal and shall note that amount in the
1-61 judgment. If a portion of the rent is payable by a government
1-62 agency, the court shall determine and note in the judgment the
1-63 portion of the rent to be paid by the government agency and the
1-64 portion to be paid by the tenant. The court's determination shall

2-1 be in accordance with the terms of the rental agreement and
 2-2 applicable laws and regulations. This subsection does not require
 2-3 or prohibit payment of rent into the court registry or directly to
 2-4 the landlord during the pendency of an appeal of an eviction case
 2-5 based on grounds other than nonpayment of rent.

2-6 (b) If an eviction case is based on nonpayment of rent and
 2-7 the tenant appeals by filing a pauper's affidavit, the tenant shall
 2-8 pay the rent, as it becomes due, into the justice court or the
 2-9 county court registry, as applicable, during the pendency of the
 2-10 appeal, in accordance with the Texas Rules of Civil Procedure and
 2-11 Subsection (a). If a government agency is responsible for all or a
 2-12 portion of the rent under an agreement with the landlord, the tenant
 2-13 shall pay only that portion of the rent determined by the justice
 2-14 court under Subsection (a) to be paid by the tenant during appeal,
 2-15 subject to either party's right to contest that determination under
 2-16 Subsection (c).

2-17 (c) If an eviction case is based on nonpayment of rent and
 2-18 the tenant's rent during the rental agreement term has been paid
 2-19 wholly or partly by a government agency, either party may contest
 2-20 the portion of the rent that the justice court determines must be
 2-21 paid into the county court registry by the tenant under this
 2-22 section. The contest must be filed on or before the fifth day after
 2-23 the date the justice signs the judgment. If a contest is filed, not
 2-24 later than the fifth day after the date the contest is filed the
 2-25 justice court shall notify the parties and hold a hearing to
 2-26 determine the amount owed by the tenant in accordance with the terms
 2-27 of the rental agreement and applicable laws and regulations. After
 2-28 hearing the evidence, the justice court shall determine the portion
 2-29 of the rent that must be paid by the tenant under this section.

2-30 (d) If the tenant objects to the justice court's ruling
 2-31 under Subsection (c) on the portion of the rent to be paid by the
 2-32 tenant during appeal, the tenant shall be required to pay only the
 2-33 portion claimed by the tenant to be owed by the tenant until the
 2-34 issue is tried de novo along with the case on the merits in county
 2-35 court. During the pendency of the appeal, either party may file a
 2-36 motion with the county court to reconsider the amount of the rent
 2-37 that must be paid by the tenant into the registry of the court.

2-38 (e) If either party files a contest under Subsection (c) and
 2-39 the tenant files a pauper's affidavit that is contested by the
 2-40 landlord under Section 24.0052(d), the justice court shall hold the
 2-41 hearing on both contests at the same time.

2-42 Sec. 24.0054. TENANT'S FAILURE TO PAY RENT DURING APPEAL.

2-43 (a) During an appeal of an eviction case for nonpayment of rent, if
 2-44 a tenant fails to pay rent into the justice court or county court
 2-45 registry in accordance with the Texas Rules of Civil Procedure and
 2-46 Section 24.0053, the landlord may file with the county court a sworn
 2-47 motion that the tenant failed to pay rent as required. The landlord
 2-48 shall notify the tenant of the motion and the hearing date.

2-49 (b) If the county court finds that the tenant has not
 2-50 complied with the payment requirements of the Texas Rules of Civil
 2-51 Procedure and Section 24.0053, the county court shall immediately
 2-52 issue a writ of possession unless on or before the day of the
 2-53 hearing the tenant pays into the court registry:

2-54 (1) all rent not paid in accordance with the Texas
 2-55 Rules of Civil Procedure and Section 24.0053; and

2-56 (2) the landlord's reasonable attorney's fees, if any,
 2-57 in filing the motion.

2-58 (c) If the court finds that a tenant has failed to timely pay
 2-59 the rent into the court registry on more than one occasion:

2-60 (1) the tenant is not entitled to stay the issuance of
 2-61 the writ by paying the rent and the landlord's reasonable attorney's
 2-62 fees, if any; and

2-63 (2) the county court shall immediately issue a writ of
 2-64 possession.

2-65 (d) A writ of possession issued under Subsection (c) may not
 2-66 be executed before the sixth day after the date the writ is issued.

2-67 (e) In a motion or hearing in county court under Subsection
 2-68 (a), the parties may represent themselves or be represented by
 2-69 their authorized agents, who need not be attorneys.

