

BILL ANALYSIS

S.B. 38
By: Bettencourt
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that under the current eviction process used in Texas, it can take 30 days to 60 days or more from notice to vacate to executing a writ for an owner to recover property from a person that does not pay rent or is otherwise not entitled to possession. The bill sponsor has informed the committee that a 30-day presuit notice is often required to be sent to a tenant before an eviction is filed and that there can be additional delays relating to serving petitions, conducting trials, serving writs, and proceeding with appeals. The bill sponsor has further informed the committee that losing income from rental properties can affect an owner's ability to maintain their property and make tax, insurance, and mortgage payments. According to the bill sponsor, there is a need to further optimize and improve the eviction process for cases where there are no genuinely disputed facts, ensuring that rental property owners are able to regain possession of their property without being forced to absorb months of costs from unpaid rent, legal fees, and potential property damage.

S.B. 38, accordingly, seeks to alleviate the strain the eviction process can place on property owners by providing a more efficient and expedited process to restore a property owner's legal right to possession. The bill requires an eviction suit to be brought in the justice precinct in which the real property is located and makes a change to allow, under certain circumstances, a justice court to transfer the suit to a justice court in an adjacent precinct in the county.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 16 of this bill.

ANALYSIS

S.B. 38 amends the Property Code to set out, revise, remove, and repeal provisions regarding the eviction process in Texas with respect to the following general matters:

- jurisdiction and venue;
- computation of time;
- the authority to modify or suspend eviction procedures;
- the notice required before filing an eviction suit and the petition to initiate an eviction suit;
- rules of court;
- procedures applicable in a suit to evict and recover unpaid rent;
- electronic proceedings;
- summary disposition and trial;

- an appeal to county court, the appeal bond for certain evictions suits, and contest of certain appeal bonds;
- certain terms used with regard to a tenant appeal on the statement of inability to afford payment of court costs;
- the payment of rent during an appeal of eviction and a tenant's failure to pay rent during appeal;
- a writ of possession; and
- nonlawyer representation.

S.B. 38 requires the Texas Supreme Court to adopt rules as necessary to clarify eviction procedures consistent with the provisions relating to eviction suits, as those provisions are amended by the bill.

Jurisdiction

S.B. 38 grants jurisdiction in an eviction suit additionally to a justice court to which an eviction suit is transferred under the bill's provisions, as later described, from only the justice court in the precinct in which the real property is located. The bill grants to all justice courts the jurisdiction to issue a writ of possession under any provisions governing eviction suits and removes the provision currently limiting a justice court's jurisdiction in eviction suits to matters regarding a tenant's failure to pay rent during an appeal.

S.B. 38 requires a justice court in which a petition, as later described, is filed to initiate an eviction to adjudicate the right to actual possession of the premises but prohibits a justice court from adjudicating title to the premises. The bill establishes that counterclaims and the joinder of suits against third parties are not permitted in eviction suits. These provisions expressly do not preclude a claim that may not be asserted under this provision from being brought in a separate suit in a court of proper jurisdiction.

Venue

S.B. 38 requires an eviction suit to be brought in the justice precinct in which the real property is located. The bill requires that justice court in such a suit, on the motion of the plaintiff, to transfer the suit to a justice court in an adjacent precinct in the county in which the real property is located under the following circumstances:

- the sheriff or constable is unable to serve the citation on the defendant on or before the fifth business day after the date the petition is filed;
- the transferring justice court is unable to conduct the trial of the eviction suit on or before the 21st day after the date the petition is filed; or
- any other sufficient cause exists, as determined by the transferring justice court.

If the justice court with original jurisdiction finds sufficient cause for a change in venue under these provisions, the eviction suit must be transferred to the justice court identified by the plaintiff in the plaintiff's motion. The bill requires the transferring justice court, on granting the motion, to immediately forward the transcript and original papers in the case, by electronic means or otherwise, to the clerk of the justice court to which the suit is transferred. On transfer of an eviction suit under these provisions, the justice court to which the suit is transferred may not require the plaintiff to pay any additional filing fees or an additional service fee, unless additional service is required.

