87R3860 DRS-F

By:  Walle H.B. No. 4039

A BILL TO BE ENTITLED

AN ACT

relating to certain rights and duties of residential tenants and landlords; imposing civil penalties.

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

SECTION 1.  The heading to Section 24.005, Property Code, is amended to read as follows:

Sec. 24.005.  NOTICE TO CURE DEFAULT FOR NONPAYMENT OF RENT; NOTICE TO VACATE PRIOR TO FILING EVICTION SUIT.

SECTION 2.  Section 24.005, Property Code, is amended by amending Subsection (a) and adding Subsections (a-1), (a-2), and (a-3) to read as follows:

(a)  Except as provided by Subsections (a-1) and (a-2), if [~~If~~] the occupant is a tenant under a written lease or oral rental agreement, the landlord must give a tenant who defaults or holds over beyond the end of the rental term or renewal period at least three days' written notice to vacate the premises before the landlord files a forcible detainer suit, unless the parties have contracted for a shorter or longer notice period in a written lease or agreement. A landlord who files a forcible detainer suit on grounds that the tenant is holding over beyond the end of the rental term or renewal period must also comply with the tenancy termination requirements of Section 91.001.

(a-1)  The landlord must give a residential tenant who defaults for nonpayment of rent 10 days' written notice and an opportunity to cure the default by paying any delinquent rent before issuing the notice to vacate under Subsection (a-2). The written notice must include, in all capital letters in an easily readable font and type size, the words "YOU ARE IN DEFAULT OF THE LEASE FOR NONPAYMENT OF RENT. YOU HAVE 10 DAYS AFTER THE DATE THIS NOTICE WAS DELIVERED TO PAY THE RENT BEFORE A NOTICE TO VACATE MAY BE ISSUED. CALL THE STATE BAR OF TEXAS TOLL-FREE AT 1-877-9TEXBAR IF YOU NEED HELP LOCATING AN ATTORNEY. IF YOU CANNOT AFFORD TO HIRE AN ATTORNEY, YOU MAY BE ELIGIBLE FOR FREE OR LOW-COST LEGAL ASSISTANCE."

(a-2)  After a landlord gives a tenant an opportunity to cure under Subsection (a-1), the landlord must give the tenant at least 14 days' written notice to vacate the premises before the landlord files a forcible detainer suit. The notice to vacate must state the reason for the notice and must include, in all capital letters in an easily readable font and type size, the words "THIS IS NOT AN EVICTION ORDER. THIS IS A DEMAND FOR POSSESSION OF THE PROPERTY. AN EVICTION CASE MAY BE FILED AGAINST YOU 14 DAYS AFTER THE DATE THIS NOTICE WAS DELIVERED. CALL THE STATE BAR OF TEXAS TOLL-FREE AT 1-877-9TEXBAR IF YOU NEED HELP LOCATING AN ATTORNEY. IF YOU CANNOT AFFORD TO HIRE AN ATTORNEY, YOU MAY BE ELIGIBLE FOR FREE OR LOW-COST LEGAL ASSISTANCE."

(a-3)  If applicable, the written notice to vacate must inform a residential tenant of the tenant's right to cure the default for nonpayment of rent under Section 24.00605.

SECTION 3.  Chapter 24, Property Code, is amended by adding Sections 24.00605, 24.012, 24.013, and 24.014 to read as follows:

Sec. 24.00605.  RESIDENTIAL TENANT'S RIGHT TO CURE BEFORE WRIT OF POSSESSION ISSUED. (a)  Except as provided by Subsection (b), a residential tenant who is in default for nonpayment of rent under a written or oral lease may cure the default and reinstate the lease by paying all rent, court costs, and attorney's fees not later than the date that a writ of possession is executed.

(b)  Unless the lease provides otherwise, a tenant may not cure a default if the tenant cured a default under this section in the 12-month period preceding the date the writ of possession is executed.

Sec. 24.012.  ACCESS TO EVICTION CASE INFORMATION. (a) In this section:

(1)  "Eviction case" means a lawsuit brought under this chapter to recover possession of leased or rented residential real property from a tenant.

(2)  "Eviction case information" means all records and files related to a filing of an eviction case, including petitions and dispositions.

(b)  This section applies to an eviction case in which an order granting limited dissemination of eviction case information has not been entered under Section 24.013.

