

1-1 By: Whitmire S.B. No. 920
 1-2 (In the Senate - Filed February 15, 2017; February 28, 2017,
 1-3 read first time and referred to Committee on State Affairs;
 1-4 March 7, 2017, rereferred to Committee on Criminal Justice;
 1-5 March 15, 2017, reported favorably by the following vote: Yeas 9,
 1-6 Nays 0; March 15, 2017, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 A BILL TO BE ENTITLED
 1-19 AN ACT

1-20 relating to access to a residence or former residence to retrieve
 1-21 personal property, including access based on danger of family
 1-22 violence.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Chapter 24A, Property Code, is amended by
 1-25 amending Sections 24A.001 and 24A.002 and adding Section 24A.0021
 1-26 to read as follows:

1-27 Sec. 24A.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

1-28 (1) "Electronic record" means a record created,
 1-29 generated, sent, communicated, received, or stored by electronic
 1-30 means.

1-31 (2) "Family violence" has the meaning assigned by
 1-32 Section 71.004, Family Code.

1-33 (3) "Peace[~~, "peace~~] officer" means a person listed
 1-34 under Article 2.12(1) or (2), Code of Criminal Procedure.

1-35 Sec. 24A.002. WRIT [~~ORDER~~] AUTHORIZING ENTRY AND PROPERTY
 1-36 RETRIEVAL; PEACE OFFICER TO ACCOMPANY. (a) If a person is unable
 1-37 to enter the person's residence or former residence to retrieve
 1-38 personal property belonging to the person or the person's dependent
 1-39 because the current occupant is denying the person entry, the
 1-40 person may apply to the justice court for a writ [~~an order~~]
 1-41 authorizing the person to enter the residence accompanied by a
 1-42 peace officer to retrieve specific items of personal property.

1-43 (b) An application under Subsection (a) must:

1-44 (1) certify that the applicant is unable to enter the
 1-45 residence because the current occupant of the residence:

1-46 (A) has denied the applicant access to the
 1-47 residence; or

1-48 (B) poses a clear and present danger of family
 1-49 violence to the applicant or the applicant's dependent;

1-50 (2) certify that, to the best of the applicant's
 1-51 knowledge, the applicant is not:

1-52 (A) the subject of an active protective order
 1-53 under Title 4, Family Code, a magistrate's order for emergency
 1-54 protection under Article 17.292, Code of Criminal Procedure, or
 1-55 another court order prohibiting entry to the residence; or

1-56 (B) otherwise prohibited by law from entering the
 1-57 residence;

1-58 (3) allege that the applicant or the applicant's
 1-59 [~~minor~~] dependent requires personal items located in the residence
 1-60 that are only of the following types:

1-61 (A) medical records;

1-62 (B) medicine and medical supplies;

1-63 (C) clothing;

1-64 (D) child-care items;

2-1 (E) legal or financial documents;
2-2 (F) checks or bank or credit cards in the name of
2-3 the applicant;
2-4 (G) employment records; [~~or~~]
2-5 (H) personal identification documents; or
2-6 (I) copies of electronic records containing
2-7 legal or financial documents;
2-8 (4) describe with specificity the items that the
2-9 applicant intends to retrieve;
2-10 (5) allege that the applicant or the applicant's
2-11 dependent will suffer personal harm if the items listed in the
2-12 application are not retrieved promptly; and
2-13 (6) include a lease or other documentary evidence that
2-14 shows the applicant is currently or was formerly authorized to
2-15 occupy the residence.
2-16 (c) Before the justice of the peace may issue a writ [~~an~~
2-17 ~~order~~] under this section, the applicant must execute a bond that:
2-18 (1) has two or more good and sufficient non-corporate
2-19 sureties or one corporate surety authorized to issue bonds in this
2-20 state;
2-21 (2) is payable to the occupant of the residence;
2-22 (3) is in an amount required by the justice; and
2-23 (4) is conditioned on the applicant paying all damages
2-24 and costs adjudged against the applicant for wrongful property
2-25 retrieval.
2-26 (d) The applicant shall deliver the bond to the justice of
2-27 the peace issuing the writ [~~order~~] for the justice's approval. The
2-28 bond shall be filed with the justice court.
2-29 (e) On sufficient evidence of urgency and potential harm to
2-30 the health and safety of any person and after sufficient notice to
2-31 the current occupant and an opportunity to be heard, the justice of
2-32 the peace may grant the application under this section and issue a
2-33 writ [~~an order~~] authorizing the applicant to enter the residence
2-34 accompanied by a peace officer and retrieve the property listed in
2-35 the application if the justice of the peace finds that:
2-36 (1) the applicant is unable to enter the residence
2-37 because the current occupant of the residence has denied the
2-38 applicant access to the residence to retrieve the applicant's
2-39 personal property or the personal property of the applicant's
2-40 dependent;
2-41 (2) the applicant is not:
2-42 (A) the subject of an active protective order
2-43 under Title 4, Family Code, a magistrate's order for emergency
2-44 protection under Article 17.292, Code of Criminal Procedure, or
2-45 another court order prohibiting entry to the residence; or
2-46 (B) otherwise prohibited by law from entering the
2-47 residence;
2-48 (3) there is a risk of personal harm to the applicant
2-49 or the applicant's dependent if the items listed in the application
2-50 are not retrieved promptly;
2-51 (4) the applicant is currently or was formerly
2-52 authorized to occupy the residence according to a lease or other
2-53 documentary evidence; and
2-54 (5) the current occupant received notice of the
2-55 application and was provided an opportunity to appear before the
2-56 court to contest the application.
2-57 Sec. 24A.0021. TEMPORARY EX PARTE WRIT AUTHORIZING ENTRY
2-58 AND PROPERTY RETRIEVAL. (a) If a justice of the peace finds at the
2-59 hearing on an application for a writ under Section 24A.002 that the
2-60 conditions of Sections 24A.002(e)(1)-(4) are established and that
2-61 the current occupant poses a clear and present danger of family
2-62 violence to the applicant or the applicant's dependent, the justice
2-63 may:
2-64 (1) waive the requirements relating to providing:
2-65 (A) a bond under Sections 24A.002(c) and (d); and
2-66 (B) notice and opportunity to be heard under
2-67 Section 24A.002(e)(5); and
2-68 (2) grant the application and issue a temporary ex
2-69 parte writ authorizing the applicant to enter the residence
2-70 accompanied by a peace officer and retrieve the property listed in
2-71 the application.

