

By: Hinojosa

S.B. No. 739

A BILL TO BE ENTITLED

AN ACT

relating to the right of a person to enter the person's residence or former residence accompanied by a peace officer to recover certain personal property; creating an offense.

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

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. (a) If a 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, the
person may 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.

(b) An application under Subsection (a) must:

(1) 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;

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

(A) the subject of an active protective order

1 under Title 4, Family Code, a magistrate's order for emergency
2 protection under Article 17.292, Code of Criminal Procedure, or
3 another court order prohibiting entry to the residence; or

4 (B) otherwise prohibited by law from entering the
5 residence;

6 (3) allege that the applicant or the applicant's
7 dependent requires personal items located in the residence,
8 including medical records, medicine and medical supplies,
9 clothing, child-care items, legal documents, financial documents,
10 including checks or bank or credit cards, employment records,
11 personal identification documents, educational or work-related
12 books and supplies, including electronic devices, and items
13 pertaining to personal safety;

14 (4) describe with specificity the items that the
15 applicant intends to retrieve; and

16 (5) allege that the applicant or the applicant's
17 dependent will suffer personal or financial harm if the items
18 listed in the application are not retrieved promptly.

19 (c) On sufficient evidence of hardship and urgency, the
20 justice of the peace may grant the application under this section
21 and issue an order authorizing the applicant to enter the residence
22 accompanied by a peace officer and retrieve the property listed in
23 the application if the justice of the peace finds that:

24 (1) the applicant is unable to enter the residence
25 because the current occupant of the residence has denied the
26 applicant access to the residence to retrieve the applicant's
27 personal property or the personal property of the applicant's

1 dependent;

2 (2) the applicant is not:

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

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

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

12 Sec. 24A.002. AUTHORIZED ENTRY PROCEDURES; DUTIES OF PEACE
13 OFFICER. (a) If the justice of the peace grants an application
14 under Section 24A.001, a peace officer shall accompany and assist
15 the applicant in making the authorized entry and retrieving the
16 items of personal property listed in the application.

17 (b) If the current occupant of the residence is present at
18 the time of the entry, the peace officer shall provide the occupant
19 with a copy of the court order authorizing the entry and property
20 retrieval.

21 (c) Before removing the property listed in the application
22 from the residence, the applicant must submit all property
23 retrieved to the peace officer assisting the applicant under this
24 section to be inventoried. The peace officer shall create an
25 inventory listing the items taken from the residence, provide a
26 copy of the inventory to the applicant, provide a copy of the
27 inventory to the current occupant or, if the current occupant is not

1 present, leave the copy in a conspicuous place in the residence, and
2 return the property to be removed from the residence to the
3 applicant. The officer shall file the original inventory with the
4 court that issued the order authorizing the entry and property
5 retrieval.

6 (d) A peace officer may use reasonable force in providing
7 assistance under this section.

8 (e) A peace officer who provides assistance under this
9 section in good faith and with reasonable diligence is not:

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

12 (2) civilly or criminally liable for the wrongful
13 appropriation of any personal property by the person the officer is
14 assisting.

15 Sec. 24A.003. OFFENSE. (a) A person commits an offense if
16 the person interferes with a person or peace officer entering a
17 residence and retrieving personal property under the authority of a
18 court order issued under Section 24A.001.

19 (b) An offense under this section is a Class B misdemeanor.

20 (c) It is a defense to prosecution under this section that
21 the actor did not receive a copy of the court order or other notice
22 that the entry or property retrieval was authorized.

23 Sec. 24A.004. HEARING; REVIEW. (a) The occupant of a
24 residence that is the subject of a court order issued under Section
25 24A.001, not later than the 10th day after the date of the
26 authorized entry, may file a complaint in the court that issued the
27 order alleging that the applicant has appropriated property

1 belonging to the occupant or the occupant's dependent.

2 (b) The court shall promptly hold a hearing on a complaint
3 submitted under this section and rule on the disposition of the
4 disputed property.

5 (c) This section does not limit the occupant's remedies
6 under any other law for recovery of the property of the occupant or
7 the occupant's dependent.

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