(c)  The court clerk shall allow access to eviction case information only to:

(1)  a party to the action, including a party's attorney;

(2)  a person who provides the clerk with:

(A)  the names of at least one plaintiff and one defendant; and

(B)  the address of the premises, including the apartment or unit number, if any;

(3)  a resident of the premises who:

(A)  provides the clerk with the name of one of the parties or the case number; and

(B)  shows proof of residency;

(4)  a person in accordance with a court order, which may be granted ex parte, issued on a showing of good cause;

(5)  a person in accordance with a court order issued at the time the judgment in the case is entered, if the judgment is entered:

(A)  for the plaintiff after a trial; and

(B)  after the 60th day after the date the complaint was filed; or

(6)  any other person after the 60th day after the date the complaint was filed:

(A)  if the plaintiff prevailed in the action before the 60th day after the date the complaint was filed; or

(B)  if the case involved residential real property purchased at a foreclosure sale and judgment against all defendants was entered for the plaintiff after a trial.

(d)  If a default or default judgment is set aside after the 60th day after the date the complaint was filed, this section applies as if the complaint had been filed on the date the default or default judgment is set aside.

(e)  This section may not be construed to prohibit the court from issuing an order that bars access to eviction case information if stipulated by the parties to the case.

(f)  For purposes of this section, good cause for access to eviction case information includes the gathering of:

(1)  newsworthy facts by a journalist as defined by Article 38.11, Code of Criminal Procedure; and

(2)  evidence by a party to the eviction case solely for the purpose of making a request for judicial notice.

(g)  After the filing of an eviction case, the court clerk shall mail notice to each defendant named in the case. The notice must be mailed to the address provided in the complaint. The notice must contain a statement that an eviction case has been filed against the defendant and that access to the eviction case information will be delayed for 60 days except to a party, an attorney for one of the parties, a person who has good cause for access as determined by a court, or any other person who provides to the clerk:

(1)  the names of at least one plaintiff and one defendant in the case and provides to the clerk the address, including any applicable apartment or unit number, of the subject premises; or

(2)  the name of one of the parties in the case or the case number and can establish through proper identification that the person resides at the address identified in the case.

(h)  The notice must also contain:

(1)  the name and telephone number of the county bar association for the county in which the case is filed;

(2)  the name and telephone number of any entity that requests inclusion on the notice and demonstrates to the satisfaction of the court that the entity has been certified by the State Bar of Texas as a lawyer referral service and maintains a panel of attorneys qualified in the practice of landlord-tenant law under the minimum standards for a lawyer referral service established by the State Bar of Texas and Chapter 952, Occupations Code;

(3)  the following statement: "The State Bar of Texas certifies lawyer referral services in Texas and publishes a list of certified lawyer referral services. To locate a lawyer referral service in your area, go to the State Bar's Internet website at www.texasbar.com or call 1-877-9TEXBAR.";

(4)  the names and telephone numbers of offices that provide legal services at low or no cost to low-income persons in the county in which the action is filed; and

(5)  a statement that a person receiving the notice may call the telephone numbers described in the notice for legal advice regarding the case.

(i)  The court clerk shall mail a notice required under this section not earlier than the 24th hour and not later than the 48th hour after the time the eviction case is filed, excluding weekends and holidays.

(j)  The court clerk shall mail separately to the subject premises one copy of the notice addressed to "all occupants." The notice does not constitute service of the summons and complaint.

Sec. 24.013.  LIMITED DISSEMINATION OF EVICTION CASE INFORMATION. (a) In this section, "eviction case" and "eviction case information" have the meanings assigned by Section 24.012.

(b)  Concurrently with a final judgment or dismissal in an eviction case or on petition of a defendant in an eviction case after a final judgment or dismissal in the case, a court shall enter an order of limited dissemination of the eviction case information pertaining to the defendant if:

(1)  the judgment is or was entered in favor of the defendant;

(2)  the eviction case is or was dismissed without any relief granted to the plaintiff;

(3)  the defendant is or was a tenant not otherwise in default and the eviction case was brought by the landlord's successor in interest following foreclosure; or

(4)  at least three years have elapsed from the date of the final judgment in the eviction case.

(c)  Concurrently with a final judgment or dismissal in an eviction case or on petition of a defendant in an eviction case after a final judgment or dismissal in the case, a court may order the limited dissemination of eviction case information pertaining to the defendant if the court finds that:

(1)  the limited dissemination of the eviction case information is in the interest of justice; and

(2)  the interest of justice is not outweighed by the public's interest in knowing the eviction case information.

(d)  If an order is entered granting limited dissemination of eviction case information pertaining to a defendant under this section:

(1)  all courts or court clerks shall delete or redact all index references to the name of the defendant that relate to the eviction case information from the public records; and

(2)  except to the extent permitted by federal law, a credit reporting agency, a person who regularly collects and disseminates eviction case information, or a person who sells eviction case information may not:

(A)  disclose the existence of the eviction case; or

(B)  use the eviction case information as a factor in determining a score or recommendation in a tenant screening report regarding the defendant.