Computation of Time

S.B. 38 provides, as follows, that a period of time prescribed by provisions governing eviction suits:

- does not include the day of the event that begins the period;
- includes Saturdays, Sundays, and state or federal holidays;

- includes the last day of the period; and
- if the last day of the period is a Saturday, Sunday, or state or federal holiday, is extended so that the last day of the period is the next day that is not a Saturday, Sunday, or state or federal holiday.

Authority to Modify or Suspend Eviction Procedures

S.B. 38 establishes that only the legislature has the authority to modify or suspend procedures prescribed by provisions governing eviction suits but the bill establishes that this restriction expressly does not affect the authority of the Texas Supreme Court to modify or suspend certain provisions for the conduct of any court proceedings affected by a disaster declared by the governor under applicable state law. However, such a modification or suspension may be applied to an eviction suit only if, as follows:

- the modification or suspension is applicable to all courts similarly affected by the disaster without regard to the subject matter of an action; and
- any request for the modification or suspension is made in writing and available to the public.

Notice Required Before Filing Suit

S.B. 38 establishes that, in a forcible detainer suit against a tenant whose right of possession is terminated based on nonpayment of rent, the written notice to vacate given to a tenant before the filing of such a suit must be given in the form of either a notice to pay rent or vacate or a notice to vacate. In addition, if a federal law or rule requires a landlord to give notice to a tenant before the landlord requires the tenant to vacate the premises, the following apply:

- a landlord that satisfies the notice requirements is not required to delay the filing of an eviction suit based on the federal requirement;
- the federal requirement is not a basis for a court to delay or abate the conduct of the eviction suit; and
- a writ of possession may not be served on the tenant until the period between the delivery of the applicable notice and the service of the writ equals or exceeds the period prescribed by the federal requirement.

S.B. 38 replaces the requirement that if the lease or applicable law requires the landlord to give a tenant an opportunity to respond to a notice of proposed eviction, a notice to vacate may not be given until the period provided for the tenant to respond to the eviction notice has expired. The bill provides that, if the lease or applicable state or federal law or rule requires a landlord to give a tenant an opportunity to respond to a notice of proposed eviction before filing an eviction suit, the following apply:

- the notice period in a notice to pay rent or vacate or a notice to vacate may, at the landlord's discretion, run concurrently with the period provided for the tenant to respond to the notice of proposed eviction; and
- the notice to pay rent or vacate or notice to vacate may include the required opportunity to respond to the notice of proposed eviction.

A notice required before filing an eviction suit against a tenant must be delivered using at least one of the following methods:

- mail, including first class mail, registered mail, certified mail, or a delivery service;
- delivery to the inside of the premises;
- hand delivery to any tenant of the premises; or
- if the parties have agreed in writing, electronic communication, including e-mail or other electronic means.

This requirement expressly does not apply if the tenant actually receives the notice.

S.B. 38 repeals the provisions that do the following:

- require a notice to vacate to be given in person or by mail to the premises in question by delivering the notice in person by personal delivery to the tenant or any person residing at the premises who is 16 years of age or older or personal delivery to the premises and affixing the notice to the inside of the main entry door or by mailing the notice by regular mail, by registered mail, or by certified mail, return receipt requested, to the premises in question;
- provide an alternative to delivering the notice to vacate in person or by mail to the premises by authorizing the landlord to deliver the notice to vacate by securely affixing to the outside of the main entry door a sealed envelope that contains the notice under certain conditions;
- establish that the notice to vacate is considered delivered on the date the envelope is affixed to the outside of the door and is deposited in the mail, regardless of the date the notice is received;
- establish that the notice period for a notice to vacate is calculated from the day on which the notice is delivered;
- require a notice to vacate to be considered a demand for possession for purposes of provisions governing forcible detainer; and
- authorize a landlord to include in the notice to vacate a demand that the tenant pay the delinquent rent or vacate the premises by the date and time stated in the notice if before the required notice to vacate is given the landlord has given a written notice or reminder to the tenant that rent is due and unpaid.

Petition to Initiate Eviction Suit

S.B. 38 requires a sworn petition to be filed with the court in order to initiate an eviction suit and requires the petition to include the contents required by the Texas Rules of Civil Procedure.

