

1-1 By: Hartnett, et al. (Senate Sponsor - Harris) H.B. No. 1111  
1-2 (In the Senate - Received from the House May 6, 2011;  
1-3 May 9, 2011, read first time and referred to Committee on  
1-4 Jurisprudence; May 19, 2011, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;  
1-6 May 19, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1111 By: Carona

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to a tenant's failure to pay rent during an appeal of an  
1-11 eviction for nonpayment of rent after filing a pauper's affidavit.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 24.004, Property Code, is amended to  
1-14 read as follows:

1-15 Sec. 24.004. JURISDICTION. A justice court in the precinct  
1-16 in which the real property is located has jurisdiction in eviction  
1-17 suits. Eviction suits include forcible entry and detainer and  
1-18 forcible detainer suits. A justice court has jurisdiction to issue  
1-19 a writ of possession under Sections 24.0054(a), (a-2), and (a-3).

1-20 SECTION 2. Section 24.0053, Property Code, is amended by  
1-21 adding Subsections (a-1) and (a-2) to read as follows:

1-22 (a-1) If a tenant files a pauper's affidavit in the period  
1-23 prescribed by Section 24.0052 to appeal an eviction for nonpayment  
1-24 of rent, the justice court shall provide to the tenant a written  
1-25 notice at the time the pauper's affidavit is filed that contains the  
1-26 following information in bold or conspicuous type:

1-27 (1) the amount of the initial deposit of rent stated in  
1-28 the judgment that the tenant must pay into the justice court  
1-29 registry;

1-30 (2) whether the initial deposit must be paid in cash,  
1-31 cashier's check, or money order, and to whom the cashier's check or  
1-32 money order, if applicable, must be made payable;

1-33 (3) the calendar date by which the initial deposit  
1-34 must be paid into the justice court registry;

1-35 (4) for a court that closes before 5 p.m. on the date  
1-36 specified by Subdivision (3), the time the court closes; and

1-37 (5) a statement that failure to pay the required  
1-38 amount into the justice court registry by the date prescribed by  
1-39 Subdivision (3) may result in the court issuing a writ of possession  
1-40 without hearing.

1-41 (a-2) The date by which an initial deposit must be paid into  
1-42 the justice court registry under Subsection (a-1)(3) must be within  
1-43 five days of the date the tenant files the pauper's affidavit as  
1-44 required by Rule 749b(1), Texas Rules of Civil Procedure.

1-45 SECTION 3. Section 24.0054, Property Code, is amended by  
1-46 amending Subsections (a) and (e) and adding Subsections (a-1),  
1-47 (a-2), (a-3), and (a-4) to read as follows:

1-48 (a) During an appeal of an eviction case for nonpayment of  
1-49 rent, the justice court on request shall immediately issue a writ of  
1-50 possession, without hearing, if:

1-51 (1) a tenant fails to pay the initial rent deposit into  
1-52 the justice court registry within five days of the date the tenant  
1-53 filed a pauper's affidavit as required by Rule 749b(1), Texas Rules  
1-54 of Civil Procedure, and Section 24.0053;

1-55 (2) the justice court has provided the written notice  
1-56 required by Section 24.0053(a-1); and

1-57 (3) the justice court has not yet forwarded the  
1-58 transcript and original papers to the county court as provided by  
1-59 Subsection (a-2).

1-60 (a-1) The sheriff or constable shall execute a writ of  
1-61 possession under Subsection (a) in accordance with Sections  
1-62 24.0061(d) through (h). The landlord shall bear the costs of  
1-63 issuing and executing the writ of possession.

2-1 (a-2) The justice court shall forward the transcript and  
2-2 original papers in an appeal of an eviction case to the county court  
2-3 but may not forward the transcript and original papers before the  
2-4 sixth day after the date the tenant files a pauper's affidavit,  
2-5 except that, if the court confirms that the tenant has timely paid  
2-6 the initial deposit of rent into the justice court registry in  
2-7 accordance with Section 24.0053, the court may forward the  
2-8 transcript and original papers immediately. If the tenant has not  
2-9 timely paid the initial deposit into the justice court registry,  
2-10 the justice court on request shall issue a writ of possession  
2-11 notwithstanding the fact that the tenant has perfected an appeal by  
2-12 filing a pauper's affidavit that has been approved by the court. The  
2-13 justice court shall forward the transcript and original papers in  
2-14 the case to the county court for trial de novo, notwithstanding the  
2-15 fact that a writ of possession under this section has already been  
2-16 issued.

2-17 (a-3) Notwithstanding Subsections (a) and (a-2), the  
2-18 justice court may not issue a writ of possession if the tenant has  
2-19 timely deposited the tenant's portion of the rent claimed by the  
2-20 tenant under Section 24.0053(d).

2-21 (a-4) During an appeal of an eviction case for nonpayment of  
2-22 rent, if a tenant fails to pay rent into the justice court or county  
2-23 court registry as the rent becomes due under the rental agreement in  
2-24 accordance with the Texas Rules of Civil Procedure and Section  
2-25 24.0053, the landlord may file with the county court a sworn motion  
2-26 that the tenant failed to pay rent as required. The landlord shall  
2-27 notify the tenant of the motion and the hearing date.

2-28 (e) In a motion or hearing [~~in county court~~] under  
2-29 Subsection (a-4), or in a motion to dismiss an appeal of an eviction  
2-30 case in county court [~~(a)~~], the parties may represent themselves or  
2-31 be represented by their authorized agents, who need not be  
2-32 attorneys.

2-33 SECTION 4. The change in law made by this Act applies only  
2-34 to an eviction suit filed on or after the effective date of this  
2-35 Act. A suit filed before the effective date of this Act is governed  
2-36 by the law in effect immediately before the effective date of this  
2-37 Act, and that law is continued in effect for that purpose.

2-38 SECTION 5. This Act takes effect January 1, 2012.

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