(e)  A person who knowingly violates Subsection (d) is liable to an injured party for:

(1)  actual damages;

(2)  exemplary damages of $1,000; and

(3)  reasonable attorney's fees and court costs.

(f)  Notwithstanding Section 41.004(a), Civil Practice and Remedies Code, a court shall award exemplary damages under Subsection (e)(2) to the injured party irrespective of whether the party is awarded actual damages.

Sec. 24.014.  EVICTION CASE INFORMATION RELATED TO COVID-19 PANDEMIC. (a) In this section, "eviction case" has the meaning assigned by Section 24.012.

(b)  Except as provided by Subsection (d), a landlord may not refuse to rent, negotiate for the rental of, or in any other manner make unavailable or deny a dwelling to a person because of an eviction case brought against the person during a state of disaster declared by the governor under Section 418.014, Government Code, related to the coronavirus disease (COVID-19) pandemic or before the 180th day after the date of termination of the state of disaster.

(c)  A court may find that limited dissemination of information related to an eviction case brought against a person during the period described by Subsection (b) is in the interest of justice for purposes of Section 24.013.

(d)  This section does not apply to an eviction case based on actions of the tenant that create an imminent threat to the health or safety of the landlord, a member of the landlord's or tenant's household, other tenants, or neighbors.

SECTION 4.  Section 92.0081(b), Property Code, is amended to read as follows:

(b)  A landlord may not intentionally prevent a tenant from entering the leased premises except by judicial process unless the exclusion results from:

(1)  bona fide repairs, construction, or an emergency; or

(2)  removing the contents of premises abandoned by a tenant[~~; or~~

[~~(3)  changing the door locks on the door to the tenant's individual unit of a tenant who is delinquent in paying at least part of the rent~~].

SECTION 5.  The heading to Section 92.011, Property Code, is amended to read as follows:

Sec. 92.011.  [~~CASH~~] RENTAL PAYMENTS.

SECTION 6.  Section 92.011, Property Code, is amended by adding Subsection (b-1) to read as follows:

(b-1)  A landlord shall apply any payment received from a tenant to unpaid rent before applying the payment to a fee, charge, or other sum of money owed by the tenant that is not rent. This subsection applies without regard to the method of payment.

SECTION 7.  Subchapter A, Chapter 92, Property Code, is amended by adding Section 92.0111 to read as follows:

Sec. 92.0111.  NON-UTILITY MANDATORY SERVICE FEES PROHIBITED. (a) In this section, "mandatory service" means any service other than water, gas, or electric utility services provided to a tenant under a lease and for which the lease does not allow the tenant to voluntarily opt out of receiving the service.

(b)  A landlord shall include any charges for a mandatory service in the rent and may not charge a tenant a separate fee for a mandatory service.

SECTION 8.  Subchapter A, Chapter 92, Property Code, is amended by adding Section 92.0133 to read as follows:

Sec. 92.0133.  NOTICE FOR DWELLING LOCATED IN FLOODPLAIN. (a) In this section:

(1)  "100-year floodplain" means any area of land designated as a flood hazard area with a one percent or greater chance of flooding each year by the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. Section 4001 et seq.).

(2)  "Flooding" means a general or temporary condition of partial or complete inundation of a dwelling caused by:

(A)  the overflow of inland or tidal waters;

(B)  the unusual and rapid accumulation of runoff or surface waters from any established water source such as a river, stream, or drainage ditch; or

(C)  a ponding of water at or near the place where heavy or excessive rain fell.

(b)  A landlord shall provide to a tenant a written notice substantially equivalent to the following:

"(Landlord) ( ) is or ( ) is not aware that the dwelling you are renting is located in a 100-year floodplain. If neither box is checked, you should assume the dwelling is in a 100-year floodplain. Even if the dwelling is not in a 100-year floodplain, the dwelling may still be susceptible to flooding. The Federal Emergency Management Agency (FEMA) maintains a flood map on its website that is searchable by address, at no cost, to determine if a dwelling is located in a flood hazard area. Most tenant insurance policies do not cover damages or loss incurred in a flood. You should seek insurance coverage that would cover losses caused by a flood."

(c)  Notwithstanding Subsection (b), a landlord is not required to disclose on the notice that the landlord is aware that a dwelling is located in a 100-year floodplain if the elevation of the dwelling is raised above the 100-year floodplain flood levels in accordance with federal regulations.

(d)  If a landlord knows that flooding has damaged any portion of a dwelling at least once during the five-year period immediately preceding the effective date of the lease, the landlord shall provide a written notice to a tenant that is substantially equivalent to the following:

"(Landlord) ( ) is or ( ) is not aware that the dwelling you are renting has flooded at least once within the last five years."

(e)  The notices required by Subsections (b) and (d) must be included in a separate written document given to the tenant before execution of the lease.