Rules of Court

S.B. 38 authorizes a court to adopt local rules, forms, or standing orders for eviction suits in accordance with the Texas Rules of Civil Procedure and prohibits the court from adopting local rules, forms, or standing orders for eviction suits that do the following:

- require content in or with the petition other than content required by the Texas Rules of Civil Procedure;
- require any mediation, pretrial conference, or other proceeding before trial; or
- authorize the dismissal of an eviction suit on the basis that a petition is improper if the petition meets the requirements of the Texas Rules of Civil Procedure or can be amended to meet those requirements.

Procedures Applicable in Suit to Evict and Recover Unpaid Rent

S.B. 38 removes requirements by the Texas Rules of Civil Procedure regarding citations and replaces the sworn statement landlords file with a sworn petition. The bill establishes that, if a landlord files a motion for summary disposition with the applicable petition, with respect to a suit to evict, the citation must include a notice to the tenant on the first page of the citation in English and Spanish and in conspicuous bold print, with specified language notifying the tenant of the conditions under which the applicable court may enter a judgment in favor of the landlord without a trial.

S.B. 38 requires a sheriff or constable, including a deputy sheriff or deputy constable, to make a diligent effort to serve the citation and petition not later than the fifth business day after the date the petition is filed. The bill authorizes a landlord, if the citation and petition are not served on or before the fifth business day after the date the petition is filed, to provide for the citation and petition to be served by any other law enforcement officer, including an off-duty officer,

that has received appropriate training in the service of process, eviction procedures, and the execution of writs, as determined by the Texas Commission on Law Enforcement.

S.B. 38 sets out the following provisions with respect to a trial date of an eviction suit:

- a court must hold the trial of an eviction suit on a date that is not earlier than the 10th day or later than the 21st day after the date the petition is filed;
- a court may not hold the trial on a date that is earlier than the fourth day after the date the tenant is served with the petition; and
- a court from may not postpone the date of a trial for more than seven days unless the parties agree to the postponement in writing.

Electronic Proceedings

S.B. 38 establishes that a justice court, if the parties in an eviction suit agree, may allow the parties to appear at a court proceeding in the suit by videoconference, teleconference, or other available electronic means.

Summary Disposition and Trial

S.B. 38 authorizes a landlord that files a sworn petition to initiate an eviction suit under the bill's provisions to include with the petition a sworn motion for summary disposition without trial. The bill requires the motion to set out all supporting facts and requires documents on which the motion relies to be attached. If the motion shows that there are no genuinely disputed facts that would prevent a judgment in favor of the landlord, the court may enter judgment in favor of the landlord without a trial unless, as follows:

- not later than the fourth day after the date the tenant is served with the landlord's sworn petition, the tenant files a response setting out supporting facts and providing any applicable documents on which the response relies; and
- the justice court determines that service on the tenant was proper and, based on the landlord's sworn petition and the tenant's response, if any, there are genuinely disputed facts that would prevent a judgment in favor of the landlord.

S.B. 38 authorizes a justice court to do the following:

- enter judgment for the landlord regardless of the tenant's response if the response does not show there is a genuinely disputed fact that would prevent judgment in favor of the landlord; and
- consider a response filed by the tenant later than the fourth day after the date the tenant was served with the landlord's sworn petition and motion if the response shows there is a genuinely disputed fact that would prevent judgment in favor of the landlord and the tenant has filed the response before judgment has been entered.

If the justice court determines that there are genuinely disputed facts that would prevent a judgment in favor of the landlord, the justice court must set a trial date that is not earlier than the 10th day and not later than the 21st day after the date the petition is filed by the landlord. The bill authorizes the justice court to immediately set the case for trial upon the tenant's request for a trial in response to a motion for summary disposition. The bill establishes that a judgement on summary disposition under these provisions has the same effect as any other judgment in an eviction suit.