3-1 (b) The justice of the peace may recess a hearing under
 3-2 Subsection (a) to notify the current occupant by telephone that the
 3-3 current occupant may attend the hearing or bring to the court the
 3-4 personal property listed in the application. The justice of the
 3-5 peace shall reconvene the hearing before 5 p.m. that day regardless
 3-6 of whether the current occupant attends the hearing or brings the
 3-7 personal property to the court.

3-8 (c) A temporary ex parte writ issued under Subsection (a)
 3-9 must state the period, not to exceed five days, during which the
 3-10 writ is valid.

3-11 SECTION 2. Sections 24A.003(a), (b), and (c), Property
 3-12 Code, are amended to read as follows:

3-13 (a) If the justice of the peace grants an application under
 3-14 Section 24A.002 or Section 24A.0021, a peace officer shall
 3-15 accompany and assist the applicant in making the authorized entry
 3-16 and retrieving the items of personal property listed in the
 3-17 application.

3-18 (b) If the current occupant of the residence is present at
 3-19 the time of the entry, the peace officer shall provide the occupant
 3-20 with a copy of the writ [~~court order~~] authorizing the entry and
 3-21 property retrieval.

3-22 (c) Before removing the property listed in the application
 3-23 from the residence, the applicant must submit all property
 3-24 retrieved to the peace officer assisting the applicant under this
 3-25 section to be inventoried. The peace officer shall create an
 3-26 inventory listing the items taken from the residence, provide a
 3-27 copy of the inventory to the applicant, provide a copy of the
 3-28 inventory to the current occupant or, if the current occupant is not
 3-29 present, leave the copy in a conspicuous place in the residence, and
 3-30 return the property to be removed from the residence to the
 3-31 applicant. The officer shall file the original inventory with the
 3-32 court that issued the writ [~~order~~] authorizing the entry and
 3-33 property retrieval.

3-34 SECTION 3. Section 24A.004, Property Code, is amended to
 3-35 read as follows:

3-36 Sec. 24A.004. IMMUNITY FROM LIABILITY. A landlord or a
 3-37 landlord's agent who permits or facilitates entry into a residence
 3-38 in accordance with a writ [~~court order~~] issued under this chapter is
 3-39 not civilly or criminally liable for an act or omission that arises
 3-40 in connection with permitting or facilitating the entry.

3-41 SECTION 4. Sections 24A.005(a) and (c), Property Code, are
 3-42 amended to read as follows:

3-43 (a) A person commits an offense if the person interferes
 3-44 with a person or peace officer entering a residence and retrieving
 3-45 personal property under the authority of a writ [~~court order~~]
 3-46 issued under Section 24A.002 or 24A.0021.

3-47 (c) It is a defense to prosecution under this section that
 3-48 the actor did not receive a copy of the writ [~~court order~~] or other
 3-49 notice that the entry or property retrieval was authorized.

3-50 SECTION 5. Section 24A.006(a), Property Code, is amended to
 3-51 read as follows:

3-52 (a) The occupant of a residence that is the subject of a writ
 3-53 [~~court order~~] issued under Section 24A.002 or 24A.0021, not later
 3-54 than the 10th day after the date of the authorized entry, may file a
 3-55 complaint in the court that issued the writ [~~order~~] alleging that
 3-56 the applicant has appropriated property belonging to the occupant
 3-57 or the occupant's dependent.

3-58 SECTION 6. Chapter 24A, Property Code, as amended by this
 3-59 Act, applies only to an application filed on or after the effective
 3-60 date of this Act. An application filed before the effective date of
 3-61 this Act is governed by the law in effect on the date the
 3-62 application was filed, and the former law is continued in effect for
 3-63 that purpose.

3-64 SECTION 7. This Act takes effect September 1, 2017.

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