

By: Hartnett, et al.

H.B. No. 1111

A BILL TO BE ENTITLED

AN ACT

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.

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

SECTION 1. Section 24.004, Property Code, is amended to read as follows:

Sec. 24.004. JURISDICTION. A justice court in the precinct in which the real property is located has jurisdiction in eviction suits. Eviction suits include forcible entry and detainer and forcible detainer suits. A justice court has jurisdiction to issue a writ of possession under Section 24.0054(a), (a-1), and (a-2).

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

(a-1) If a tenant files a pauper's affidavit in the period prescribed by Section 24.0052 to appeal an eviction for nonpayment of rent, the justice court shall 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;

1           (3) the date by which the initial deposit must be paid  
2 into the justice court registry;

3           (4) for a court that closes before 5 p.m. on the date  
4 specified by Subdivision (3), the time the court closes; and

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

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

13           SECTION 3. Section 24.0054, Property Code, is amended by  
14 amending Subsections (a) and (e) and adding Subsections (a-1),  
15 (a-2), and (a-3) to read as follows:

16           (a) During an appeal of an eviction case for nonpayment of  
17 rent, if a tenant fails to pay the initial rent deposit into the  
18 justice court registry within five days of the date the tenant filed  
19 a pauper's affidavit as required by Rule 749b(1), Texas Rules of  
20 Civil Procedure, and Section 24.0053, and if the justice court has  
21 provided the written notice required by Section 24.0053(a-1), the  
22 justice court shall immediately issue a writ of possession, without  
23 hearing. The sheriff or constable shall execute the writ in  
24 accordance with Section 24.0061(d) through (h). The landlord shall  
25 bear the costs of issuing and executing the writ of possession.

26           (a-1) A justice court may not forward the transcript and  
27 original papers in an eviction case to the county court before the

1 fifth day after the date the tenant files a pauper's affidavit  
2 unless the court confirms that the tenant has timely paid the  
3 initial deposit of rent into the justice court registry in  
4 accordance with Section 24.0053. If the tenant has not timely paid  
5 the initial deposit into the justice court registry, the justice  
6 court shall issue a writ of possession notwithstanding the fact  
7 that the tenant has perfected an appeal by filing a pauper's  
8 affidavit that has been approved by the court. The justice court  
9 shall forward the transcript and original papers in the case to the  
10 county court for trial de novo, notwithstanding the fact that a writ  
11 of possession under this section has already been issued.

12 (a-2) Notwithstanding Subsections (a) and (a-1), the  
13 justice court may not issue a writ of possession if the tenant has  
14 timely deposited the tenant's portion of the rent claimed by the  
15 tenant under Section 24.0053(d).

16 (a-3) During an appeal of an eviction case for nonpayment of  
17 rent, if a tenant fails to pay rent into the justice court or county  
18 court registry as the rent becomes due under the rental agreement in  
19 accordance with the Texas Rules of Civil Procedure and Section  
20 24.0053, the landlord may file with the county court a sworn motion  
21 that the tenant failed to pay rent as required. The landlord shall  
22 notify the tenant of the motion and the hearing date.

23 (e) In a motion or hearing [~~in county court~~] under  
24 Subsection (a-3) [~~(a)~~], the parties may represent themselves or be  
25 represented by their authorized agents, who need not be attorneys.

26 SECTION 4. The change in law made by this Act applies only  
27 to an eviction suit filed on or after the effective date of this

1 Act. A suit filed before the effective date of this Act is governed  
2 by the law in effect immediately before the effective date of this  
3 Act, and that law is continued in effect for that purpose.

4 SECTION 5. This Act takes effect January 1, 2012.