

SENATE AMENDMENTS

2nd Printing

By: Anchia, Deshotel, Thompson, Dutton,
Murphy, et al.

H.B. No. 3101

A BILL TO BE ENTITLED

AN ACT

relating to a residential tenant's rights and remedies.

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

SECTION 1. Section 92.0081, Property Code, is amended by amending Subsections (b), (d), and (h) and adding Subsections (e-1), (k), and (l) to read as follows:

(b) A landlord may not intentionally prevent a tenant from entering the leased premises except by judicial process unless the exclusion results from:

(1) bona fide repairs, construction, or an emergency;

(2) removing the contents of premises abandoned by a tenant; or

(3) changing the door locks on the door to the tenant's individual unit of a tenant who is delinquent in paying at least part of the rent.

(d) A landlord may not intentionally prevent a tenant from entering the leased premises under Subsection (b)(3) unless:

(1) the landlord's right to change the locks because of a tenant's failure to timely pay rent is placed in the lease;

(2) the tenant is delinquent in paying all or part of the rent; and

(3) [+2+] the landlord has locally mailed not later than the fifth calendar day before the date on which the door locks are changed or hand-delivered to the tenant or posted on the inside

1 of the main entry door of the tenant's dwelling not later than the
2 third calendar day before the date on which the door locks are
3 changed a written notice stating:

4 (A) the earliest date that the landlord proposes
5 to change the door locks;

6 (B) the amount of rent the tenant must pay to
7 prevent changing of the door locks; ~~and~~

8 (C) the name and street address of the individual
9 to whom, or the location of the on-site management office at which,
10 the delinquent rent may be discussed or paid during the landlord's
11 normal business hours; and

12 (D) in underlined or bold print, the tenant's
13 right to receive a key to the new lock at any hour, regardless of
14 whether the tenant pays the delinquent rent.

15 (e-1) A landlord who changes the locks or otherwise prevents
16 a tenant from entering the tenant's individual rental unit may not
17 change the locks or otherwise prevent a tenant from entering a
18 common area of residential rental property.

19 (h) If a landlord violates this section, the tenant may:

20 (1) either recover possession of the premises or
21 terminate the lease; and

22 (2) in addition to any other remedy provided by law,
23 recover from the landlord a civil penalty of one month's rent plus
24 \$1,000 ~~[\$500]~~, actual damages, court costs, and reasonable
25 attorney's fees in an action to recover property damages, actual
26 expenses, or civil penalties, less any delinquent rent or other
27 sums for which the tenant is liable to the landlord.

1 (k) A landlord may not change the locks on the door of a
2 tenant's dwelling under Subsection (b)(3):

3 (1) when the tenant or any other legal occupant is in
4 the dwelling; or

5 (2) more than once during a rental payment period.

6 (1) This section does not affect the ability of a landlord
7 to pursue other available remedies, including the remedies provided
8 by Chapter 24.

9 SECTION 2. Section 92.0131, Property Code, is amended by
10 adding Subsection (c-1) to read as follows:

11 (c-1) As a precondition for allowing a tenant to park in a
12 specific parking space or a common parking area that the landlord
13 has made available for tenant use, the landlord may require a tenant
14 to provide only the make, model, color, year, license number, and
15 state of registration of the vehicle to be parked.

16 SECTION 3. Subchapter A, Chapter 92, Property Code, is
17 amended by adding Section 92.019 to read as follows:

18 Sec. 92.019. LATE PAYMENT OF RENT; FEES. (a) A landlord
19 may not charge a tenant a late fee for failing to pay rent unless:

20 (1) notice of the fee is included in a written lease;

21 (2) the fee is a reasonable estimate of uncertain
22 damages to the landlord that are incapable of precise calculation
23 and result from late payment of rent; and

24 (3) the rent remains unpaid after the second day after
25 the date the rent was originally due.

26 (b) A late fee under this section may include an initial fee
27 and a daily fee for each day the rent continues to remain unpaid. A

1 daily fee may not be charged for more than 15 days for any single
2 month's rent.

3 (c) A landlord who violates this section is liable to the
4 tenant for an amount equal to the sum of \$100, three times the
5 amount of the late fee charged in violation of this section, and the
6 tenant's reasonable attorney's fees.

7 (d) A provision of a lease that purports to waive a right or
8 exempt a party from a liability or duty under this section is void.