Appeal to County Court

S.B. 38 authorizes a party to appeal the judgment of a justice court in an eviction suit by filing a bond, cash deposit, or statement of inability to afford payment of court costs with the justice court not later than the fifth day after the date the judgment is signed. The bill requires a tenant who files an appeal to affirm, under penalty of perjury, the tenant's good faith belief that the tenant has a meritorious defense and that the appeal is not for the purpose of delay. An appeal is perfected when a bond, cash deposit, or statement of inability to afford payment of court costs

is timely filed with a justice court in accordance with these provisions. The justice court must forward by electronic means or otherwise the transcript and original papers in an appeal of an eviction case to the county court, not earlier than 4 p.m. on the sixth day or later than 4 p.m. on the 10th day after the date the tenant files the appeal, except that, if the court confirms that the tenant has timely paid the initial rent payment into the justice court registry in accordance with provisions relating to payment of rent during an appeal of eviction, the court may forward the transcript and original papers immediately. The bill requires the county court to hold a trial not later than the 21st day after the date the transcript and original papers are delivered to the county court.

Appeal Bond for Certain Eviction Suits

S.B. 38 makes applicable to all residential eviction suits the applicability of the requirement for a justice court to state in the court's judgment the amount of the appeal bond and removes the provision restricting applicability to residential eviction suits for nonpayment of rent.

S.B. 38 clarifies the tenant's right to appeal a decision disapproving an appeal bond. The bill makes the writ of possession available if the tenant fails to pay rent during the appeal, notwithstanding an appeal of the decision disapproving the appeal bond.

Tenant Appeal on Statement of Inability to Afford Payment of Court Costs

S.B. 38 updates the terminology used in reference to a tenant's appeal of a court's judgment on the basis of the tenant's inability to afford payment of the costs of appeal or the applicable appeal bond. Accordingly, rather than filing a pauper's affidavit with the justice court as required under current law, the tenant must file a signed statement of inability to afford payment of court costs containing the same information required to be in the affidavit. The bill makes provisions applicable to the pauper's affidavit instead applicable to that signed statement.

Payment of Rent During Appeal of Eviction

S.B. 38 expands the applicability of the requirement for a justice court to determine the amount of rent to be paid each rental pay period during the pendency of any appeal and to note that amount in the judgment to include all residential eviction cases, instead of only eviction cases based on nonpayment of rent as provided under current law. The bill requires the court, if there is no rental agreement, to determine the following:

- the rental pay period; and
- the amount of rent to be paid by the tenant in each rental pay period, which must be the greater of \$250 or the fair market rent, if determined by the court.

The bill removes the provision establishing that the requirement for the court to determine the amount of rent to be paid each rental pay period during the pendency of an eviction appeal expressly does not require or prohibit payment of rent into the court registry or directly to the landlord during the pendency of the appeal based on grounds other than nonpayment of rent.

S.B. 38 removes and applicably revises the requirement for a justice court, in an eviction suit for nonpayment of rent in which a tenant files a valid pauper's affidavit or appeal bond, to provide to the tenant a written notice at the time the affidavit or bond is filed containing certain information in bold or conspicuous type regarding, among other information, the requisite payment of the initial deposit of rent. Instead, the bill provides that if a tenant files an appeal of a justice court's judgment in an eviction suit, the justice court must provide the written notice, in bold or conspicuous type, at the time the appeal is filed that contains the following information:

- the amount of rent stated in the judgment that the tenant must pay into the justice court or county court registry, as applicable, during the pendency of the appeal;
- whether the rent must be paid in cash, cashier's check, or money order, and to whom the check or money order, if applicable, must be made payable;

- the calendar date by which the rent must be paid into the applicable court registry;
- for a court that closes before 5 p.m. on that calendar date, the time the court closes; and
- a statement that failure to pay the required amount into the justice court registry or county court registry, as applicable, may result in the justice court or county court issuing a writ of possession without a hearing.

S.B. 38 requires the tenant, during an appeal of eviction, to do the following:

- not later than the fifth day after the date the tenant files the appeal, pay rent for one rental pay period into the justice court registry; and
- on or before the beginning of each rental pay period during the pendency of the appeal, pay rent for one rental pay period into the justice court or county court registry, as applicable, according to the court in which the case is pending at the time of payment.

The justice court or county court, as applicable, must disburse rent paid into the justice court or county court registry to the landlord on request at any time during or after the pendency of the appeal. The bill establishes that a tenant's payment of rent into the applicable court registry under these provisions relieves the tenant of the obligation to pay rent to the landlord only for the rental pay period for which the payment is made.

