

By: Strama

H.B. No. 3293

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the performance of certain civil duties by officers in
3 this state.

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

5 SECTION 1. Section 7.001, Civil Practice and Remedies Code,
6 is amended to read as follows:

7 Sec. 7.001. LIABILITY FOR REFUSAL OR NEGLIGENCE IN PERFORMANCE
8 OF OFFICIAL DUTIES. (a) A clerk, sheriff, or other officer who
9 neglects or refuses to perform a duty required under the Texas Rules
10 of Civil Procedure [~~Title 42, Revised Statutes,~~] or under a
11 provision of this code derived from those rules [~~that title~~] is
12 liable for actual damages only in a suit brought by a person injured
13 by the officer's neglect or refusal.

14 (b) The officer may be punished for contempt of court for
15 neglect or refusal in the performance of those duties. The court
16 shall set the fine at not less than \$10 or more than \$100, with
17 costs. The officer must be given 10 days' notice of the motion.

18 (c) This section does not create a cause of action for an
19 action that can otherwise be brought under Chapter 34. A party may
20 seek actual damages under this section or Chapter 34, or the party
21 may seek contempt sanctions, but the party may not seek both damages
22 and contempt.

23 (d) An action or motion brought under this section must
24 comply with and is subject to the provisions in Sections 34.068,

1 34.069, 34.070, and 34.074, except that a motion brought under
2 Subsection (b) need not comply with Section 34.068(b).

3 SECTION 2. Section 7.003, Civil Practice and Remedies Code,
4 is amended by amending Subsection (a) and adding Subsection (c) to
5 read as follows:

6 (a) Except as provided by Section 34.061, an officer is not
7 liable for damages resulting from the execution of a writ issued by
8 a court of this state if the officer[+]

9 [~~(1)~~] in good faith executes or attempts to execute
10 the writ as provided by law and by the Texas Rules of Civil
11 Procedure[~~, and~~

12 [~~(2) uses reasonable diligence in performing his~~
13 ~~official duties~~].

14 (c) An officer shows that the officer acted in good faith
15 when the officer shows that a reasonably prudent officer, under the
16 same or similar circumstances, could have believed that the
17 officer's conduct was justified based on the information the
18 officer possessed when the conduct occurred.

19 SECTION 3. Section 34.061, Civil Practice and Remedies
20 Code, is amended by amending Subsection (b) and adding Subsection
21 (c) to read as follows:

22 (b) If an injury or loss to an interested party results from
23 the negligence of the officer, the officer and his sureties are
24 liable for the value of the property lost or damaged [~~the amount of~~
25 ~~the injury sustained, plus 10 percent of that value or amount. The~~
26 ~~total amount is recoverable on motion of the injured party filed~~
27 ~~with the court that issued the writ, following three days' notice~~].

1 (c) The injured party has the burden to prove:

2 (1) that the officer took actual possession of the
3 injured party's property; and

4 (2) the actual value of any property lost or damaged.

5 SECTION 4. Sections 34.063, 34.064, 34.065, 34.066, and
6 34.067, Civil Practice and Remedies Code, are amended to read as
7 follows:

8 Sec. 34.063. IMPROPER ENDORSEMENT OF WRIT. (a) If an
9 officer receives more than one writ of execution on the same day
10 against the same person and fails to number them as received or if
11 an officer falsely endorses a writ of execution, the officer and the
12 officer's [his] sureties are liable to the plaintiff in execution
13 only for actual damages suffered by the plaintiff because of the
14 failure or false endorsement [~~, plus 20 percent of the amount of the~~
15 ~~execution. The total amount is recoverable on motion of the~~
16 ~~plaintiff filed with the court that issued the writ, following~~
17 ~~three days' notice].~~

18 (b) The plaintiff in execution has the burden to prove:

19 (1) the officer failed to properly number or endorse
20 the writ of execution;

21 (2) the officer's failure precluded the levy of
22 executable property owned by the judgment debtor;

23 (3) the executable property owned by the judgment
24 debtor was not exempt from execution or levy; and

25 (4) the plaintiff in execution suffered actual
26 damages.

27 Sec. 34.064. IMPROPER RETURN OF WRIT. (a) An officer may

1 file an amended or corrected return after the officer has returned a
2 writ to a court.

3 (b) Once an officer receives actual notice of an error on a
4 return or of the officer's failure to file a return, the officer
5 shall amend the return or file the return not later than the 30th
6 day after the date of the receipt of notice.