9 (e) This section relates only to a fee, charge, or other sum
10 of money required to be paid under the lease if rent is not paid as
11 provided by Subsection (a)(3), and does not affect the landlord's
12 right to terminate the lease or take other action permitted by the
13 lease or other law. Payment of the fee, charge, or other sum of
14 money by a tenant does not waive the right or remedies provided by
15 this section.

16 SECTION 4. Subchapter A, Chapter 92, Property Code, is
17 amended by adding Section 92.020 to read as follows:

18 Sec. 92.020. EMERGENCY PHONE NUMBER. (a) A landlord must
19 provide to a tenant a telephone number that will be answered 24
20 hours a day for the purpose of reporting emergencies related to a
21 condition of the leased premises that materially affects the
22 physical health or safety of an ordinary tenant.

23 (b) A landlord of residential rental property that has an
24 on-site management or superintendent's office must post the phone
25 number required by Subsection (a) prominently outside the
26 management or superintendent's office.

27 (c) This section does not apply to or affect a local

1 ordinance governing a landlord's obligation to provide a 24-hour
2 emergency contact number to a tenant that is adopted before January
3 1, 2008, if the ordinance conforms with or is amended to conform
4 with this section.

5 SECTION 5. Subchapter A, Chapter 92, Property Code, is
6 amended by adding Section 92.021 to read as follows:

7 Sec. 92.021. NOTICE OF INTENT TO VACATE DWELLING OR EXTEND
8 TENANCY. (a) Notwithstanding any other law, a landlord shall, not
9 sooner than the 90th day and not later than the fifth day before the
10 last day of the lease term specified in a written lease, request
11 from a tenant written notice of whether the tenant intends to extend
12 the tenancy beyond the term specified in the tenant's lease.

13 (b) A tenant shall respond in writing to a request made by a
14 landlord under Subsection (a) not later than the last day of the
15 lease term specified in the tenant's lease.

16 (c) The requirements of Subsections (a) and (b) may not be
17 waived.

18 SECTION 6. Section 92.056, Property Code, is amended by
19 adding Subsection (g) to read as follows:

20 (g) A lease must contain language in underlined or bold
21 print that informs the tenant of the remedies available under this
22 section and Section 92.0561.

23 SECTION 7. The heading to Subchapter I, Chapter 92,
24 Property Code, is amended to read as follows:

25 SUBCHAPTER I. RENTAL APPLICATION [~~DEPOSITS~~]

26 SECTION 8. Section 92.351, Property Code, is amended by
27 adding Subdivisions (1-a) and (5-a) to read as follows:

1 (1-a) "Application fee" means a nonrefundable sum of
2 money that is given to the landlord to offset the costs of screening
3 an applicant for acceptance as a tenant.

4 (5-a) "Rental application" means a written request
5 made by an applicant to a landlord to lease premises from the
6 landlord.

7 SECTION 9. Subchapter I, Chapter 92, Property Code, is
8 amended by adding Section 92.3515 to read as follows:

9 Sec. 92.3515. NOTICE OF ELIGIBILITY REQUIREMENTS. (a) At
10 the time an applicant is provided with a rental application, the
11 landlord shall provide to the applicant printed notice of the
12 landlord's tenant selection criteria and the grounds for which the
13 rental application may be denied, including the applicant's:

14 (1) criminal history;
15 (2) previous rental history;
16 (3) current income;
17 (4) credit history; or
18 (5) failure to provide accurate or complete
19 information on the application form.

20 (b) If the landlord provides the notice under Subsection
21 (a), the applicant shall sign an acknowledgment indicating the
22 notice was provided. If the acknowledgment is not signed, there is
23 a rebuttable presumption that the notice was not received by the
24 applicant.

25 (c) The acknowledgment required by Subsection (b) must
26 include a statement substantively equivalent to the following:
27 "Signing this acknowledgment indicates that you have had the

1 opportunity to review the landlord's tenant selection criteria.
2 The tenant selection criteria may include factors such as criminal
3 history, credit history, current income, and rental history. If
4 you do not meet the selection criteria, or if you provide inaccurate
5 or incomplete information, your application may be rejected and
6 your application fee will not be refunded."

7 (d) The acknowledgment may be part of the rental application
8 if the notice is underlined or in bold print.

