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(Senate Sponsor - Hinojosa)

H.B. No. 2486

(In the Senate - Received from the House May 14, 2015;
May 14, 2015, read first time and referred to Committee on State
Affairs; May 25, 2015, reported favorably by the following vote:
Yeas 6, Nays 0; May 25, 2015, sent to printer.)

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A BILL TO BE ENTITLED
AN ACT

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; creating an offense.

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

SECTION 1. Title 4, Property Code, is amended by adding Chapter 24A to read as follows:

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

Sec. 24A.001. DEFINITION. In this chapter, "peace officer" means a person listed under Article 2.12(1) or (2), Code of Criminal Procedure.

Sec. 24A.002. ORDER AUTHORIZING ENTRY AND PROPERTY RETRIEVAL; PEACE OFFICER TO ACCOMPANY. (a) 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, the person may 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) An application under Subsection (a) must:

(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, 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) 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) On sufficient evidence of hardship and urgency, the

August 31, 2015

(Exhibit #2)

justice of the peace may 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) If the justice of the peace grants an application under Section 24A.002, a peace officer shall accompany and assist the applicant in making the authorized entry and retrieving the items of personal property listed in the application.

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

(c) Before removing the property listed in the application from the residence, the applicant must submit all property retrieved to the peace officer assisting the applicant under this section to be inventoried. The peace officer shall 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. The officer shall file the original inventory with the court that issued the order authorizing the entry and property retrieval.

(d) A peace officer may use reasonable force in providing assistance under this section.

(e) 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. 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) 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) 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) 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, may 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) The court shall promptly hold a hearing on a complaint submitted under this section and rule on the disposition of the disputed property.

(c) 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. This Act takes effect September 1, 2015.

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