7 (c) An officer who fails or refuses to amend or file the
8 return may be subject to contempt under Section 7.001(b) [~~If an~~
9 ~~officer neglects or refuses to return a writ of execution as~~
10 ~~required by law or makes a false return on a writ of execution, the~~
11 ~~officer and his sureties are liable to the person entitled to~~
12 ~~receive the money collected on the execution for the full amount of~~
13 ~~the debt, plus interest and costs. The total amount is recoverable~~
14 ~~on motion of the plaintiff filed with the court that issued the~~
15 ~~writ, following five days' notice].~~

16 Sec. 34.065. FAILURE TO LEVY OR SELL. (a) If an officer
17 fails or refuses to levy on or sell property subject to execution
18 and the levy or sale could have taken place, the officer and the
19 officer's [~~his~~] sureties are liable to the party entitled to
20 receive the money collected on execution only for actual damages
21 suffered.

22 (b) The judgment creditor seeking relief under this section
23 has the burden to prove:

24 (1) the judgment creditor has a valid judgment against
25 the judgment debtor;

26 (2) the writ of execution was issued to the judgment
27 creditor;

1 (3) the writ was delivered to the officer;

2 (4) the judgment creditor's judgment was unpaid and
3 unsatisfied;

4 (5) the property to be levied on was subject to
5 execution;

6 (6) the officer failed or refused to levy under the
7 writ; and

8 (7) the amount of actual damages suffered.

9 (c) Property to be levied on is subject to execution for
10 purposes of this section if the judgment creditor proves that the
11 judgment debtor owned the property at issue, the property was
12 accessible to the officer under the law, the property was situated
13 in the officer's county, and the property was not exempt from
14 execution.

15 (d) Before a court may find that an officer failed or
16 refused to levy under the writ for purposes of this section, the
17 court must find that the judgment creditor specifically informed
18 the officer that the property was owned by the judgment debtor and
19 was subject to execution, and that the creditor directed the
20 officer to levy on the property [~~for the full amount of the debt,~~
21 ~~plus interest and costs. The total amount is recoverable on motion~~
22 ~~of the party filed with the court that issued the writ, following~~
23 ~~five days' notice to the officer and his sureties].~~

24 (e) In this section, "actual damages" is the amount of money
25 the property would have sold for at a constable or sheriff's auction
26 minus any costs of sale, commissions, and additional expenses of
27 execution.

1 Sec. 34.066. IMPROPER SALE. (a) If an officer sells
2 property without giving notice as required by the Texas Rules of
3 Civil Procedure or sells property in a manner other than that
4 prescribed by this chapter and the Texas Rules of Civil Procedure,
5 the officer [~~forfeits and~~] shall be liable only for actual damages
6 sustained by the injured party [~~pay to the injured party not less~~
7 ~~than \$10 nor more than \$200, in addition to any other damages~~
8 ~~sustained by the party. The amount is recoverable on motion of the~~
9 ~~party, following five days' notice to the officer and his~~
10 ~~sureties~~].

11 (b) The injured party has the burden to prove that the sale
12 was improper and any actual damages suffered.

13 Sec. 34.067. FAILURE TO DELIVER MONEY COLLECTED. If an
14 officer fails or refuses to deliver money collected under an
15 execution when demanded by the person entitled to receive the
16 money, the officer and the officer's [~~his~~] sureties are liable to
17 the person for the amount collected and for damages at a rate of one
18 [~~five~~] percent a month on that amount if proven by the injured
19 party [~~, plus interest and costs. The total amount is recoverable on~~
20 ~~motion of the person entitled to the money filed with the court that~~
21 ~~issued the writ, following five days' notice to the officer and his~~
22 ~~sureties~~].

23 SECTION 5. Subchapter D, Chapter 34, Civil Practice and
24 Remedies Code, is amended by adding Sections 34.068, 34.069,
25 34.070, 34.071, 34.072, 34.073, 34.074, 34.075, and 34.076 to read
26 as follows:

27 Sec. 34.068. RULES GOVERNING ACTIONS UNDER THIS CHAPTER.

1 (a) This section applies to any claim for damages brought under
2 Section 7.001, 34.061, 34.063, 34.065, 34.066, or 34.067 or under
3 Section 86.023, Local Government Code.

4 (b) Suit shall be brought in the form of a lawsuit filed
5 against the officer in the county in which the officer holds office.

6 (c) All suits must be filed not later than the first
7 anniversary of the date on which the injury accrues.

8 (d) An officer or a surety may defend the action by stating
9 and proving any defenses provided by law, including any defense
10 that would mitigate damages.

11 Sec. 34.069. PAYMENT OF DAMAGES. A county, at the
12 discretion of the commissioners court, may pay any judgment taken
13 against an officer under Section 7.001, 34.061, 34.063, 34.064,
14 34.065, 34.066, or 34.067 or under Section 86.023, Local Government
15 Code, provided that this section does not apply if the officer is
16 finally convicted under Section 39.02 or 39.03, Penal Code.