9 (e) If the landlord rejects an applicant and the landlord
10 has not provided the notice required by Subsection (a), the
11 landlord shall return the application fee and any application
12 deposit.

13 (f) If an applicant requests a landlord to mail a refund of
14 the applicant's application fee to the applicant, the landlord
15 shall mail the refund check to the applicant at the address
16 furnished by the applicant.

17 SECTION 10. Section 92.354, Property Code, is amended to
18 read as follows:

19 Sec. 92.354. LIABILITY OF LANDLORD. A landlord who in bad
20 faith fails to refund an application fee or deposit in violation of
21 this subchapter is liable for an amount equal to the sum of \$100,
22 three times the amount wrongfully retained [~~of the application~~
23 ~~deposit~~], and the applicant's reasonable attorney's fees [~~in a suit~~
24 ~~to recover the deposit~~].

25 SECTION 11. Subchapter I, Chapter 92, Property Code, is
26 amended by adding Section 92.355 to read as follows:

27 Sec. 92.355. WAIVER. A provision of a rental application

1 that purports to waive a right or exempt a party from a liability or
2 duty under this subchapter is void.

3 SECTION 12. This Act applies only to a lease agreement or a
4 renewal of a lease agreement entered into, or a rental application
5 received by an applicant, on or after the effective date of this
6 Act. A lease agreement or a renewal of a lease agreement entered
7 into, or a rental application received by an applicant, before the
8 effective date of this Act is covered by the law in effect at the
9 time the lease agreement or renewal of the lease agreement was
10 entered into or the rental application was received, and the former
11 law is continued in effect for that purpose.

12 SECTION 13. This Act takes effect January 1, 2008.

ADOPTED

MAY 23 2007

Atty. Gen.
Secretary of the Senate

By: *Anchia/*
Cramer

H.B. No. 3101

Substitute the following for __.B. No. ____:

By: *Elyse*

C.S. __.B. No. ____

A BILL TO BE ENTITLED

1

AN ACT

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

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SECTION 1. Section 92.0081, Property Code, is amended by amending Subsections (b), (d), and (h) and adding Subsections (e-1), (k), and (l) to read as follows:

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(b) A landlord may not intentionally prevent a tenant from entering the leased premises except by judicial process unless the exclusion results from:

10

(1) bona fide repairs, construction, or an emergency;

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(2) removing the contents of premises abandoned by a tenant; or

13

(3) changing the door locks on the door to the tenant's individual unit of a tenant who is delinquent in paying at least part of the rent.

16

(d) A landlord may not intentionally prevent a tenant from entering the leased premises under Subsection (b)(3) unless:

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(1) the landlord's right to change the locks because of a tenant's failure to timely pay rent is placed in the lease;

19

20

(2) the tenant is delinquent in paying all or part of the rent; and

21

22

(3) ~~[(2)]~~ the landlord has locally mailed not later than the fifth calendar day before the date on which the door locks are changed or hand-delivered to the tenant or posted on the inside

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24

1 of the main entry door of the tenant's dwelling not later than the
2 third calendar day before the date on which the door locks are
3 changed a written notice stating:

4 (A) the earliest date that the landlord proposes
5 to change the door locks;

6 (B) the amount of rent the tenant must pay to
7 prevent changing of the door locks; ~~and~~

8 (C) the name and street address of the individual
9 to whom, or the location of the on-site management office at which,
10 the delinquent rent may be discussed or paid during the landlord's
11 normal business hours; and

12 (D) in underlined or bold print, the tenant's
13 right to receive a key to the new lock at any hour, regardless of
14 whether the tenant pays the delinquent rent.

15 (e-1) A landlord who changes the locks or otherwise prevents
16 a tenant from entering the tenant's individual rental unit may not
17 change the locks or otherwise prevent a tenant from entering a
18 common area of residential rental property.

19 (h) If a landlord violates this section, the tenant may:

20 (1) either recover possession of the premises or
21 terminate the lease; and

22 (2) recover from the landlord a civil penalty of one
23 month's rent plus \$1,000 [~~\$500~~], actual damages, court costs, and
24 reasonable attorney's fees in an action to recover property
25 damages, actual expenses, or civil penalties, less any delinquent
26 rent or other sums for which the tenant is liable to the landlord.

