

1-1 By: Dutton, Collier, Lambert H.B. No. 1012
1-2 (Senate Sponsor - Zaffirini)
1-3 (In the Senate - Received from the House April 12, 2021;
1-4 April 19, 2021, read first time and referred to Committee on
1-5 Criminal Justice; May 13, 2021, reported favorably by the
1-6 following vote: Yeas 7, Nays 0; May 13, 2021, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Whitmire	X		
1-10	Huffman	X		
1-11	Bettencourt	X		
1-12	Birdwell	X		
1-13	Hinojosa	X		
1-14	Miles	X		
1-15	Nichols	X		

1-16 A BILL TO BE ENTITLED
1-17 AN ACT

1-18 relating to access to a residence or former residence to retrieve
1-19 certain personal property.

1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-21 SECTION 1. Section 24A.002, Property Code, is amended to
1-22 read as follows:

1-23 Sec. 24A.002. WRIT AUTHORIZING ENTRY AND PROPERTY
1-24 RETRIEVAL; PEACE OFFICER TO ACCOMPANY. (a) If a person is unable
1-25 to enter the person's residence or former residence to retrieve
1-26 personal property belonging to the person or the person's dependent
1-27 because the current occupant is denying the person entry, the
1-28 person may apply [~~to the justice court~~] for a writ authorizing the
1-29 person to enter the residence accompanied by a peace officer to
1-30 retrieve specific items of personal property.

1-31 (a-1) A person applying for a writ under this section must
1-32 apply:

1-33 (1) if the person and the current occupant are parties
1-34 to a pending suit under Title 1, Family Code, to the court in which
1-35 the suit is pending;

1-36 (2) if the person's right to possession of the items
1-37 described in the application is subject to a decree of divorce or
1-38 annulment to which the person and the current occupant are parties,
1-39 to the court having jurisdiction of the divorce or annulment
1-40 action; or

1-41 (3) if Subdivision (1) or (2) does not apply, to a
1-42 justice court.

1-43 (b) An application under Subsection (a) must:

1-44 (1) certify that the applicant is unable to enter the
1-45 residence because the current occupant of the residence:

1-46 (A) has denied the applicant access to the
1-47 residence; or

1-48 (B) poses a clear and present danger of family
1-49 violence to the applicant or the applicant's dependent;

1-50 (2) certify that, to the best of the applicant's
1-51 knowledge, the applicant is not:

1-52 (A) the subject of an active protective order
1-53 under Title 4, Family Code, a magistrate's order for emergency
1-54 protection under Article 17.292, Code of Criminal Procedure, or
1-55 another court order prohibiting entry to the residence; or

1-56 (B) otherwise prohibited by law from entering the
1-57 residence;

1-58 (3) certify whether, to the best of the applicant's
1-59 knowledge:

1-60 (A) the applicant and the current occupant are
1-61 parties to a pending suit under Title 1, Family Code; or

