

By:

____.B. No.____

A BILL TO BE ENTITLED

1 AN ACT

2 relating to access to a residence or former residence to retrieve
3 personal property by persons who are parties to certain suits and
4 decrees.

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

6 SECTION 1. Section 24A.002, Property Code, is amended by
7 adding Subsection (a-1) and amending Subsections (b) and (e) to
8 read as follows:

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

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

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

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

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

2 (1) certify that the applicant is unable to enter the
3 residence because the current occupant of the residence:

4 (A) has denied the applicant access to the
5 residence; or

6 (B) poses a clear and present danger of family
7 violence to the applicant or the applicant's dependent;

8 (2) certify that, to the best of the applicant's
9 knowledge, the applicant is not:

10 (A) the subject of an active protective order under
11 Title 4, Family Code, a magistrate's order for emergency protection
12 under Article 17.292, Code of Criminal Procedure, or another court
13 order prohibiting entry to the residence; or

14 (B) otherwise prohibited by law from entering the
15 residence;

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

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

20 (B) the applicant's right to possession of the
21 items described in the application is subject to a decree of

1 divorce or annulment to which the applicant and the current
2 occupant are parties;

3 (4) allege that the applicant or the applicant's
4 dependent requires personal items located in the residence that are
5 only of the following types:

6 (A) medical records;

7 (B) medicine and medical supplies;

8 (C) clothing;

9 (D) child-care items;

10 (E) legal or financial documents;

11 (F) checks or bank or credit cards in the name of
12 the applicant;

13 (G) employment records;

14 (H) personal identification documents; [~~ex~~]

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

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

20 (K) wireless communication devices, as defined by
21 Section 545.425(a), Transportation Code, of the applicant or the

1 applicant's dependent; or

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

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

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

9 (7) [(+6)] include a lease or other documentary evidence
10 that shows the applicant is currently or was formerly authorized to
11 occupy the residence.

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

14 (1) has two or more good and sufficient non-corporate
15 sureties or on corporate surety authorized to issue bonds in the
16 state;

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

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

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

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

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

11 (1) the applicant is unable to enter the residence
12 because the current occupant of the residence has denied the
13 applicant access to the residence to retrieve the applicant's
14 personal property or the personal property of the applicant's
15 dependent;

16 (2) the applicant is not:

17 (A) the subject of an active protective order under
18 Title 4, Family Code, a magistrate's order for emergency protection
19 under Article 17.292, Code of Criminal Procedure, or another court
20 order prohibiting entry to the residence; or

21 (B) otherwise prohibited by law from entering the

1 residence;

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

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

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

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

13 (a) A court [~~justice of the peace~~] may issue a writ under
14 Section 24A.002 without providing notice and hearing under Section
15 24A.002(e)(5) if the court [~~justice~~] finds at a hearing on the
16 application that:

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

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

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

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

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

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

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

21 SECTION 4. The changes is law made by this Act apply only to

1 an application filed on or after the effective date of this Act.
2 An application filed before the effective date of this Act is
3 governed by the law in effect on the date the application was
4 filed, and the former law is continued in effect for that purpose.

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

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