(f)  If a landlord violates this section and a tenant suffers a substantial loss or damage to the tenant's personal property as a result of flooding, the tenant may terminate the lease by giving a written notice of termination to the landlord not later than the 30th day after the date the loss or damage occurred. Termination of a lease under this subsection is effective when the tenant surrenders possession of the dwelling.

(g)  Not later than the 30th day after the effective date of the termination of a lease under Subsection (f), the landlord shall refund to the tenant all rent or other amounts paid in advance under the lease for any period after the effective date of the termination of the lease.

(h)  This section does not affect a tenant's liability for delinquent, unpaid rent or other sums owed to the landlord before the date the lease was terminated by the tenant under this section.

SECTION 9.  Section 92.019, Property Code, is amended by amending Subsection (a-1) and adding Subsection (b-1) to read as follows:

(a-1)  For purposes of this section, a late fee is considered reasonable if[~~:~~

[~~(1)~~]  the late fee is not more than the lesser of [~~:~~

[~~(A)  12 percent of the amount of rent for the rental period under the lease for a dwelling located in a structure that contains not more than four dwelling units; or~~

[~~(B)~~] 10 percent of the amount of rent for the rental period under the lease or $75 [~~for a dwelling located in a structure that contains more than four dwelling units; or~~

[~~(2)  the late fee is more than the applicable amount under Subdivision (1), but not more than uncertain damages to the landlord related to the late payment of rent, including direct or indirect expenses, direct or indirect costs, or overhead associated with the collection of late payment~~].

(b-1)  A landlord may not charge a tenant a late fee on an unpaid amount that does not include unpaid rent and consists entirely of a fee, charge, or other sum of money owed by the tenant that is not rent, including a late fee charged under Subsection (a).

SECTION 10.  Subchapter A, Chapter 92, Property Code, is amended by adding Section 92.022 to read as follows:

Sec. 92.022.  CERTAIN CRIMINAL MATTERS NOT DEFAULT. Notwithstanding any terms of a lease to the contrary, the arrest, charge, detention, or deferred adjudication or pretrial diversion of a tenant for any crime does not constitute a default under the lease by the tenant.

SECTION 11.  Subchapter A, Chapter 92, Property Code, is amended by adding Section 92.027 to read as follows:

Sec. 92.027.  NOTICE REGARDING ENTRY TO DWELLING BY LANDLORD. (a) Except as provided by Subsection (c), a landlord may enter a dwelling only if the landlord has delivered to the tenant, at least 48 hours before the entry, a written notice containing the date and time the landlord will enter the tenant's dwelling and the purpose for the entry.

(b)  After giving notice as required by Subsection (a), a landlord may enter a dwelling only:

(1)  on the date and at the time contained in the notice; and

(2)  for the purpose stated in the notice.

(c)  In the case of an emergency, a landlord may enter a dwelling as necessary without providing the notice required by Subsection (a).

(d)  A provision of a lease that purports to waive a right or to exempt a party from a liability or duty under this section is void.

SECTION 12.  Section 92.052, Property Code, is amended by adding Subsections (a-1), (a-2), and (a-3) to read as follows:

(a-1)  Before a lease is executed, a landlord or a landlord's agent shall:

(1)  inspect the premises;

(2)  make a diligent effort to complete all repairs necessary to make the premises habitable, including ensuring that the premises:

(A)  have a device to supply hot water of a minimum temperature of 120 degrees Fahrenheit that is in good operating condition; and

(B)  comply with the requirements of applicable building or housing codes material to the physical health and safety of the ordinary tenant; and

(3)  affirm in the lease that the landlord has complied with this subsection.

(a-2)  If, not later than the seventh day after the lease start date and except as provided by Subsection (a-3), a tenant discovers that the premises do not meet the requirements of Subsection (a-1)(2)(A) or (B), the tenant, after notifying the landlord by giving that notice to the person to whom or to the place where the tenant's rent is normally paid, may:

(1)  terminate the lease;

(2)  withhold rent payments or have the condition repaired or remedied according to Section 92.0561;

(3)  deduct from the tenant's rent, without necessity of judicial action, the cost of the repair or remedy according to Section 92.0561; and

(4)  obtain judicial remedies according to Section 92.0563.

(a-3)  A tenant who elects to terminate the lease under Subsection (a-2) is:

(1)  entitled to a pro rata refund of rent from the date of termination or the date the tenant moves out, whichever is later;

(2)  entitled to deduct the tenant's security deposit from the tenant's rent, without necessity of judicial action, or to obtain a refund of the tenant's security deposit according to law; and

(3)  not entitled to the other repair and deduct remedies under Section 92.0561 or the judicial remedies under Sections 92.0563(a)(1) and (2).

