

BILL ANALYSIS

C.S.S.B. 920
By: Whitmire
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the authorization to apply for a writ to enter a residence and retrieve specific items of personal property while accompanied by a peace officer should be extended to those unable to enter a residence because the current occupant poses a clear and present danger of family violence to the applicant or the applicant's dependent. C.S.S.B. 920 seeks to offer protection for those at risk of family violence when retrieving property by providing for such extension.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 920 amends the Property Code to add, as an alternative to the requirement that an application for a writ to authorize the applicant to enter a residence and retrieve specific items of personal property accompanied by a peace officer certify the applicant's inability to enter the residence because the current occupant of the residence has denied the applicant access to the residence, that the application certify the applicant's inability to enter the residence because the current occupant poses a clear and present danger of family violence to the applicant or the applicant's dependent. The bill removes the condition that an applicant's dependent who requires certain personal items located in the residence be a minor in order to meet application requirements and includes copies of electronic records containing legal or financial documents among the items that the applicant or the applicant's dependent may retrieve under a writ.

C.S.S.B. 920 authorizes a justice of the peace to issue such a writ for entry and property retrieval without providing to the current occupant notice and opportunity to be heard if the justice finds at a hearing on the application that certain conditions for the writ are established, that the current occupant poses a clear and present danger of family violence to the applicant or the applicant's dependent, and that the personal harm to be suffered by the applicant or the applicant's dependent will be immediate and irreparable if the application is not granted. The bill authorizes a justice of the peace issuing such a writ to waive requirements relating to providing a bond to the court. The bill authorizes the justice of the peace to recess a hearing on a writ application to notify the current occupant by telephone that the current occupant may attend the hearing or bring to the court the personal property listed in the application and requires the justice of the peace to reconvene the hearing before 5 p.m. that day regardless of whether the current occupant attends the hearing or brings the personal property to the court. The bill requires that a temporary

ex parte writ state the period, not to exceed five days, during which the writ is valid. The bill extends to an applicant or occupant, as applicable, under a temporary ex parte writ the procedure for a peace officer to assist the applicant in making authorized entry and retrieving items and the procedure for an occupant to make a complaint. The bill expands the conduct that constitutes the offense relating to interfering with a person or peace officer entering a residence and retrieving personal property under the authority of a writ to include interfering with a person or peace officer entering a residence and retrieving personal property under the authority of a temporary ex parte writ.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 920 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Chapter 24A, Property Code, is amended by amending Sections 24A.001 and 24A.002 and adding Section 24A.0021 to read as follows:

Sec. 24A.001. DEFINITIONS
[DEFINITION].

Sec. 24A.002. WRIT [ORDER]
AUTHORIZING ENTRY AND
PROPERTY RETRIEVAL; PEACE
OFFICER TO ACCOMPANY.

Sec. 24A.0021. TEMPORARY EX PARTE WRIT AUTHORIZING ENTRY AND PROPERTY RETRIEVAL. (a) If a justice of the peace finds at the hearing on an application for a writ under Section 24A.002 that the conditions of Sections 24A.002(e)(1)-(4) are established and that the current occupant poses a clear and present danger of family violence to the applicant or the applicant's dependent, the justice may:

(1) waive the requirements relating to providing:

(A) a bond under Sections 24A.002(c) and (d); and

(B) notice and opportunity to be heard under Section 24A.002(e)(5); and

(2) grant the application and issue a

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 24A, Property Code, is amended by amending Sections 24A.001 and 24A.002 and adding Section 24A.0021 to read as follows:

Sec. 24A.001. DEFINITIONS
[DEFINITION].

Sec. 24A.002. WRIT [ORDER]
AUTHORIZING ENTRY AND
PROPERTY RETRIEVAL; PEACE
OFFICER TO ACCOMPANY.

Sec. 24A.0021. TEMPORARY EX PARTE WRIT AUTHORIZING ENTRY AND PROPERTY RETRIEVAL. (a) A justice of the peace may issue a writ under Section 24A.002 without providing notice and hearing under Section 24A.002(e)(5) if the justice finds at a hearing on the application that:

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

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

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

(b) A justice of the peace issuing a writ under this section may waive the bond requirements under Sections 24A.002(c) and (d).

temporary ex parte writ authorizing the applicant to enter the residence accompanied by a peace officer and retrieve the property listed in the application.

(b) The justice of the peace may recess a hearing under Subsection (a) to notify the current occupant by telephone that the current occupant may attend the hearing or bring to the court the personal property listed in the application. The justice of the peace shall reconvene the hearing before 5 p.m. that day regardless of whether the current occupant attends the hearing or brings the personal property to the court.

(c) A temporary ex parte writ issued under Subsection (a) must state the period, not to exceed five days, during which the writ is valid.

SECTION 2. Sections 24A.003(a), (b), and (c), Property Code, are amended to read as follows:

(a) If the justice of the peace grants an application under Section 24A.002 or Section 24A.0021, 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 writ [~~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 writ [~~order~~] authorizing the entry and property retrieval.

SECTION 3. Section 24A.004, Property Code, is amended to read as follows:

Sec. 24A.004. IMMUNITY FROM

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

(d) A temporary ex parte writ issued under Subsection (a) must state the period, not to exceed five days, during which the writ is valid.

SECTION 2. Same as engrossed version.

SECTION 3. Same as engrossed version.

LIABILITY. A landlord or a landlord's agent who permits or facilitates entry into a residence in accordance with a writ [~~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.

SECTION 4. Sections 24A.005(a) and (c), Property Code, are amended to read as follows:

(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 writ [~~court order~~] issued under Section 24A.002 or 24A.0021.

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

SECTION 5. Section 24A.006(a), Property Code, is amended to read as follows:

(a) The occupant of a residence that is the subject of a writ [~~court order~~] issued under Section 24A.002 or 24A.0021, not later than the 10th day after the date of the authorized entry, may file a complaint in the court that issued the writ [~~order~~] alleging that the applicant has appropriated property belonging to the occupant or the occupant's dependent.

SECTION 6. Chapter 24A, Property Code, as amended by this Act, applies only to an application filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2017.

SECTION 4. Same as engrossed version.

SECTION 5. Same as engrossed version.

SECTION 6. Same as engrossed version.

SECTION 7. Same as engrossed version.