S.B. 38 repeals the provision authorizing the plaintiff in the eviction suit, on sworn motion and hearing, to withdraw money deposited in the court registry before the final determination in the case, dismissal of appeal, or order of the court after final hearing and requiring a county court to give precedence to such a hearing or motion. The bill removes provisions that do the following:

- establish the date by which an initial deposit must be paid into a justice court registry by a tenant who files a pauper's affidavit;
- require a tenant, if the tenant files an appeal bond to appeal an eviction for nonpayment of rent, to pay into the justice court registry not later than the fifth day after the date the tenant filed the appeal bond the amount of rent to be paid in one rental pay period as determined by the court;
- authorize the plaintiff, if the tenant fails to timely pay that amount into the justice court registry and the transcript has not yet been transmitted to the county court, to request a writ of possession;
- require the justice court, on request and payment of the applicable fee, to issue the writ of possession immediately and without a hearing;
- require the justice court, regardless of whether a writ of possession is issued, to transmit the transcript and appeal documents to the county court for trial de novo on issues relating to possession, rent, or attorney's fees;
- require a tenant, if an eviction case is based on nonpayment of rent and the tenant appeals by filing a pauper's affidavit, to pay the rent, as it becomes due, into the applicable court registry during the pendency of the appeal; and
- require a tenant, if the tenant objects to the justice court's ruling on the portion of the rent to be paid by the tenant during appeal, to pay only the portion claimed by the tenant to be owed by the tenant until the issue is tried de novo along with the case on the merits in county court.

S.B. 38, with respect to the payment of a tenant's rent during the rental agreement term wholly or partly by a government agency, removes the condition that an eviction case be based on nonpayment of rent to authorize either party to contest the portion of the rent that the justice court determines must be paid into the county court registry by the tenant.

Tenant's Failure to Pay Rent During Appeal

S.B. 38 revises the provision setting out the conditions under which a justice court, during an appeal of an eviction case for nonpayment of rent, must immediately issue on request a writ of possession without hearing by doing the following:

- requiring a county court, as applicable, or the justice court, on request, to immediately issue such a writ without hearing under the same conditions applicable to the justice court during an appeal of eviction cases and not only eviction cases for nonpayment of rent;
- changing a requisite condition for the issuance of such a writ from a tenant's failure to pay the initial rent deposit into the justice court registry within five days of the date the tenant filed a pauper's affidavit to the tenant's failure to pay rent into the appropriate court registry; and
- removing as a requisite condition for the issuance of such a writ that the justice court has not yet forwarded the transcript and original papers to the county court.

S.B. 38 requires any law enforcement officer to execute a writ of possession under the same conditions currently applicable to a sheriff's or constable's execution of such a writ and makes the landlord responsible for bearing the costs of issuing and executing the writ of possession by any law enforcement officer. The bill replaces the requirement for a justice court to forward the transcript and original papers in an appeal of an eviction case to the county court for trial de novo, notwithstanding the fact that a writ of possession under statutory provisions relating to a tenant's failure to pay rent during appeal has already been issued, with a requirement for the court, if it issues such a writ of possession, to forward the transcript and original papers in an eviction case to the county court for trial de novo to resolve any remaining issues in the case, such as rent or attorney's fees, notwithstanding the fact that the writ has been issued or executed.

S.B. 38 removes provisions that do the following:

- require a justice court to forward the transcript and original papers in an appeal of an eviction case to the county court and prohibit the justice court from forwarding those documents before the sixth day after the date the tenant files a pauper's affidavit except that, if the court confirms that the tenant has timely paid the initial deposit of rent into the justice court registry, to forward the transcript and original papers immediately; and
- requires a justice court, if the tenant has not timely paid the initial deposit into the justice court registry, to issue on request a writ of possession notwithstanding the fact that the tenant has perfected an appeal by filing a pauper's affidavit that has been approved by the court.

The bill removes from the conditions that trigger the requirement for a county court, during the appeal of an eviction case in which a government agency is responsible for payment of a portion of the rent and does not pay that portion, to grant a motion requesting that the tenant be required to pay into the county court registry, as a condition of remaining in possession, the full amount of each rental period's rent as it becomes due, the condition that the landlord prove by credible evidence that the landlord is not able to take reasonable action that will cause the agency to resume making payments of its portion of the total rent due under the rental agreement.