SECTION 13.  Section 92.054, Property Code, is amended by amending Subsections (b) and (c) and adding Subsections (b-1), (b-2), (b-3), (b-4), (b-5), (d), (e), (f), and (g) to read as follows:

(b)  If after a casualty loss the rental premises are as a practical matter totally unusable for residential purposes and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant, either the landlord or the tenant may terminate the lease by giving written notice to the other any time before repairs are completed.

(b-1)  A notice described by Subsection (b) must be provided:

(1)  to a landlord:

(A)  by hand delivery or mail to a forwarding address that the landlord provides to the tenant by e-mail or otherwise; or

(B)  if a forwarding address has not been provided as described by Paragraph (A):

(i)  by hand delivery to the landlord or the landlord's representative at another location; or

(ii)  by mail to the place where the tenant's rent is normally paid; or

(2)  to a tenant:

(A)  by hand delivery or mail to a forwarding address that the tenant provides to the landlord by e-mail or otherwise; or

(B)  if a forwarding address has not been provided as described by Paragraph (A):

(i)  by hand delivery to the tenant at another location; or

(ii)  by mail to the tenant's rental premises.

(b-2)  A termination of a lease as authorized by Subsection (b) may not take effect before the 15th day after the date the notice is delivered. If more than one method under Subsection (b-1) is used to provide notice, the method under which the notice was delivered on the earliest date applies for purposes of this subsection.

(b-3)  A landlord may not charge rent for the rental premises and rent for the rental premises may not accrue after the date the premises became as a practical matter totally unusable for residential purposes as a result of a casualty loss.

(b-4)  Subject to Subsection (b-5) and notwithstanding that the termination of the lease has not taken effect under Subsection (b-2), if a notice to terminate [~~If~~] the lease is provided under this section [~~terminated~~], the landlord shall pay to the tenant not later than the fifth day after the date the notice is delivered:

(1)  a refund of any prepaid rent;

(2)  [~~is entitled only to~~] a pro rata refund of rent from the date the rental premises became as a practical matter totally unusable for residential purposes as a result of a casualty loss; [~~tenant moves out~~] and

(3)  [~~to~~] a full refund of any security deposit [~~otherwise required by law~~].

(b-5)  If a tenant has not provided the landlord a forwarding address as described by Subsection (b-1)(2)(A), the period for providing the refund amounts specified by Subsection (b-4) is tolled until the tenant provides the landlord a written statement by e-mail or otherwise of the tenant's forwarding address for the purpose of refunding those amounts. A tenant that provides notice under Subsection (b) may provide the written statement of the tenant's forwarding address in that notice. A landlord that provides notice under Subsection (b) must include a statement informing the tenant of the requirement of this subsection.

(c)  If after a casualty loss the rental premises are partially unusable for residential purposes and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant, the tenant is entitled to reduction in the rent for the month in which the casualty loss occurs and any subsequent months in the lease term in which the rental premises are partially unusable for residential purposes. The tenant is entitled to determine the amount of the reduction in the rent, provided that the tenant must determine [~~in~~] an amount that is proportionate to the extent the premises are unusable because of the casualty loss [~~, but only on judgment of a county or district court~~]. A tenant entitled to a reduction in rent may deduct and withhold from a rent payment the amount determined by the tenant [~~A landlord and tenant may agree otherwise in a written lease~~].

(d)  It is a defense in a proceeding to recover unpaid rent for a rental premises, including a proceeding to recover possession of a rental premises for nonpayment of rent, that a rent payment was reduced, deducted, and withheld in accordance with Subsection (c).

(e)  If a tenant asserts a defense under Subsection (d), the court shall determine the amount of the reduction in the rent that is proportionate to the extent the premises are unusable because of the casualty. If the tenant withheld an amount less than the amount determined by the court, the court shall enter a judgment for the tenant in an amount equal to the amount the tenant overpaid. If the tenant withheld an amount greater than the amount determined by the court, the court:

(1)  may assess late fees in accordance with the lease if the court finds that the tenant acted in bad faith in reducing or withholding the rent payment;

(2)  shall order the tenant to pay into the registry of the court or, if the landlord consents in writing, directly to the landlord:

(A)  an amount equal to the amount the tenant underpaid; and

(B)  any late fees assessed under Subdivision (1);

(3)  may not enter a final judgment in the proceeding before the 10th business day after the date the court issued the order of payment under Subdivision (2); and

(4)  shall dismiss the proceeding against the tenant if the tenant complies with the order of payment under Subdivision (2) before the 10th business day after the date the court issued the order of payment under Subdivision (2).

(f)  It is a defense in a proceeding to recover possession of a rental premises after the landlord terminates a lease under this section that the premises are totally or partially usable for residential purposes.

