

By: Whitmire, Garcia

S.B. No. 920

A BILL TO BE ENTITLED

AN ACT

relating to access to a residence or former residence to retrieve personal property, including access based on danger of family violence.

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

SECTION 1. Chapter 24A, Property Code, is amended by amending Sections 24A.001 and 24A.002 and adding Section 24A.0021 to read as follows:

Sec. 24A.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

(1) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(2) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(3) "Peace[~~er~~]" officer" means a person listed under Article 2.12(1) or (2), Code of Criminal Procedure.

Sec. 24A.002. WRIT [~~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 a writ [~~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:

(A) has denied the applicant access to the residence; or

(B) poses a clear and present danger of family violence to the applicant or the applicant's dependent;

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

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

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

(3) allege that the applicant or the applicant's ~~minor~~ dependent requires personal items located in the residence that are only of the following types:

(A) medical records;

(B) medicine and medical supplies;

(C) clothing;

(D) child-care items;

(E) legal or financial documents;

(F) checks or bank or credit cards in the name of the applicant;

(G) employment records; ~~or~~

(H) personal identification documents; or

1                    (I) copies of electronic records containing  
2 legal or financial documents;

3                    (4) describe with specificity the items that the  
4 applicant intends to retrieve;

5                    (5) allege that the applicant or the applicant's  
6 dependent will suffer personal harm if the items listed in the  
7 application are not retrieved promptly; and

8                    (6) include a lease or other documentary evidence that  
9 shows the applicant is currently or was formerly authorized to  
10 occupy the residence.

11                  (c) Before the justice of the peace may issue a writ [~~an~~  
12 ~~order~~] under this section, the applicant must execute a bond that:

13                    (1) has two or more good and sufficient non-corporate  
14 sureties or one corporate surety authorized to issue bonds in this  
15 state;

16                    (2) is payable to the occupant of the residence;

17                    (3) is in an amount required by the justice; and

18                    (4) is conditioned on the applicant paying all damages  
19 and costs adjudged against the applicant for wrongful property  
20 retrieval.

21                  (d) The applicant shall deliver the bond to the justice of  
22 the peace issuing the writ [~~order~~] for the justice's approval. The  
23 bond shall be filed with the justice court.

24                  (e) On sufficient evidence of urgency and potential harm to  
25 the health and safety of any person and after sufficient notice to  
26 the current occupant and an opportunity to be heard, the justice of  
27 the peace may grant the application under this section and issue a

1 writ [~~an order~~] authorizing the applicant to enter the residence  
2 accompanied by a peace officer and retrieve the property listed in  
3 the application if the justice of the peace finds that:

4           (1) the applicant is unable to enter the residence  
5 because the current occupant of the residence has denied the  
6 applicant access to the residence to retrieve the applicant's  
7 personal property or the personal property of the applicant's  
8 dependent;

9           (2) the applicant is not:

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

14           (B) otherwise prohibited by law from entering the  
15 residence;

16           (3) there is a risk of personal harm to the applicant  
17 or the applicant's dependent if the items listed in the application  
18 are not retrieved promptly;

19           (4) the applicant is currently or was formerly  
20 authorized to occupy the residence according to a lease or other  
21 documentary evidence; and

22           (5) the current occupant received notice of the  
23 application and was provided an opportunity to appear before the  
24 court to contest the application.

25       Sec. 24A.0021. TEMPORARY EX PARTE WRIT AUTHORIZING ENTRY  
26 AND PROPERTY RETRIEVAL. (a) If a justice of the peace finds at the  
27 hearing on an application for a writ under Section 24A.002 that the

1 conditions of Sections 24A.002(e)(1)-(4) are established and that  
2 the current occupant poses a clear and present danger of family  
3 violence to the applicant or the applicant's dependent, the justice  
4 may:

5 (1) waive the requirements relating to providing:

6 (A) a bond under Sections 24A.002(c) and (d); and

7 (B) notice and opportunity to be heard under  
8 Section 24A.002(e)(5); and

9 (2) grant the application and issue a temporary ex  
10 parte writ authorizing the applicant to enter the residence  
11 accompanied by a peace officer and retrieve the property listed in  
12 the application.

13 (b) The justice of the peace may recess a hearing under  
14 Subsection (a) to notify the current occupant by telephone that the  
15 current occupant may attend the hearing or bring to the court the  
16 personal property listed in the application. The justice of the  
17 peace shall reconvene the hearing before 5 p.m. that day regardless  
18 of whether the current occupant attends the hearing or brings the  
19 personal property to the court.

20 (c) A temporary ex parte writ issued under Subsection (a)  
21 must state the period, not to exceed five days, during which the  
22 writ is valid.

23 SECTION 2. Sections 24A.003(a), (b), and (c), Property  
24 Code, are amended to read as follows:

25 (a) If the justice of the peace grants an application under  
26 Section 24A.002 or Section 24A.0021, a peace officer shall  
27 accompany and assist the applicant in making the authorized entry

1 and retrieving the items of personal property listed in the  
2 application.

3 (b) If the current occupant of the residence is present at  
4 the time of the entry, the peace officer shall provide the occupant  
5 with a copy of the writ [~~court order~~] authorizing the entry and  
6 property retrieval.

7 (c) Before removing the property listed in the application  
8 from the residence, the applicant must submit all property  
9 retrieved to the peace officer assisting the applicant under this  
10 section to be inventoried. The peace officer shall create an  
11 inventory listing the items taken from the residence, provide a  
12 copy of the inventory to the applicant, provide a copy of the  
13 inventory to the current occupant or, if the current occupant is not  
14 present, leave the copy in a conspicuous place in the residence, and  
15 return the property to be removed from the residence to the  
16 applicant. The officer shall file the original inventory with the  
17 court that issued the writ [~~order~~] authorizing the entry and  
18 property retrieval.

19 SECTION 3. Section 24A.004, Property Code, is amended to  
20 read as follows:

21 Sec. 24A.004. IMMUNITY FROM LIABILITY. A landlord or a  
22 landlord's agent who permits or facilitates entry into a residence  
23 in accordance with a writ [~~court order~~] issued under this chapter is  
24 not civilly or criminally liable for an act or omission that arises  
25 in connection with permitting or facilitating the entry.

26 SECTION 4. Sections 24A.005(a) and (c), Property Code, are  
27 amended to read as follows:

1           (a) A person commits an offense if the person interferes  
2 with a person or peace officer entering a residence and retrieving  
3 personal property under the authority of a writ [~~court order~~]  
4 issued under Section 24A.002 or 24A.0021.

5           (c) It is a defense to prosecution under this section that  
6 the actor did not receive a copy of the writ [~~court order~~] or other  
7 notice that the entry or property retrieval was authorized.

8           SECTION 5. Section 24A.006(a), Property Code, is amended to  
9 read as follows:

10          (a) The occupant of a residence that is the subject of a writ  
11 [~~court order~~] issued under Section 24A.002 or 24A.0021, not later  
12 than the 10th day after the date of the authorized entry, may file a  
13 complaint in the court that issued the writ [~~order~~] alleging that  
14 the applicant has appropriated property belonging to the occupant  
15 or the occupant's dependent.

16          SECTION 6. Chapter 24A, Property Code, as amended by this  
17 Act, applies only to an application filed on or after the effective  
18 date of this Act. An application filed before the effective date of  
19 this Act is governed by the law in effect on the date the  
20 application was filed, and the former law is continued in effect for  
21 that purpose.

22          SECTION 7. This Act takes effect September 1, 2017.