

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

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

11 (a-2) After a landlord gives a tenant an opportunity to cure
12 under Subsection (a-1), the landlord must give the tenant at least
13 14 days' written notice to vacate the premises before the landlord
14 files a forcible detainer suit. The notice to vacate must state the
15 reason for the notice and must include, in all capital letters in an
16 easily readable font and type size, the words "THIS IS NOT AN
17 EVICTION ORDER. THIS IS A DEMAND FOR POSSESSION OF THE PROPERTY.
18 AN EVICTION CASE MAY BE FILED AGAINST YOU 14 DAYS AFTER THE DATE
19 THIS NOTICE WAS DELIVERED. CALL THE STATE BAR OF TEXAS TOLL-FREE AT
20 1-877-9TEXBAR IF YOU NEED HELP LOCATING AN ATTORNEY. IF YOU CANNOT
21 AFFORD TO HIRE AN ATTORNEY, YOU MAY BE ELIGIBLE FOR FREE OR LOW-COST
22 LEGAL ASSISTANCE."

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

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

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

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

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

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

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

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

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

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

26 (2) a person who provides the clerk with:

27 (A) the names of at least one plaintiff and one

1 defendant; and

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

4 (3) a resident of the premises who:

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

7 (B) shows proof of residency;

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

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

13 (A) for the plaintiff after a trial; and

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

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

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

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

23 (d) If a default or default judgment is set aside after the
24 60th day after the date the complaint was filed, this section
25 applies as if the complaint had been filed on the date the default
26 or default judgment is set aside.

27 (e) This section may not be construed to prohibit the court

1 from issuing an order that bars access to eviction case information
2 if stipulated by the parties to the case.

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

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

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

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

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

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

25 (h) The notice must also contain:

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

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

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

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

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

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

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

27 Sec. 24.013. LIMITED DISSEMINATION OF EVICTION CASE

1 INFORMATION. (a) In this section, "eviction case" and "eviction
2 case information" have the meanings assigned by Section 24.012.

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

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

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

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

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

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

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

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

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

1 section:

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

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

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

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

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

- 16 (1) actual damages;
17 (2) exemplary damages of \$1,000; and
18 (3) reasonable attorney's fees and court costs.

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

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

26 (b) Except as provided by Subsection (d), a landlord may not
27 refuse to rent, negotiate for the rental of, or in any other manner

1 make unavailable or deny a dwelling to a person because of an
2 eviction case brought against the person during a state of disaster
3 declared by the governor under Section 418.014, Government Code,
4 related to the coronavirus disease (COVID-19) pandemic or before
5 the 180th day after the date of termination of the state of
6 disaster.

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

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

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

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

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

22 (2) removing the contents of premises abandoned by a
23 tenant [~~, or~~

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

27 SECTION 5. The heading to Section 92.011, Property Code, is

1 amended to read as follows:

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

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

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

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

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

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

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

21 Sec. 92.0133. NOTICE FOR DWELLING LOCATED IN FLOODPLAIN.

22 (a) In this section:

23 (1) "100-year floodplain" means any area of land
24 designated as a flood hazard area with a one percent or greater
25 chance of flooding each year by the Federal Emergency Management
26 Agency under the National Flood Insurance Act of 1968 (42 U.S.C.
27 Section 4001 et seq.).

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

3 (A) the overflow of inland or tidal waters;

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

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

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

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

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

27 (d) If a landlord knows that flooding has damaged any

1 portion of a dwelling at least once during the five-year period
2 immediately preceding the effective date of the lease, the landlord
3 shall provide a written notice to a tenant that is substantially
4 equivalent to the following:

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

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

10 (f) If a landlord violates this section and a tenant suffers
11 a substantial loss or damage to the tenant's personal property as a
12 result of flooding, the tenant may terminate the lease by giving a
13 written notice of termination to the landlord not later than the
14 30th day after the date the loss or damage occurred. Termination of
15 a lease under this subsection is effective when the tenant
16 surrenders possession of the dwelling.

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

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

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

1 (a-1) For purposes of this section, a late fee is considered
2 reasonable if[+]

3 [~~(1)~~] the late fee is not more than the lesser of [+]
4 [~~(A)~~ 12 percent of the amount of rent for the
5 rental period under the lease for a dwelling located in a structure
6 that contains not more than four dwelling units; or

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

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

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

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

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

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

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

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

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

11 (2) for the purpose stated in the notice.

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

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

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

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

22 (1) inspect the premises;

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

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

1 condition; and

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

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

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

13 (1) terminate the lease;

14 (2) withhold rent payments or have the condition
15 repaired or remedied according to Section [92.0561](#);

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

19 (4) obtain judicial remedies according to Section
20 [92.0563](#).