2-1 (B) the applicant's right to possession of the
 2-2 items described in the application is subject to a decree of divorce
 2-3 or annulment to which the applicant and the current occupant are
 2-4 parties;
 2-5 (4) allege that the applicant or the applicant's
 2-6 dependent requires personal items located in the residence that are
 2-7 only of the following types:
 2-8 (A) medical records;
 2-9 (B) medicine and medical supplies;
 2-10 (C) clothing;
 2-11 (D) child-care items;
 2-12 (E) legal or financial documents;
 2-13 (F) checks or bank or credit cards in the name of
 2-14 the applicant;
 2-15 (G) employment records;
 2-16 (H) personal identification documents; ~~[or]~~
 2-17 (I) copies of electronic records containing
 2-18 legal or financial documents;
 2-19 (J) assistance animals or service animals, as
 2-20 defined by Section 121.002, Human Resources Code, used by the
 2-21 applicant or the applicant's dependent;
 2-22 (K) wireless communication devices, as defined
 2-23 by Section 545.425(a), Transportation Code, of the applicant or the
 2-24 applicant's dependent; or
 2-25 (L) tools, equipment, books, and apparatus used
 2-26 by the applicant in the applicant's trade or profession;
 2-27 (5) ~~[(4)]~~ describe with specificity the items that the
 2-28 applicant intends to retrieve;
 2-29 (6) ~~[(5)]~~ allege that the applicant or the applicant's
 2-30 dependent will suffer personal harm if the items listed in the
 2-31 application are not retrieved promptly; and
 2-32 (7) ~~[(6)]~~ include a lease or other documentary
 2-33 evidence that shows the applicant is currently or was formerly
 2-34 authorized to occupy the residence.
 2-35 (c) Before the court ~~[justice of the peace]~~ may issue a writ
 2-36 under this section, the applicant must execute a bond that:
 2-37 (1) has two or more good and sufficient non-corporate
 2-38 sureties or one corporate surety authorized to issue bonds in this
 2-39 state;
 2-40 (2) is payable to the occupant of the residence;
 2-41 (3) is in an amount required by the court ~~[justice]~~;
 2-42 and
 2-43 (4) is conditioned on the applicant paying all damages
 2-44 and costs adjudged against the applicant for wrongful property
 2-45 retrieval.
 2-46 (d) The applicant shall deliver the bond to the court
 2-47 ~~[justice of the peace]~~ issuing the writ for the court's ~~[justice's]~~
 2-48 approval. The bond shall be filed with the ~~[justice]~~ court.
 2-49 (e) On sufficient evidence of urgency and potential harm to
 2-50 the health and safety of any person and after sufficient notice to
 2-51 the current occupant and an opportunity to be heard, the court
 2-52 ~~[justice of the peace]~~ may grant the application under this section
 2-53 and issue a writ authorizing the applicant to enter the residence
 2-54 accompanied by a peace officer and retrieve the property listed in
 2-55 the application if the court ~~[justice of the peace]~~ finds that:
 2-56 (1) the applicant is unable to enter the residence
 2-57 because the current occupant of the residence has denied the
 2-58 applicant access to the residence to retrieve the applicant's
 2-59 personal property or the personal property of the applicant's
 2-60 dependent;
 2-61 (2) the applicant is not:
 2-62 (A) the subject of an active protective order
 2-63 under Title 4, Family Code, a magistrate's order for emergency
 2-64 protection under Article 17.292, Code of Criminal Procedure, or
 2-65 another court order prohibiting entry to the residence; or
 2-66 (B) otherwise prohibited by law from entering the
 2-67 residence;
 2-68 (3) there is a risk of personal harm to the applicant
 2-69 or the applicant's dependent if the items listed in the application

3-1 are not retrieved promptly;

3-2 (4) the applicant is currently or was formerly
3-3 authorized to occupy the residence according to a lease or other
3-4 documentary evidence; and

3-5 (5) the current occupant received notice of the
3-6 application and was provided an opportunity to appear before the
3-7 court to contest the application.

3-8 SECTION 2. Sections 24A.0021(a), (b), and (c), Property
3-9 Code, are amended to read as follows:

3-10 (a) A court [~~justice of the peace~~] may issue a writ under
3-11 Section 24A.002 without providing notice and hearing under Section
3-12 24A.002(e)(5) if the court [~~justice~~] finds at a hearing on the
3-13 application that:

3-14 (1) the conditions of Sections 24A.002(e)(1)-(4) are
3-15 established;

3-16 (2) the current occupant poses a clear and present
3-17 danger of family violence to the applicant or the applicant's
3-18 dependent; and

3-19 (3) the personal harm to be suffered by the applicant
3-20 or the applicant's dependent will be immediate and irreparable if
3-21 the application is not granted.

3-22 (b) A court [~~justice of the peace~~] issuing a writ under this
3-23 section may waive the bond requirements under Sections 24A.002(c)
3-24 and (d).

3-25 (c) The court [~~justice of the peace~~] may recess a hearing
3-26 under Subsection (a) to notify the current occupant by telephone
3-27 that the current occupant may attend the hearing or bring to the
3-28 court the personal property listed in the application. The court
3-29 [~~justice of the peace~~] shall reconvene the hearing before 5 p.m.
3-30 that day regardless of whether the current occupant attends the
3-31 hearing or brings the personal property to the court.

3-32 SECTION 3. Section 24A.003(a), Property Code, is amended to
3-33 read as follows:

3-34 (a) If the court [~~justice of the peace~~] grants an
3-35 application under Section 24A.002 or Section 24A.0021, a peace
3-36 officer shall accompany and assist the applicant in making the
3-37 authorized entry and retrieving the items of personal property
3-38 listed in the application.

3-39 SECTION 4. The changes in law made by this Act apply only to
3-40 an application filed on or after the effective date of this Act. An
3-41 application filed before the effective date of this Act is governed
3-42 by the law in effect on the date the application was filed, and the
3-43 former law is continued in effect for that purpose.

3-44 SECTION 5. This Act takes effect September 1, 2021.

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