

By: West

S.B. No. 1269

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

(d) An action or motion brought under this section must 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 through 34.067, Civil Practice  
6 and Remedies Code, are amended to read as follows:

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

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

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

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

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

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

26        Sec. 34.064. IMPROPER RETURN OF WRIT. (a) An officer may  
27 file an amended or corrected return after the officer has returned a

1 writ to a court.

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

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

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

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

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

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

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

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

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

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

7           (7) the amount of actual damages suffered.

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

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

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

27           Sec. 34.066. IMPROPER SALE.   (a) If an officer sells

property without giving notice as required by the Texas Rules of Civil Procedure or sells property in a manner other than that prescribed by this chapter and the Texas Rules of Civil Procedure, the officer ~~[forfeits and]~~ shall be liable only for actual damages sustained by ~~[pay to]~~ the injured party ~~[not less than \$10 nor more than \$200, in addition to any other damages sustained by the party. The amount is recoverable on motion of the party, following five days' notice to the officer and his sureties].~~

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

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

SECTION 5. Subchapter D, Chapter 34, Civil Practice and Remedies Code, is amended by adding Sections 34.068 through 34.076 to read as follows:

Sec. 34.068. RULES GOVERNING ACTIONS UNDER THIS CHAPTER.

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

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

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

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

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

14        Sec. 34.070. RIGHT OF SUBROGATION. An officer against whom  
15 a judgment has been taken under Section 7.001, 7.002, 34.061,  
16 34.063, 34.064, 34.065, 34.066, or 34.067 or under Section 86.023,  
17 Local Government Code, or a county that has paid the judgment on  
18 behalf of the officer under Section 34.069, has a right of  
19 subrogation against the debtor or person against whom the writ was  
20 issued.

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

23                (1) search for property belonging to the judgment  
24 debtor;

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

27                (3) determine whether property belonging to the

1 judgment debtor is exempt property that is not subject to levy;

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

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

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

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

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

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

25 Sec. 34.074. OFFICER'S SURETY. (a) An officer's surety  
26 may only be liable for the penal sum of the surety bond minus any  
27 amounts already paid out under the bond. In no event may an



1 officer's surety be liable for more than the penal sum of the  
2 officer's surety bond.

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

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

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

22 Sec. 34.076. EXCLUSIVE REMEDY. This subchapter is the  
23 exclusive remedy for violations of an officer's duties with regard  
24 to the execution and return of writs without regard to the source of  
25 the duty prescribed by law.

26 SECTION 6. Subsection (a), Section 86.024, Local Government  
27 Code, is amended to read as follows:

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

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

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

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

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