

BILL ANALYSIS

Senate Research Center

H.B. 1111
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Jurisprudence
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A tenant has a right to file an appeal during a certain period when a judgment is issued in an eviction case awarding a landlord possession of a property along with any unpaid rent. A tenant is allowed to file a pauper's affidavit if the tenant is unable to pay the costs of the appeal. Observers note that when a tenant files a pauper's affidavit, the tenant has a right to otherwise remain in possession of the property pending the outcome of the trial of the eviction by paying a deposit into the registry of the court. It is further noted that when a tenant fails to pay the deposit within a certain period, the landlord must then file a motion stating the deposit was not paid and request a writ of possession. Interested parties say that this procedure can sometimes take months to resolve and the landlord during this time has neither the security of the deposit nor the unit to rent to mitigate further damages.

H.B. 1111 amends current law relating to a tenant's failure to pay rent during an appeal of an eviction for nonpayment of rent after filing a pauper's affidavit.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 24.004, Property Code, to provide that a justice court has jurisdiction to issue a writ of possession under Sections 24.0054(a), (a-1), and (a-2).

SECTION 2. Amends Section 24.0053, Property Code, by adding Subsections (a-1) and (a-2), as follows:

(a-1) Requires the justice court, if a tenant files a pauper's affidavit in the period prescribed by Section 24.0052 (Tenant Appeal on Pauper's Affidavit) to appeal an eviction for nonpayment of rent, to provide to the tenant a written notice at the time the pauper's affidavit is filed that contains the following information in bold or conspicuous type:

- (1) the amount of the initial deposit of rent stated in the judgment that the tenant must pay into the justice court registry;
- (2) whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;
- (3) the date by which the initial deposit must be paid into the justice court registry;
- (4) for a court that closes before 5 p.m. on the date specified by Subdivision (3), the time the court closes; and

(5) a statement that failure to pay the required amount into the justice court registry by the date prescribed by Subdivision (3) may result in the court issuing a writ of possession without hearing.

(a-2) Requires that the date by which an initial deposit must be paid into the justice court registry under Subsection (a-1)(3) be within five days of the date the tenant files the pauper's affidavit as required by Rule 749b(1), Texas Rules of Civil Procedure.

SECTION 3. Amends Section 24.0054, Property Code, by amending Subsections (a) and (e) and adding Subsections (a-1), (a-2), and (a-3), as follows:

(a) Requires the justice court, during an appeal of an eviction case for nonpayment of rent, if a tenant fails to pay the initial rent deposit into the justice court registry within five days of the date the tenant filed a pauper's affidavit as required by Rule 749b(1), Texas Rules of Civil Procedure, and Section 24.0053 (Payment of Rent During Appeal of Eviction), and if the justice court has provided the written notice required by Section 24.0053(a-1), to immediately issue a writ of possession, without hearing. Requires the sheriff or constable to execute the writ in accordance with Sections 24.0061(d) (relating to requiring a writ of possession to order the officer executing the writ to perform certain actions), (e) (relating to requiring the writ of possession to authorize the officer to engage the services of a bonded or insured warehouseman to remove and store part or all of the property at no cost to the landlord or the officer executing the writ), (f) (prohibiting the officer from requiring the landlord to store the property), (g) (relating to requiring the writ of possession to contain notice to the officer that the officer is not liable for damages resulting from the execution of the writ under a certain condition), and (h) (authorizing a sheriff or constable to use reasonable force in executing a writ under this section). Requires the landlord to bear the costs of issuing and executing the writ of possession.

(a-1) Prohibits a justice court from forwarding the transcript and original papers in an eviction case to the county court before the fifth day after the date the tenant files a pauper's affidavit unless the court confirms that the tenant has timely paid the initial deposit of rent into the justice court registry in accordance with Section 24.0053. Requires the justice court, if the tenant has not timely paid the initial deposit into the justice court registry, to issue a writ of possession notwithstanding the fact that the tenant has perfected an appeal by filing a pauper's affidavit that has been approved by the court. Requires the justice court to forward the transcript and original papers in the case to the county court for trial de novo, notwithstanding the fact that a writ of possession under this section has already been issued.

(a-2) Prohibits the justice court, notwithstanding Subsections (a) and (a-1), from issuing a writ of possession if the tenant has timely deposited the tenant's portion of the rent claimed by the tenant under Section 24.0053(d) (relating to requiring a tenant to be required to pay only the portion claimed by the tenant to be owed by the tenant until the issue is tried de novo along with the case on the merits in county court).

(a-3) Redesignates existing Subsection (a) as Subsection (a-3). Authorizes the landlord, during an appeal of an eviction case for nonpayment of rent, if a tenant fails to pay rent into the justice court or county court registry as the rent becomes due under the rental agreement in accordance with the Texas Rules of Civil Procedure and Section 24.0053, to file with the county court a sworn motion that the tenant failed to pay rent as required.

(e) Authorizes the parties, in a motion or hearing, rather than in a motion or hearing in county court, under Subsection (a-3), to represent themselves or be represented by their authorized agents, who need not be attorneys. Makes a conforming change.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: January 1, 2012.