

By: Hinojosa

S.B. No. 117

A BILL TO BE ENTITLED

AN ACT

relating to the right of a spouse to enter the marital residence accompanied by a peace officer under certain circumstances.

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

SECTION 1. Chapter 3, Family Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. ACCESS TO MARITAL RESIDENCE

Sec. 3.501. DEFINITION. In this subchapter, "marital residence" means the dwelling in which spouses primarily reside, regardless of whether that dwelling qualifies as a homestead.

Sec. 3.502. RIGHT TO ENTER MARITAL RESIDENCE. Except as otherwise provided by a protective order under Title 4, a magistrate's order for emergency protection under Article 17.292, Code of Criminal Procedure, another court order, or other law, a spouse is entitled to enter the spouse's marital residence for a purpose described by Section 3.503 regardless of whether:

(1) there is an agreement between the spouses that the other spouse shall have exclusive right to reside in the residence;
or

(2) the spouse seeking to enter the residence voluntarily moved out of the residence.

Sec. 3.503. APPLICATION TO ENTER RESIDENCE ACCOMPANIED BY PEACE OFFICER. (a) If a spouse desires to be accompanied by a peace officer when the spouse enters the marital residence, the

1 spouse must apply to a justice court for an order authorizing entry
2 to the residence. The application must:

3 (1) certify that the applicant is unable to enter the
4 marital residence because the spouse occupying the marital
5 residence has denied the applicant access to the marital residence;

6 (2) certify that, to the best of the applicant's
7 knowledge, the applicant is not:

8 (A) the subject of an active protective order
9 under Title 4, a magistrate's order for emergency protection under
10 Article 17.292, Code of Criminal Procedure, or another court order
11 prohibiting entry to the marital residence; or

12 (B) otherwise prohibited by law from entering the
13 marital residence;

14 (3) allege that the applicant requires vital items
15 located in the marital residence, including medical records and
16 supplies, legal documents, financial documents, employment
17 records, personal identification documents, and items pertaining
18 to personal safety;

19 (4) describe with specificity the items that the
20 applicant intends to retrieve; and

21 (5) allege that the applicant will suffer personal or
22 financial harm if the items listed in the application are not
23 retrieved.

24 (b) The justice of the peace shall grant the application
25 under Subsection (a) only if the justice of the peace finds that:

26 (1) the applicant is unable to enter the marital
27 residence because the spouse occupying the marital residence has

1 denied the applicant access to the marital residence;

2 (2) the applicant is not:

3 (A) the subject of an active protective order
4 under Title 4, a magistrate's order for emergency protection under
5 Article 17.292, Code of Criminal Procedure, or another court order
6 prohibiting entry to the marital residence; or

7 (B) otherwise prohibited by law from entering the
8 marital residence; and

9 (3) there is a risk of personal or financial harm to
10 the applicant if the items listed in the application are not
11 retrieved.

12 (c) If the justice of the peace grants the application under
13 this section, a peace officer shall accompany and assist the
14 applicant in making the authorized entry.

15 (d) A peace officer who provides assistance under
16 Subsection (c) is not:

17 (1) civilly liable for an act or omission of the
18 officer that arises in connection with providing the assistance; or

19 (2) civilly or criminally liable for the wrongful
20 appropriation of any personal property by the spouse the officer is
21 assisting.

22 SECTION 2. This Act takes effect September 1, 2013.