

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 Sections 24.0054(a), (a-2), and (a-3).

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 calendar date by which the initial deposit  
2 must be paid 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), (a-3), and (a-4) to read as follows:

16           (a) During an appeal of an eviction case for nonpayment of  
17 rent, the justice court on request shall immediately issue a writ of  
18 possession, without hearing, if:

19           (1) a tenant fails to pay the initial rent deposit into  
20 the justice court registry within five days of the date the tenant  
21 filed a pauper's affidavit as required by Rule 749b(1), Texas Rules  
22 of Civil Procedure, and Section 24.0053;

23           (2) the justice court has provided the written notice  
24 required by Section 24.0053(a-1); and

25           (3) the justice court has not yet forwarded the  
26 transcript and original papers to the county court as provided by  
27 Subsection (a-2).

1       (a-1) The sheriff or constable shall execute a writ of  
2 possession under Subsection (a) in accordance with Sections  
3 24.0061(d) through (h). The landlord shall bear the costs of  
4 issuing and executing the writ of possession.

5       (a-2) The justice court shall forward the transcript and  
6 original papers in an appeal of an eviction case to the county court  
7 but may not forward the transcript and original papers before the  
8 sixth day after the date the tenant files a pauper's affidavit,  
9 except that, if the court confirms that the tenant has timely paid  
10 the initial deposit of rent into the justice court registry in  
11 accordance with Section 24.0053, the court may forward the  
12 transcript and original papers immediately. If the tenant has not  
13 timely paid the initial deposit into the justice court registry,  
14 the justice court on request shall issue a writ of possession  
15 notwithstanding the fact that the tenant has perfected an appeal by  
16 filing a pauper's affidavit that has been approved by the court. The  
17 justice court shall forward the transcript and original papers in  
18 the case to the county court for trial de novo, notwithstanding the  
19 fact that a writ of possession under this section has already been  
20 issued.

21       (a-3) Notwithstanding Subsections (a) and (a-2), the  
22 justice court may not issue a writ of possession if the tenant has  
23 timely deposited the tenant's portion of the rent claimed by the  
24 tenant under Section 24.0053(d).

25       (a-4) During an appeal of an eviction case for nonpayment of  
26 rent, if a tenant fails to pay rent into the justice court or county  
27 court registry as the rent becomes due under the rental agreement in

1 accordance with the Texas Rules of Civil Procedure and Section  
2 24.0053, the landlord may file with the county court a sworn motion  
3 that the tenant failed to pay rent as required. The landlord shall  
4 notify the tenant of the motion and the hearing date.

5 (e) In a motion or hearing [~~in county court~~] under  
6 Subsection (a-4), or in a motion to dismiss an appeal of an eviction  
7 case in county court [~~(a)~~], the parties may represent themselves or  
8 be represented by their authorized agents, who need not be  
9 attorneys.

10 SECTION 4. The change in law made by this Act applies only  
11 to an eviction suit filed on or after the effective date of this  
12 Act. A suit filed before the effective date of this Act is governed  
13 by the law in effect immediately before the effective date of this  
14 Act, and that law is continued in effect for that purpose.

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

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President of the Senate

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Speaker of the House

I certify that H.B. No. 1111 was passed by the House on May 5, 2011, by the following vote: Yeas 146, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1111 on May 27, 2011, by the following vote: Yeas 141, Nays 0, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 1111 was passed by the Senate, with amendments, on May 25, 2011, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor