

BILL ANALYSIS

C.S.H.B. 2486
By: Keffer
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties point out that in certain domestic situations an individual may need to enter the individual's former residence to retrieve personal property but be denied entry to the residence. These parties contend that an individual who is denied entry to a former residence in such a situation should be able to apply to a court for an order allowing the individual to retrieve certain items of personal property. C.S.H.B. 2486 seeks to provide for this option and give eligible individuals a safe alternative for retrieving personal items from a former residence to which they are no longer allowed access.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 2486 amends the Property Code to authorize a person, if the person is unable to enter the person's residence or former residence to retrieve personal property belonging to the person or the person's dependent because the current occupant is denying the person entry, to apply to the justice court for an order authorizing the person to enter the residence accompanied by a peace officer to retrieve specific items of personal property. The bill requires the application to do the following: certify that the applicant is unable to enter the residence because the current occupant of the residence has denied the applicant access to the residence; certify that, to the best of the applicant's knowledge, the applicant is not the subject of certain active court orders prohibiting entry to the residence or otherwise prohibited by law from entering the residence; allege that the applicant or the applicant's dependent requires personal items located in the residence; describe with specificity the items that the applicant intends to retrieve; and allege that the applicant or the applicant's dependent will suffer personal or financial harm if the items listed in the application are not retrieved promptly. The bill defines "peace officer" as a sheriff, a constable, a deputy sheriff or constable, or a reserve deputy sheriff or constable who holds a permanent peace officer license.

C.S.H.B. 2486 authorizes a justice of the peace, on sufficient evidence of hardship and urgency, to grant the application and issue an order authorizing the applicant to enter the residence accompanied by a peace officer and retrieve the property listed in the application if the justice of the peace finds that the applicant is unable to enter the residence because the current occupant of the residence has denied the applicant access to the residence to retrieve the applicant's personal

property or the personal property of the applicant's dependent; that the applicant is not the subject of certain active court orders prohibiting entry to the residence or otherwise prohibited by law from entering the residence; and that there is a risk of personal or financial harm to the applicant or the applicant's dependent if the items listed in the application are not retrieved promptly.

C.S.H.B. 2486 requires a peace officer, if the justice of the peace grants such an application, to accompany and assist the applicant in making the authorized entry and retrieving the items of personal property listed in the application. The bill requires the peace officer, if the current occupant of the residence is present at the time of the entry, to provide the occupant with a copy of the court order authorizing the entry and property retrieval. The bill requires the applicant, before removing the property listed in the application from the residence, to submit all property retrieved to the peace officer assisting the applicant to be inventoried and requires the peace officer to create an inventory listing the items taken from the residence, to provide a copy of the inventory to the applicant, to provide a copy of the inventory to the current occupant or, if the current occupant is not present, to leave the copy in a conspicuous place in the residence, and to return the property to be removed from the residence to the applicant. The bill requires the officer to file the original inventory with the court that issued the order authorizing the entry and property retrieval.

C.S.H.B. 2486 authorizes a peace officer to use reasonable force in providing the assistance and grants a peace officer who provides assistance in good faith and with reasonable diligence immunity from civil liability for an act or omission of the officer that arises in connection with providing the assistance and immunity from civil or criminal liability for the wrongful appropriation of any personal property by the person the officer is assisting. The bill makes it a Class B misdemeanor to interfere with a person or peace officer entering a residence and retrieving personal property under the authority of a court order issued under the bill's provisions and establishes a defense to prosecution for such offense if the actor did not receive a copy of the court order or other notice that the entry or property retrieval was authorized.

C.S.H.B. 2486 authorizes the occupant of a residence that is the subject of a court order issued under the bill's provisions, not later than the 10th day after the date of the authorized entry, to file a complaint in the court that issued the order alleging that the applicant has appropriated property belonging to the occupant or the occupant's dependent. The bill requires the court to promptly hold a hearing on such a complaint and rule on the disposition of the disputed property. The bill expressly does not limit the occupant's remedies under any other law for recovery of the property of the occupant or the occupant's dependent.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2486 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Title 4, Property Code, is amended by adding Chapter 24A to read as follows:

CHAPTER 24A. ACCESS TO RESIDENCE OR FORMER RESIDENCE

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Title 4, Property Code, is amended by adding Chapter 24A to read as follows:

CHAPTER 24A. ACCESS TO RESIDENCE OR FORMER RESIDENCE

TO RETRIEVE PERSONAL PROPERTY

Sec. 24A.001. ORDER AUTHORIZING ENTRY AND PROPERTY RETRIEVAL; PEACE OFFICER TO ACCOMPANY.

Sec. 24A.002. AUTHORIZED ENTRY PROCEDURES; DUTIES OF PEACE OFFICER.

Sec. 24A.003. OFFENSE.

Sec. 24A.004. HEARING; REVIEW.

SECTION 2. This Act takes effect September 1, 2015.

TO RETRIEVE PERSONAL PROPERTY

Sec. 24A.001. DEFINITION. In this chapter, "peace officer" means a person listed under Article 2.12(1) or (2), Code of Criminal Procedure.

Sec. 24A.002. ORDER AUTHORIZING ENTRY AND PROPERTY RETRIEVAL; PEACE OFFICER TO ACCOMPANY.

Sec. 24A.003. AUTHORIZED ENTRY PROCEDURES; DUTIES OF PEACE OFFICER.

Sec. 24A.004. OFFENSE.

Sec. 24A.005. HEARING; REVIEW.

SECTION 2. Same as introduced version.