S.B. 38 repeals provisions that do the following:

- prohibit a justice court from issuing a writ of possession if a tenant has timely deposited the tenant's portion of the rent claimed by the tenant under applicable provisions;
- authorize a landlord during an appeal of an eviction case for nonpayment of rent, if the tenant fails to pay rent into the justice court or county court registry as the rent becomes due, to file with the county court a sworn motion that the tenant failed to pay rent as required and require the landlord to notify the tenant of the motion and the hearing date;
- require a county court, if the court finds that the tenant has not complied with the payment requirements of applicable state law, to immediately issue a writ of possession unless on or before the day of the hearing the tenant pays into the court registry all rent not paid in accordance with applicable state law and the landlord's reasonable attorney's fees, if any, in filing the motion;
- establish that, if the county court finds that a tenant has failed to timely pay the rent into the court registry on more than one occasion, the tenant is not entitled to stay the issuance of the writ by paying the rent and the landlord's reasonable attorney's fees and the court

is required to immediately issue a writ to be executed not before the sixth day after the date the writ is issued; and

- authorize the parties in a motion or a hearing of an appeal of an eviction case for nonpayment of rent or in a motion to dismiss an appeal of an eviction case in county court to represent themselves or be represented by their authorized agents, who need not be attorneys.

Writ of Possession

S.B. 38 changes the definition of "premises" for purposes of provisions governing eviction suits to include any outside area or facility that is occupied by or in the possession of the person against whom the eviction suit is filed, in addition to, as under current law, any such area that a tenant is entitled to use under a written lease or oral rental agreement and that is held out for the use of tenants generally. The bill removes as an exception to the prohibition against a writ of possession being issued before the sixth day after the date on which the judgment for possession is rendered that a judgment for possession has been granted by default after a possession bond has been filed and approved under the Texas Rules of Civil Procedure. The bill establishes that the issuance of a writ of possession is a ministerial act not subject to review or delay. The bill requires a sheriff or constable, including a deputy sheriff or deputy constable, to serve the writ of possession not later than the fifth business day after the date the writ is issued. If the writ of possession is not served on or before the fifth business day after the date the writ is issued, the landlord may, but is not obligated to, have the writ served by any other law enforcement officer, including an off-duty officer, who has received appropriate training in the service of process, eviction procedures, and the execution of writs, as determined by the Texas Commission on Law Enforcement.

S.B. 38 requires a court to notify a tenant in writing of a judgment for possession under the bill's provisions relating to summary disposition and trial by sending a copy of the judgment to the premises by first class mail not later than 48 hours after the entry of the judgment, in addition to the existing requirement to do so for a default judgment for possession. The bill clarifies that the authorization for a sheriff or constable to use reasonable force in executing a writ of possession applies to any officer. The bill establishes that a landlord is not liable for damages to the tenant resulting from the enforcement of a judgment in favor of the landlord under provisions governing eviction suits.

Nonlawyer Representation

S.B. 38 authorizes parties in all eviction suits in justice court to represent themselves or be represented by their authorized agents, who need not be attorneys, whereas current law makes that authorization applicable only to suit in justice court for nonpayment of rent or holding over beyond a rental term. The bill removes the provision establishing that, in any eviction suit in justice court, an authorized agent requesting or obtaining a default judgement need not be an attorney. The bill removes the provision establishing that, in an appeal of an eviction suit for nonpayment of rent in a county or district court, the owner of a multifamily residential property who is a corporation or other entity may be represented by an employee, owner, officer, or partner of the entity who need not be an attorney.

Repealed Provisions

S.B. 38 repeals the following provisions of the Property Code:

- Sections 24.005 (f), (f-1), (f-2), (g), (h), and (i);
- Section 24.0053(a-4); and
- Sections 24.0054(a-3), (a-4), (b), (c), (d), and (e).

Procedural Provision

S.B. 38 applies only to an eviction suit in which the applicable petition is filed on or after January 1, 2026. An eviction suit in which the petition is filed before that date is governed by the law as it existed immediately before January 1, 2026, and that law is continued in effect for that purpose.

EFFECTIVE DATE

Except as otherwise provided, January 1, 2026.