(g)  A provision of a lease is void if the provision purports to:

(1)  waive a right or exempt a party from a liability or duty under this section; or

(2)  expand a party's right to unilaterally terminate a lease under this section.

SECTION 14.  Sections 92.056(b) and (e), Property Code, are amended to read as follows:

(b)  A landlord is liable to a tenant as provided by this subchapter if:

(1)  the tenant has given the landlord notice to repair or remedy a condition by giving that notice to the person to whom or to the place where the tenant's rent is normally paid;

(2)  the condition materially affects the physical health or safety of an ordinary tenant;

(3)  the tenant has given the landlord a subsequent written notice to repair or remedy the condition after a reasonable time to repair or remedy the condition following the notice given under Subdivision (1) or the tenant has given the notice under Subdivision (1) by sending that notice by:

(A)  a method specified in the lease;

(B)  a method generally accepted by the landlord in practice;

(C)  certified mail, return receipt requested;

(D)  [~~, by~~] registered mail; [~~,~~] or

(E)  [~~by~~] another form of mail that allows tracking of delivery from the United States Postal Service or a private delivery service;

(4)  the landlord has had a reasonable time to repair or remedy the condition after the landlord received the tenant's notice under Subdivision (1) and, if applicable, the tenant's subsequent notice under Subdivision (3);

(5)  the landlord has not made a diligent effort to repair or remedy the condition after the landlord received the tenant's notice under Subdivision (1) and, if applicable, the tenant's notice under Subdivision (3); and

(6)  the tenant was not delinquent in the payment of rent at the time any notice required by this subsection was given.

(e)  Except as provided by [~~in~~] Subsection (f), a tenant to whom a landlord is liable under Subsection (b) [~~of this section~~] may:

(1)  terminate the lease;

(2)  withhold rent payments or have the condition repaired or remedied according to Section 92.0561;

(3)  deduct from the tenant's rent, without necessity of judicial action, the cost of the repair or remedy according to Section 92.0561; and

(4)  obtain judicial remedies according to Section 92.0563.

SECTION 15.  The heading to Section 92.0561, Property Code, is amended to read as follows:

Sec. 92.0561.  TENANT'S REPAIR AND DEDUCT AND RENT WITHHOLDING REMEDIES.

SECTION 16.  Section 92.0561, Property Code, is amended by amending Subsections (a), (d), (e), and (f) and adding Subsections (l) and (m) to read as follows:

(a)  If the landlord is liable to the tenant under Section 92.056(b), the tenant may:

(1)  withhold rent payments; or

(2)  have the condition repaired or remedied and may deduct the cost from a subsequent rent payment as provided in this section.

(d)  Repairs under this section may be made or rent payments may be withheld only if [~~all of the following requirements are met~~]:

(1)  the [~~The~~] landlord has a duty to repair or remedy the condition under Section 92.052, and the duty has not been waived in a written lease by the tenant under [~~Subsection (e) or (f) of~~] Section 92.006(e) or (f); [~~92.006.~~]

(2)  the [~~The~~] tenant has given notice to the landlord as required by Section 92.056(b)(1), and, if required, a subsequent notice under Section 92.056(b)(3);

(3)  if the tenant intends to repair or remedy the condition, [~~and~~] at least one of the [~~those~~] notices under Subdivision (2):

(A)  states that the tenant intends to repair or remedy the condition; and

(B)  contains [~~. The notice shall also contain~~] a reasonable description of the intended repair or remedy; and [~~.~~]

(4)  any [~~(3)  Any~~] one of the following events has occurred:

(A)  the [~~The~~] landlord has failed to remedy the backup or overflow of raw sewage inside the tenant's dwelling or the flooding from broken pipes or natural drainage inside the dwelling; [~~.~~]

(B)  the [~~The~~] landlord has expressly or impliedly agreed in the lease to furnish potable water to the tenant's dwelling and the water service to the dwelling has totally ceased; [~~.~~]

(C)  the [~~The~~] landlord has expressly or impliedly agreed in the lease to furnish heating or cooling equipment, [~~;~~] the equipment is producing inadequate heat or cooled air, [~~;~~] and the landlord has been notified in writing by the appropriate local housing, building, or health official or other official having jurisdiction that the lack of heat or cooling materially affects the health or safety of an ordinary tenant; or [~~.~~]

(D)  the [~~The~~] landlord has been notified in writing by the appropriate local housing, building, or health official or other official having jurisdiction that the condition materially affects the health or safety of an ordinary tenant.

