87R680 BEE-F

By:  Dutton, Collier H.B. No. 1012

A BILL TO BE ENTITLED

AN ACT

relating to access to a residence or former residence to retrieve certain personal property.

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

SECTION 1.  Section 24A.002, Property Code, is amended to read as follows:

Sec. 24A.002.  WRIT 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 authorizing the person to enter the residence accompanied by a peace officer to retrieve specific items of personal property.

(a-1)  A person applying for a writ under this section must apply:

(1)  if the person and the current occupant are parties to a pending suit under Title 1, Family Code, to the court in which the suit is pending;

(2)  if the person's right to possession of the items described in the application is subject to a decree of divorce or annulment to which the person and the current occupant are parties, to the court having jurisdiction of the divorce or annulment action; or

(3)  if Subdivision (1) or (2) does not apply, to a justice court.

(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)  certify whether, to the best of the applicant's knowledge:

(A)  the applicant and the current occupant are parties to a pending suit under Title 1, Family Code; or

(B)  the applicant's right to possession of the items described in the application is subject to a decree of divorce or annulment to which the applicant and the current occupant are parties;

(4)  allege that the applicant or the applicant's 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;

(H)  personal identification documents; [~~or~~]

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

(J)  assistance animals or service animals, as defined by Section 121.002, Human Resources Code, used by the applicant or the applicant's dependent;

(K)  wireless communication devices, as defined by Section 545.425(a), Transportation Code, of the applicant or the applicant's dependent; or

(L)  tools, equipment, books, and apparatus used by the applicant in the applicant's trade or profession;

(5) [~~(4)~~]  describe with specificity the items that the applicant intends to retrieve;

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

(7) [~~(6)~~]  include a lease or other documentary evidence that shows the applicant is currently or was formerly authorized to occupy the residence.

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

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

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

(3)  is in an amount required by the court [~~justice~~]; and

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

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

(e)  On sufficient evidence of urgency and potential harm to the health and safety of any person and after sufficient notice to the current occupant and an opportunity to be heard, the court [~~justice of the peace~~] may grant the application under this section and issue a writ authorizing the applicant to enter the residence accompanied by a peace officer and retrieve the property listed in the application if the court [~~justice of the peace~~] finds that:

(1)  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;

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

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

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

SECTION 2.  Sections 24A.0021(a), (b), and (c), Property Code, are amended to read as follows:

(a)  A court [~~justice of the peace~~] may issue a writ under Section 24A.002 without providing notice and hearing under Section 24A.002(e)(5) if the court [~~justice~~] finds at a hearing on the application that:

(1)  the conditions of Sections 24A.002(e)(1)-(4) are established;

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

(3)  the personal harm to be suffered by the applicant or the applicant's dependent will be immediate and irreparable if the application is not granted.

(b)  A court [~~justice of the peace~~] issuing a writ under this section may waive the bond requirements under Sections 24A.002(c) and (d).

(c)  The court [~~justice of the peace~~] may recess a hearing under Subsection (a) to notify the current occupant by telephone that the current occupant may attend the hearing or bring to the court the personal property listed in the application. The court [~~justice of the peace~~] shall reconvene the hearing before 5 p.m. that day regardless of whether the current occupant attends the hearing or brings the personal property to the court.

SECTION 3.  Section 24A.003(a), Property Code, is amended to read as follows:

(a)  If the court [~~justice of the peace~~] grants an application under Section 24A.002 or Section 24A.0021, a peace officer shall accompany and assist the applicant in making the authorized entry and retrieving the items of personal property listed in the application.

SECTION 4.  The changes in law made by this Act apply only to an application filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 5.  This Act takes effect September 1, 2021.