27 (k) A landlord may not change the locks on the door of a

1 tenant's dwelling under Subsection (b)(3):

2 (1) when the tenant or any other legal occupant is in
3 the dwelling; or

4 (2) more than once during a rental payment period.

5 (1) This section does not affect the ability of a landlord
6 to pursue other available remedies, including the remedies provided
7 by Chapter 24.

8 SECTION 2. Section 92.0131, Property Code, is amended by
9 adding Subsection (c-1) to read as follows:

10 (c-1) As a precondition for allowing a tenant to park in a
11 specific parking space or a common parking area that the landlord
12 has made available for tenant use, the landlord may require a tenant
13 to provide only the make, model, color, year, license number, and
14 state of registration of the vehicle to be parked.

15 SECTION 3. Subchapter A, Chapter 92, Property Code, is
16 amended by adding Section 92.019 to read as follows:

17 Sec. 92.019. LATE PAYMENT OF RENT; FEES. (a) A landlord
18 may not charge a tenant a late fee for failing to pay rent unless:

19 (1) notice of the fee is included in a written lease;

20 (2) the fee is a reasonable estimate of uncertain
21 damages to the landlord that are incapable of precise calculation
22 and result from late payment of rent; and

23 (3) the rent remains unpaid after the second day after
24 the date the rent was originally due.

25 (b) A late fee under this section may include an initial fee
26 and a daily fee for each day the rent continues to remain unpaid.

27 (c) A landlord who violates this section is liable to the

1 tenant for an amount equal to the sum of \$100, three times the
2 amount of the late fee charged in violation of this section, and the
3 tenant's reasonable attorney's fees.

4 (d) A provision of a lease that purports to waive a right or
5 exempt a party from a liability or duty under this section is void.

6 (e) This section relates only to a fee, charge, or other sum
7 of money required to be paid under the lease if rent is not paid as
8 provided by Subsection (a)(3), and does not affect the landlord's
9 right to terminate the lease or take other action permitted by the
10 lease or other law. Payment of the fee, charge, or other sum of
11 money by a tenant does not waive the right or remedies provided by
12 this section.

13 SECTION 4. Subchapter A, Chapter 92, Property Code, is
14 amended by adding Section 92.020 to read as follows:

15 Sec. 92.020. EMERGENCY PHONE NUMBER. (a) A landlord that
16 has an on-site management or superintendent's office for a
17 residential rental property must provide to a tenant a telephone
18 number that will be answered 24 hours a day for the purpose of
19 reporting emergencies related to a condition of the leased premises
20 that materially affects the physical health or safety of an
21 ordinary tenant.

22 (b) The landlord must post the phone number required by
23 Subsection (a) prominently outside the management or
24 superintendent's office.

25 (c) This section does not apply to or affect a local
26 ordinance governing a landlord's obligation to provide a 24-hour
27 emergency contact number to a tenant that is adopted before January

1 1, 2008, if the ordinance conforms with or is amended to conform
2 with this section.

3 (d) A landlord to whom Subsection (a) does not apply must
4 provide to a tenant a telephone number for the purpose of reporting
5 emergencies described by that subsection.

6 SECTION 5. Section 92.056, Property Code, is amended by
7 adding Subsection (g) to read as follows:

8 (g) A lease must contain language in underlined or bold
9 print that informs the tenant of the remedies available under this
10 section and Section 92.0561.

11 SECTION 6. The heading to Subchapter I, Chapter 92,
12 Property Code, is amended to read as follows:

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19 (5-a) "Rental application" means a written request
20 made by an applicant to a landlord to lease premises from the
21 landlord.

22 SECTION 8. Subchapter I, Chapter 92, Property Code, is
23 amended by adding Section 92.3515 to read as follows:

24 Sec. 92.3515. NOTICE OF ELIGIBILITY REQUIREMENTS. (a) At
25 the time an applicant is provided with a rental application, the
26 landlord shall make available to the applicant printed notice of
27 the landlord's tenant selection criteria and the grounds for which

1 the rental application may be denied, including the applicant's:

2 (1) criminal history;

3 (2) previous rental history;

4 (3) current income;

5 (4) credit history; or

6 (5) failure to provide accurate or complete
7 information on the application form.

8 (b) If the landlord makes the notice available under
9 Subsection (a), the applicant shall sign an acknowledgment
10 indicating the notice was made available. If the acknowledgment is
11 not signed, there is a rebuttable presumption that the notice was
12 not made available to the applicant.