17 Sec. 34.070. RIGHT OF SUBROGATION. An officer against whom
18 a judgment has been taken under Section 7.001, 7.002, 34.061,
19 34.063, 34.064, 34.065, 34.066, or 34.067 or under Section 86.023,
20 Local Government Code, or a county that has paid the judgment on
21 behalf of the officer under Section 34.069, has a right of
22 subrogation against the debtor or person against whom the writ was
23 issued.

24 Sec. 34.071. DUTIES OF EXECUTING OFFICER. An officer
25 receiving a writ of execution does not have a duty to:

26 (1) search for property belonging to the judgment
27 debtor;

1 (2) determine whether property belongs to a judgment
2 debtor;

3 (3) determine whether property belonging to the
4 judgment debtor is exempt property that is not subject to levy;

5 (4) determine the priority of liens asserted against
6 property subject to execution; or

7 (5) make multiple levies for cash or multiple levies
8 at the same location.

9 Sec. 34.072. TIMING OF EXECUTION AND RETURN. (a) An
10 officer receiving a writ of execution may return the writ after the
11 first levy, or attempted levy, if the judgment creditor cannot
12 designate any more executable property currently owned by the
13 judgment debtor at the time of the first levy or first attempted
14 levy.

15 (b) Notwithstanding Rule 637, Texas Rules of Civil
16 Procedure, an attempt to levy on property may begin any time during
17 the life of the writ, provided that the officer shall allow enough
18 time for completing the sale of the property.

19 Sec. 34.073. TRANSFER OF WRIT; NO DUTY TO LEVY OUTSIDE OF
20 COUNTY. (a) An officer receiving a writ may transfer the writ to
21 another officer in another precinct, or to another law enforcement
22 agency authorized to perform executions, within the county of the
23 first officer who received the writ.

24 (b) An officer does not have a duty to levy on or sell
25 property not within the officer's county, unless it is real
26 property that is partially in the officer's county and partially
27 within a contiguous county.

1 Sec. 34.074. OFFICER'S SURETY. (a) An officer's surety may
2 only be liable for the penal sum of the surety bond minus any
3 amounts already paid out under the bond. In no event may an
4 officer's surety be liable for more than the penal sum of the
5 officer's surety bond.

6 (b) If the officer and the officer's surety are both
7 defendants in an action brought under this chapter, the surety may
8 deposit in the court's registry the amount unpaid under the surety
9 bond and the court shall determine the proper disposition of this
10 sum or order the return of the deposit to the surety in the court's
11 final judgment.

12 (c) A surety is not a necessary party to an action brought
13 under this chapter or under Section 7.001. Instead, a prevailing
14 party under these provisions may bring a separate action against a
15 surety failing to pay the amount remaining under the bond on a final
16 judgment. This action must be brought on or before 180 days after
17 the date all appeals are exhausted in the underlying action.

18 Sec. 34.075. WRONGFUL LEVY. Whenever a distress warrant,
19 writ of execution, sequestration, attachment, or other like writ is
20 levied upon personal property, and the property, or any part of the
21 property, is claimed by any claimant who is not a party to the writ,
22 the only remedy against a sheriff or constable for wrongful levy on
23 the property is by trial of right of property in Part VI, Section 9,
24 Texas Rules of Civil Procedure.

25 Sec. 34.076. EXCLUSIVE REMEDY. This subchapter is the
26 exclusive remedy for violations of an officer's duties with regard
27 to the execution and return of writs without regard to the source of

1 the duty prescribed by law.

2 SECTION 6. Section 86.024(a), Local Government Code, is
3 amended to read as follows:

4 (a) If a constable fails or refuses to execute and return
5 according to law a process, warrant, or precept that is lawfully
6 directed and delivered to the constable, the constable shall be
7 fined for contempt before the court that issued the process,
8 warrant, or precept on the motion of the person injured by the
9 failure or refusal. This section does not apply to actions brought
10 under or that could have been brought under Chapter 34, Civil
11 Practice and Remedies Code.

12 SECTION 7. Section 604.005, Government Code, is amended by
13 adding Subsection (c) to read as follows:

14 (c) In no event may the surety be liable for more than the
15 penal sum of the surety bond minus any amounts already paid out
16 under the bond.

17 SECTION 8. This Act applies only to the performance of a
18 duty that occurs on or after the effective date of this Act. A duty
19 performed before the effective date of this Act is governed by the
20 law applicable to the performance of the duty immediately before
21 the effective date of this Act, and that law is continued in effect
22 for that purpose.

23 SECTION 9. This Act takes effect September 1, 2007.