

BILL ANALYSIS

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S.B. 117
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The dissolution of a family relationship is difficult even under the best circumstances. This difficult situation is only exacerbated when one family member refuses to allow another to return home to retrieve personal belongings. There have been multiple reports of women denied entry to their homes and access to any of their clothing or personal items. In some cases, women have reported being unable to access critical medications and retrieve items necessary for the care of their children. S.B. 117 safeguards a spouse's property rights by creating a procedural means by which he or she can seek assistance in accessing the home.

Once a spouse has been denied entry to the home, he or she can seek a court order authorizing entry. The applicant must attest to an inability to enter the home, specify the items that need to be retrieved, and certify that he or she is not legally enjoined from accessing the home. The application must also state the harm that will result if the application is denied. When the application is approved and the order issued, the applicant will be accompanied and protected by a peace officer when he or she returns to the home.

This bill represents a simple but critical means by which to mitigate the risk of violence and safeguard an individual's right to return to his or her own home.

As proposed, S.B. 117 amends current law relating to the right of a spouse to enter the marital residence accompanied by a peace officer under certain circumstances.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 3, Family Code, by adding Subchapter F, as follows:

SUBCHAPTER F. ACCESS TO MARITAL RESIDENCE

Sec. 3.501. DEFINITION. Defines "marital residence" in this subchapter.

Sec. 3.502. RIGHT TO ENTER MARITAL RESIDENCE. Entitles a spouse, except as otherwise provided by a protective order under Title 4 (Protective Orders and Family Violence), a magistrate's order for emergency protection under Article 17.292 (Magistrate's Order for Emergency Protection), Code of Criminal Procedure, another court order, or other law, to enter the spouse's marital residence for a purpose described by Section 3.503 regardless of whether there is an agreement between the spouses that the other spouse shall have exclusive right to reside in the residence, or the spouse is seeking to enter the residence voluntarily moved out of the residence.

Sec. 3.503. APPLICATION TO ENTER RESIDENCE ACCOMPANIED BY PEACE OFFICER. (a) Requires a spouse, if a spouse desires to be accompanied by a peace officer when the spouse enters the marital residence, to apply to a justice court for an order authorizing entry to the residence. Requires the application to certify that the

applicant is unable to enter the marital residence because the spouse occupying the marital residence has denied the applicant access to the marital residence; certify that, to the best of the applicant's knowledge, the applicant is not the subject of an active protective order under Title 4, a magistrate's order for emergency protection under Article 17.292, Code of Criminal Procedure, or another court order prohibiting entry to the marital residence or otherwise prohibited by law from entering the marital residence; allege that the applicant requires vital items located in the marital residence, including medical records and supplies, legal documents, financial documents, employment records, personal identification documents, and items pertaining to personal safety; describe with specificity the items that the applicant intends to retrieve; and allege that the applicant will suffer personal or financial harm if the items listed in the application are not retrieved.

(b) Requires the justice of the peace to grant the application under Subsection (a) only if the justice of the peace finds that:

(1) the applicant is unable to enter the marital residence because the spouse occupying the marital residence has denied the applicant access to the marital residence;

(2) the applicant is not the subject of an active protective order under Title 4, a magistrate's order for emergency protection under Article 17.292, Code of Criminal Procedure, or another court order prohibiting entry to the marital residence; or

(3) there is a risk of personal or financial harm to the applicant if the items listed in the application are not retrieved.

(c) Requires a peace officer, if the justice of the peace grants the application under this section, to accompany and assist the applicant in making the authorized entry.

(d) Provides that a peace officer who provides assistance under Subsection (c) is not civilly liable for an act or omission of the officer that arises in connection with providing the assistance or civilly or criminally liable for the wrongful appropriation of any personal property by the spouse the officer is assisting.

SECTION 2. Effective date: September 1, 2013.