13 (c) The acknowledgment required by Subsection (b) must
14 include a statement substantively equivalent to the following:
15 "Signing this acknowledgment indicates that you have had the
16 opportunity to review the landlord's tenant selection criteria.
17 The tenant selection criteria may include factors such as criminal
18 history, credit history, current income, and rental history. If
19 you do not meet the selection criteria, or if you provide inaccurate
20 or incomplete information, your application may be rejected and
21 your application fee will not be refunded."

22 (d) The acknowledgment may be part of the rental application
23 if the notice is underlined or in bold print.

24 (e) If the landlord rejects an applicant and the landlord
25 has not made the notice required by Subsection (a) available, the
26 landlord shall return the application fee and any application
27 deposit.

1 (f) If an applicant requests a landlord to mail a refund of
2 the applicant's application fee to the applicant, the landlord
3 shall mail the refund check to the applicant at the address
4 furnished by the applicant.

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8 faith fails to refund an application fee or deposit in violation of
9 this subchapter is liable for an amount equal to the sum of \$100,
10 three times the amount wrongfully retained [~~of the application~~
11 ~~deposit~~], and the applicant's reasonable attorney's fees [~~in a suit~~
12 ~~to recover the deposit~~].

13 SECTION 10. Subchapter I, Chapter 92, Property Code, is
14 amended by adding Section 92.355 to read as follows:

15 Sec. 92.355. WAIVER. A provision of a rental application
16 that purports to waive a right or exempt a party from a liability or
17 duty under this subchapter is void.

18 SECTION 11. This Act applies only to a lease agreement or a
19 renewal of a lease agreement entered into, or a rental application
20 received by an applicant, on or after the effective date of this
21 Act. A lease agreement or a renewal of a lease agreement entered
22 into, or a rental application received by an applicant, before the
23 effective date of this Act is covered by the law in effect at the
24 time the lease agreement or renewal of the lease agreement was
25 entered into or the rental application was received, and the former
26 law is continued in effect for that purpose.

27 SECTION 12. This Act takes effect January 1, 2008.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 18, 2007

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB3101** by Anchia (Relating to a residential tenant's rights and remedies.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Property Code relating to tenants' rights, preventing a tenant from entering a leased premise, and permitting a landlord to require certain tenants to provide the landlord with identifying information about their vehicles. The Office of the Attorney General indicates that additional cases and investigations may arise resulting from the provisions of the bill; however, any additional costs could be absorbed within existing state resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General

LBB Staff: JOB, JRO, JM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 9, 2007

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3101 by Anchia (Relating to a residential tenant's rights and remedies.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Property Code relating to tenants' rights, preventing a tenant from entering a leased premise, and permitting a landlord to require certain tenants to provide the landlord with identifying information about their vehicles. The Office of the Attorney General indicates that additional cases and investigations may arise resulting from the provisions of the bill; however, any additional costs could be absorbed within existing state resources.

Local Government Impact

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Source Agencies: 302 Office of the Attorney General

LBB Staff: JOB, JRO, JM

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LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 17, 2007

TO: Honorable Helen Giddings, Chair, House Committee on Business & Industry

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3101 by Anchia (Relating to a residential tenant's rights and remedies.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Property Code relating to preventing a tenant from entering a leased premise and permit a landlord to require tenants with designated parking spaces to provide the landlord with identifying information about their vehicles. The bill would also prohibit a landlord from charging a penalty or fee of more than seven percent of the unpaid rent amount. The Office of the Attorney General indicates that additional cases and investigations may arise resulting from the provisions of the bill; however, any additional costs could be absorbed within existing state resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General

LBB Staff: JOB, JRO, JM

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 3, 2007

TO: Honorable Helen Giddings, Chair, House Committee on Business & Industry

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3101 by Anchia (Relating to a residential tenant's rights and remedies.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Property Code and permit a landlord to require tenants with designated parking spaces to provide the landlord with identifying information about their vehicles. The bill would also prohibit a landlord from charging a penalty or fee of more than seven percent of the unpaid rent amount. The Office of the Attorney General indicates that additional cases and investigations may arise resulting from the provisions of the bill; however, any additional costs could be absorbed within existing state resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General

LBB Staff: JOB, JRO, JM