(e)  If the requirements of Subsection (d) [~~of this section~~] are met, a tenant may withhold rent payments or:

(1)  have the condition repaired or remedied immediately following the tenant's notice of intent to repair if the condition involves sewage or flooding as described by [~~referred to in Paragraph (A) of Subdivision (3) of~~] Subsection (d)(4)(A) [~~(d) of this section~~];

(2)  have the condition repaired or remedied if the condition involves a cessation of potable water as described by [~~referred to in Paragraph (A) of Subdivision (3) of~~] Subsection (d)(4)(B) [~~(d) of this section~~] and if the landlord has failed to repair or remedy the condition within three days following the tenant's delivery of notice of intent to repair;

(3)  have the condition repaired or remedied if the condition involves inadequate heat or cooled air as described by [~~referred to in Paragraph (C) of Subdivision (3) of~~] Subsection (d)(4)(C) [~~(d) of this section~~] and if the landlord has failed to repair the condition within three days after delivery of the tenant's notice of intent to repair; or

(4)  have the condition repaired or remedied if:

(A)  the condition is not covered by Subsection (d)(4)(A) [~~Paragraph (A)~~], (B), or (C);

(B)  the condition [~~of Subdivision (3) of Subsection (d) of this section and~~] involves a condition affecting the physical health or safety of the ordinary tenant as described by [~~referred to in Paragraph (D) of Subdivision (3) of~~] Subsection (d)(4)(D); [~~(d) of this section~~] and

(C)  [~~if~~] the landlord has failed to repair or remedy the condition within seven days after delivery of the tenant's notice of intent to repair.

(f)  Repairs made pursuant to the tenant's notice must be made by a company, contractor, or repairman listed in the yellow or business pages of the telephone directory, on an Internet website that aggregates and provides information about other businesses that perform repair work, or in the classified advertising section of a newspaper of the local city, county, or adjacent county at the time of the tenant's notice of intent to repair. Unless the landlord and tenant agree otherwise under Subsection (g) [~~of this section~~], repairs may not be made by the tenant, the tenant's immediate family, the tenant's employer or employees, or a company in which the tenant has an ownership interest. Repairs may not be made to the foundation or load-bearing structural elements of the building if it contains two or more dwelling units.

(l)  If the tenant chooses to withhold rent payments under this section, the tenant may withhold rent until the repair is completed. The tenant shall pay all rent owed not later than the second business day after the date the repair is completed. The tenant may not withhold rent payments that came due before the tenant notified the landlord of the condition in need of repair or remedy.

(m)  A landlord may not charge a late fee for rent properly withheld under this section.

SECTION 17.  Section 92.331(b), Property Code, is amended to read as follows:

(b)  A landlord may not, because [~~within six months after the date~~] of the tenant's action under Subsection (a), retaliate against the tenant by:

(1)  filing an eviction proceeding, except for the grounds stated by Section 92.332;

(2)  depriving the tenant of the use of the premises, except for reasons authorized by law;

(3)  decreasing services to the tenant;

(4)  increasing the tenant's rent or terminating the tenant's lease; or

(5)  engaging, in bad faith, in a course of conduct that materially interferes with the tenant's rights under the tenant's lease.

SECTION 18.  Section 92.351, Property Code, is amended by adding Subdivisions (3-a) and (3-b) to read as follows:

(3-a)  "Conditional offer" means an offer to rent or lease a rental unit to an applicant that is contingent on the landlord's subsequent inquiry into the applicant's criminal history.

(3-b)  "Conviction" means a verdict or plea of guilty or nolo contendere. The term does not include deferred adjudication or community supervision.

SECTION 19.  Section 92.3515, Property Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a)  At the time an applicant is provided with a rental application and before accepting an application fee, the landlord shall make available to the applicant printed notice of the landlord's tenant selection criteria and the grounds for which the rental application may be denied, including the applicant's:

(1)  criminal history;

(2)  previous rental history;

(3)  current income;

(4)  credit history; or

(5)  failure to provide accurate or complete information on the application form.

(a-1)  The printed notice must state in writing that the applicant may provide evidence showing:

(1)  the inaccuracies in the applicant's criminal history;

(2)  the applicant's rehabilitation or rehabilitative effort while incarcerated or after release; or

(3)  other mitigating factors.

SECTION 20.  Section 92.354, Property Code, is amended to read as follows:

Sec. 92.354.  LIABILITY OF LANDLORD. (a) A landlord who in bad faith fails to refund an application fee or deposit in violation of this subchapter is liable for an amount equal to the sum of $100, three times the amount wrongfully retained, and the applicant's reasonable attorney's fees.

(b)  A landlord who violates Section 92.356 is liable for an amount equal to the sum of $500 and the applicant's reasonable attorney's fees.

SECTION 21.  Subchapter I, Chapter 92, Property Code, is amended by adding Section 92.356 to read as follows:

Sec. 92.356.  CRIMINAL RECORD SCREENING. (a) A landlord screening an applicant's criminal history may not inquire about or consider a previous arrest of the applicant if the arrest did not result in a conviction.

