

BILL ANALYSIS

Senate Research Center

H.B. 2486
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The dissolution of a family is a difficult situation. This difficult situation is only exacerbated when one family member refuses to allow another to return home to retrieve personal belongings. My office has received multiple reports of people whose spouses are locking them out of their homes, which results in the person being unable to retrieve their personal belongings. In some cases, people have reported being unable to access prescription medications and/or necessities that they need to care for their children.

Current law does not provide any procedural means by which these individuals can seek help in entering the home and retrieving their property. H.B. 2486 proposes an amendment to the Texas Property Code, to provide a procedural mechanism to retrieve property. An individual who is denied access to personal property located in a former residence would be able to apply for a court order authorizing entry. In the application, he or she would be required to: attest to denied entry, specify items needed, certify that no protective order prevents him or her from entry, and state the harm that will result if the application is denied. If the application is approved, a court order is issued and the applicant can be accompanied and protected by a peace officer while returning to the home.

H.B. 2486 includes a Class B misdemeanor penalty for anyone who interferes with the court-ordered entry, and protects law enforcement from any civil or criminal liability. It also includes a defense to prosecution from this offense if a person did not receive a copy of the court order or notice that the entry to the property retrieval was authorized. H.B. 2486 represents a simple means by which we can mitigate the risk of violence and safeguard an individual's right to his or her property.

H.B. 2486 amends current law relating to the right of a person to enter the person's residence or former residence accompanied by a peace officer to recover certain personal property and creates an offense.

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 Title 4, Property Code, by adding Chapter 24A, as follows:

CHAPTER 24A. ACCESS TO RESIDENCE OR FORMER RESIDENCE TO RETRIEVE PERSONAL PROPERTY

Sec. 24A.001. DEFINITION. Defines "peace officer" for purposes of this chapter.

Sec. 24A.002. ORDER AUTHORIZING ENTRY AND PROPERTY RETRIEVAL; PEACE OFFICER TO ACCOMPANY. (a) Authorizes the person, if a person is unable to enter the person's residence or former residence to retrieve personal property belonging to the person or the person's dependent because the current occupant is denying the person

entry, to apply to the justice court for an order authorizing the person to enter the residence accompanied by a peace officer to retrieve specific items of personal property.

(b) Requires an application under Subsection (a) to:

(1) certify that the applicant is unable to enter the residence because the current occupant of the residence has denied the applicant access to the residence;

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

(A) the subject of an active protective order under Title 4 (Protective Orders and Family Violence), Family Code, a magistrate's order for emergency protection under Article 17.292 (Magistrate's Order for Emergency Protection), Code of Criminal Procedure, or another court order prohibiting entry to the residence; or

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

(3) allege that the applicant or the applicant's dependent requires personal items located in the residence, including medical records, medicine and medical supplies, clothing, child-care items, legal documents, financial documents, including checks or bank or credit cards, employment records, personal identification documents, educational or work-related books and supplies, including electronic devices, and items pertaining to personal safety;

(4) describe with specificity the items that the applicant intends to retrieve;

(5) allege that the applicant or the applicant's dependent will suffer personal or financial harm if the items listed in the application are not retrieved promptly; and

(6) include a lease or other documentary evidence that shows the applicant is currently or was formerly authorized to occupy the residence.

(c) Authorizes the justice of the peace, on sufficient evidence of hardship and urgency, to grant the application under this section and issue an order authorizing the applicant to enter the residence accompanied by a peace officer and retrieve the property listed in the application if the justice of the peace finds that:

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

(2) the applicant is not:

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

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

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

(4) the applicant is currently or was formerly authorized to occupy the residence according to a lease or other documentary evidence.

Sec. 24A.003. AUTHORIZED ENTRY PROCEDURES; DUTIES OF PEACE OFFICER. (a) Requires a peace officer, if the justice of the peace grants an application under Section 24A.002, to accompany and assist the applicant in making the authorized entry and retrieving the items of personal property listed in the application.

(b) Requires the peace officer, if the current occupant of the residence is present at the time of the entry, to provide the occupant with a copy of the court order authorizing the entry and property retrieval.

(c) Requires the applicant, before removing the property listed in the application from the residence, to submit all property retrieved to the peace officer assisting the applicant under this section to be inventoried. Requires the peace officer to create an inventory listing the items taken from the residence, provide a copy of the inventory to the applicant, provide a copy of the inventory to the current occupant or, if the current occupant is not present, leave the copy in a conspicuous place in the residence, and return the property to be removed from the residence to the applicant. Requires the officer to file the original inventory with the court that issued the order authorizing the entry and property retrieval.

(d) Authorizes a peace officer to use reasonable force in providing assistance under this section.

(e) Provides that a peace officer who provides assistance under this section in good faith and with reasonable diligence is not:

(1) civilly liable for an act or omission of the officer that arises in connection with providing the assistance; or

(2) civilly or criminally liable for the wrongful appropriation of any personal property by the person the officer is assisting.

Sec. 24A.004. IMMUNITY FROM LIABILITY. Provides that a landlord or a landlord's agent who permits or facilitates entry into a residence in accordance with a court order issued under this chapter is not civilly or criminally liable for an act or omission that arises in connection with permitting or facilitating the entry.

Sec. 24A.005. OFFENSE. (a) Provides that a person commits an offense if the person interferes with a person or peace officer entering a residence and retrieving personal property under the authority of a court order issued under Section 24A.002.

(b) An offense under this section is a Class B misdemeanor.

(c) Provides that it is a defense to prosecution under this section that the actor did not receive a copy of the court order or other notice that the entry or property retrieval was authorized.

Sec. 24A.006. HEARING; REVIEW. (a) Authorizes the occupant of a residence that is the subject of a court order issued under Section 24A.002, not later than the 10th day after the date of the authorized entry, to file a complaint in the court that issued the order alleging that the applicant has appropriated property belonging to the occupant or the occupant's dependent.

(b) Requires the justice court to promptly hold a hearing on a complaint submitted under this section and rule on the disposition of the disputed property.

(c) Provides that this section does not limit the occupant's remedies under any other law for recovery of the property of the occupant or the occupant's dependent.

SECTION 2. Effective date: September 1, 2015.