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

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

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

1 and

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

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

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

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

17 (1) to a landlord:

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

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

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

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

27 (2) to a tenant:

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

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

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

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

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

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

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

25 (1) a refund of any prepaid rent;

26 (2) [~~is entitled only to~~] a pro rata refund of rent
27 from the date the rental premises became as a practical matter

1 totally unusable for residential purposes as a result of a casualty
2 loss; [~~tenant moves out~~] and

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

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

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

1 amount determined by the tenant [~~A landlord and tenant may agree~~
2 ~~otherwise in a written lease~~].

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

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

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

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

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

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

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

27 (4) shall dismiss the proceeding against the tenant if

1 the tenant complies with the order of payment under Subdivision (2)
2 before the 10th business day after the date the court issued the
3 order of payment under Subdivision (2).

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

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

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

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

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

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

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

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

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

- 1 (A) a method specified in the lease;
2 (B) a method generally accepted by the landlord
3 in practice;
4 (C) certified mail, return receipt requested;
5 (D) [~~by~~] registered mail; [~~by~~] or
6 (E) [~~by~~] another form of mail that allows
7 tracking of delivery from the United States Postal Service or a
8 private delivery service;

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

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

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

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

22 (1) terminate the lease;
23 (2) withhold rent payments or have the condition
24 repaired or remedied according to Section [92.0561](#);

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

1 (4) obtain judicial remedies according to Section
2 92.0563.

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

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

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

10 (a) If the landlord is liable to the tenant under Section
11 92.056(b), the tenant may:

12 (1) withhold rent payments; or

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

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

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

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

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

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

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

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

7 (A) the [~~The~~] landlord has failed to remedy the
8 backup or overflow of raw sewage inside the tenant's dwelling or the
9 flooding from broken pipes or natural drainage inside the dwelling;
10 [~~+~~]

11 (B) the [~~The~~] landlord has expressly or impliedly
12 agreed in the lease to furnish potable water to the tenant's
13 dwelling and the water service to the dwelling has totally ceased;
14 [~~+~~]

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

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

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

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

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

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

18 (4) have the condition repaired or remedied if:

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

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

26 (C) [~~if~~] the landlord has failed to repair or
27 remedy the condition within seven days after delivery of the

1 tenant's notice of intent to repair.

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

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

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

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

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

1 against the tenant by:

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

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

6 (3) decreasing services to the tenant;

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

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

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

14 (3-a) "Conditional offer" means an offer to rent or
15 lease a rental unit to an applicant that is contingent on the
16 landlord's subsequent inquiry into the applicant's criminal
17 history.

18 (3-b) "Conviction" means a verdict or plea of guilty
19 or nolo contendere. The term does not include deferred
20 adjudication or community supervision.

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

24 (a) At the time an applicant is provided with a rental
25 application and before accepting an application fee, the landlord
26 shall make available to the applicant printed notice of the
27 landlord's tenant selection criteria and the grounds for which the

1 rental application may be denied, including the applicant's:

- 2 (1) criminal history;
- 3 (2) previous rental history;
- 4 (3) current income;
- 5 (4) credit history; or
- 6 (5) failure to provide accurate or complete
- 7 information on the application form.

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

- 10 (1) the inaccuracies in the applicant's criminal
11 history;
- 12 (2) the applicant's rehabilitation or rehabilitative
13 effort while incarcerated or after release; or
- 14 (3) other mitigating factors.

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

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

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

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

27 Sec. 92.356. CRIMINAL RECORD SCREENING. (a) A landlord

1 screening an applicant's criminal history may not inquire about or
2 consider a previous arrest of the applicant if the arrest did not
3 result in a conviction.

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

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

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

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

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

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

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

26 (4) any information produced by the applicant, or
27 produced on the applicant's behalf, in regard to the applicant's

1 rehabilitation and good conduct since the occurrence of the
2 criminal offense;

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

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

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

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

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

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

26 (2) that a child, as defined by Section 51.02, Family
27 Code, who will reside in the rental unit was found to have engaged

1 in delinquent conduct or conduct indicating a need for supervision.

2 (i) This section does not apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (3) decreasing services to the tenant;

11 (4) increasing the tenant's rent;

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

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

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

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

24 SECTION 25. Not later than January 1, 2022, the Texas
25 Supreme Court shall adopt the rules necessary to implement Sections
26 24.012 and 24.013, Property Code, as added by this Act.

27 SECTION 26. (a) Except as provided by Subsection (b) of

1 this section, this Act takes effect January 1, 2022.

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