(b)  Before making a conditional offer, a landlord may not inquire about or require an applicant to disclose or reveal a pending criminal charge.

(c)  Notwithstanding Subsection (b), a landlord may require an applicant to authorize the landlord to perform an inquiry or any other check related to the landlord's tenant selection criteria in deciding whether to rent or lease to an applicant.

(d)  After making a conditional offer, a landlord screening an applicant's criminal history may not consider a criminal conviction that occurred more than three years before the date of the conditional offer.

(e)  A landlord may withdraw a conditional offer based on an applicant's criminal conviction that has occurred less than three years before the date of the conditional offer only if the landlord determines that the withdrawal achieves a substantial, legitimate, nondiscriminatory interest. The landlord's determination must be reasonable after consideration of:

(1)  the nature and severity of the criminal offense;

(2)  the age of the applicant at the time of the occurrence of the criminal offense;

(3)  the time that has elapsed since the occurrence of the criminal offense;

(4)  any information produced by the applicant, or produced on the applicant's behalf, in regard to the applicant's rehabilitation and good conduct since the occurrence of the criminal offense;

(5)  the degree to which the criminal offense, if it reoccurred, would negatively impact the safety of the landlord's other tenants or property; and

(6)  whether the criminal offense occurred on or was connected to property that was rented or leased by the applicant.

(f)  The landlord may not have a policy to ban renting or leasing to tenants with a criminal conviction history. A determination to withdraw a conditional offer must be based on an individualized assessment considering the factors described by Subsection (e).

(g)  If a landlord withdraws a conditional offer, the landlord shall provide the applicant with written notification that includes, with specificity, the reasons for the withdrawal of the conditional offer. Not later than the 20th day after the date notice is provided, the applicant may request that the landlord provide the applicant a copy of all information on which the landlord relied in considering the applicant, including criminal records. A landlord shall provide the information, free of charge, not later than the 10th day after the date the request is received.

(h)  This section may not be construed to allow a landlord to inquire about or require an applicant to disclose:

(1)  a pending criminal accusation against any prospective tenant; or

(2)  that a child, as defined by Section 51.02, Family Code, who will reside in the rental unit was found to have engaged in delinquent conduct or conduct indicating a need for supervision.

(i)  This section does not apply:

(1)  to a landlord who owns and occupies a multiunit complex that has three or fewer dwelling units; or

(2)  if a federal law or regulation or other law:

(A)  requires the consideration of an applicant's criminal history for the purposes of obtaining housing; or

(B)  allows for denial of an applicant due to certain criminal convictions.

SECTION 22.  Section 94.251, Property Code, is amended to read as follows:

Sec. 94.251.  RETALIATION BY LANDLORD. (a) A landlord may not retaliate against a tenant by taking an action described by Subsection (b) because the tenant:

(1)  in good faith exercises or attempts to exercise against a landlord a right or remedy granted to the tenant by the lease agreement, a municipal ordinance, or a federal or state statute;

(2)  gives the landlord a notice to repair or exercise a remedy under this chapter; [~~or~~]

(3)  complains to a governmental entity responsible for enforcing building or housing codes, a public utility, or a civic or nonprofit agency, and the tenant:

(A)  claims a building or housing code violation or utility problem; and

(B)  believes in good faith that the complaint is valid and that the violation or problem occurred; or

(4)  establishes, attempts to establish, or participates in a tenant organization.

(b)  A landlord may not, because [~~within six months after the date~~] of the tenant's action under Subsection (a), retaliate against the tenant by:

(1)  filing an eviction proceeding, except for the grounds stated by Subchapter E;

(2)  depriving the tenant of the use of the premises, except for reasons authorized by law;

(3)  decreasing services to the tenant;

(4)  increasing the tenant's rent;

(5)  terminating the tenant's lease agreement; or

(6)  engaging, in bad faith, in a course of conduct that materially interferes with the tenant's rights under the tenant's lease agreement.

SECTION 23.  Sections 92.0081(c), (d), (e), (e-1), (f), (g), (i), and (k), Property Code, are repealed.

SECTION 24.  The changes in law made by this Act apply only to a lease or rental agreement entered into or renewed on or after the effective date of this Act. A lease or rental agreement entered into or renewed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 25.  Not later than January 1, 2022, the Texas Supreme Court shall adopt the rules necessary to implement Sections 24.012 and 24.013, Property Code, as added by this Act.

SECTION 26.  (a)  Except as provided by Subsection (b) of this section, this Act takes effect January 1, 2022.

(b)  Section 25 of this Act takes effect September 1, 2021.