

BILL ANALYSIS

C.S.H.B. 1111
By: Hartnett
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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.

C.S.H.B. 1111 seeks to address these issues by establishing provisions relating to a tenant's failure to pay rent during an appeal of an eviction for nonpayment of rent.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1111 amends the Property Code to require a justice court, if a tenant files a pauper's affidavit in the requisite time period 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: the amount of the initial deposit of rent stated in the judgment that the tenant must pay into the justice court registry; 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; the date by which the initial deposit must be paid into the justice court registry and, for a court that closes before 5 p.m. on that date, the time the court closes; and a statement that failure to pay the required amount into the justice court registry by such date may result in the court issuing a writ of possession without hearing. The bill requires the date by which an initial deposit must be paid into the justice court registry to be within five days of the date the tenant files the pauper's affidavit as required by provisions of the Texas Rules of Civil Procedure.

C.S.H.B. 1111 establishes that a justice court has jurisdiction to issue a writ of possession as prescribed by certain of the bill's provisions. The bill requires a justice court, during an appeal of an eviction case for nonpayment of rent, if a tenant appeals the case by filing a pauper's affidavit and then fails to pay the initial rent deposit into the justice court registry within five days of the date the tenant filed that affidavit as required by provisions of the Texas Rules of Civil Procedure and the applicable statutory provision, and if the justice court has provided the written notice to the tenant required at the time the pauper's affidavit is filed, to immediately issue a writ of possession, without hearing. The bill requires the sheriff or constable to execute the writ in

accordance with provisions of law relating to a writ of possession and requires the landlord to bear the costs of issuing and executing the writ of possession.

C.S.H.B. 1111 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. The bill 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. The bill 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 has already been issued. The bill prohibits the justice court from issuing a writ of possession if the tenant has timely deposited the tenant's portion of the rent claimed by the tenant to be owed under provisions of law relating to a tenant's objection to a justice court's ruling in a hearing on the contest of the portion of the rent to be paid by the tenant during an appeal of an eviction case based on nonpayment of rent and the tenant's rent during the rental agreement term has been paid wholly or partly by a government agency.

C.S.H.B. 1111 specifies that the tenant's failure to pay rent to the justice court or county court registry during an appeal of an eviction case for nonpayment of rent is the failure to pay such rent as it becomes due under the applicable rental agreement. The bill makes conforming and nonsubstantive changes.

EFFECTIVE DATE

January 1, 2012.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1111 contains a provision not included in the original establishing that a justice court has jurisdiction to issue a writ of possession. The substitute contains provisions not included in the original requiring the justice court to provide a written notice to a tenant who files a pauper's affidavit to appeal an eviction for nonpayment of rent, setting forth the information to be contained in that notice, and providing the date by which an initial deposit of rent must be paid into the justice court registry.

C.S.H.B. 1111, in a provision relating to the conditions under which a writ of possession may be executed in an appeal of an eviction case for nonpayment of rent, differs from the original by conditioning the execution of the writ contingent on a tenant failing to pay the initial rent deposit into the justice court registry, whereas the original conditions the writ on the tenant failing to pay one rental period's rent into the registry. The substitute, in the same provision, differs from the original by conditioning the execution of the writ on the justice court providing the specified written notice and requiring the justice court to immediately issue a writ, without hearing, whereas the original conditions the execution of the writ, without hearing, on the filing of a notice of default by the appellee. The substitute differs from the original by requiring the sheriff or constable to execute the writ in accordance with specified provisions of law, whereas the original authorizes the writ to be executed immediately and requires the sheriff or constable to execute the writ as soon as practicable. The substitute contains a provision not contained in the original requiring the landlord to bear the costs of issuing and executing the writ.

C.S.H.B. 1111 contains provisions not included in the original prohibiting a justice court from forwarding the transcript and original papers in an eviction case to the county court before a certain time unless the justice court confirms that the tenant has timely paid the initial deposit into the court registry. The substitute contains a provision not included in the original requiring the justice court to issue a writ of possession if the tenant has not timely paid the initial deposit into the registry. The substitute contains a provision not included in the original requiring the

justice court to forward the transcript and original papers in the case to the county court for trial de novo. The substitute contains a provision not included in the original prohibiting the justice court from issuing a writ of possession if the tenant has timely deposited the tenant's portion of the rent claimed by the tenant under certain circumstances.

C.S.H.B. 1111, in a provision relating to the conditions under which a landlord may file with the county court a sworn motion that the tenant failed to pay rent as required in an appeal of an eviction case for nonpayment of rent, omits a provision contained in the original conditioning the filing of the sworn motion on the landlord having not previously obtained a writ of possession from the justice court.

C.S.H.B. 1111 omits a provision contained in the original making the requirement that a county court immediately issue a writ of possession contingent on the landlord having not previously obtained a writ of possession from the justice court. The substitute omits a provision contained in the original authorizing the parties to represent themselves or be represented by their authorized agents in a motion or hearing to dismiss an appeal of an eviction case in county court.

C.S.H.B. 1111 differs from the original by establishing the substitute's effective date as January 1, 2012, whereas the original establishes that date as on passage, or, if the original does not receive the necessary vote, September 1, 2011. The substitute differs from the original in nonsubstantive ways.