

- SUBJECT:** Recovery of personal property from residences when access is denied
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 9 ayes — Smithee, Farrar, Clardy, Hernandez, Laubenberg, Raymond, Schofield, Sheets, S. Thompson
- 0 nays
- WITNESSES:** For — Catherina Conte, Asian Family Support Services of Austin; Bobby Gutierrez and Carlos Lopez, Justice of the Peace and Constables Association of Texas; Brittany Hightower, Texas Advocacy Project; David Mintz, Texas Apartment Association; (*Registered, but did not testify*: Gretta Gardner, Austin/Travis County Family Violence Task Force; Sandy Ward and Angela Smith, Fredericksburg Tea Party; Jama Pantel, Kirsha Haverlah and Mario Martinez, Justices of the Peace and Constables Association; Heather Bellino, Texas Advocacy Project; Tracy Grinstead-Everly, Texas Council on Family Violence; Lon Craft, Texas Municipal Police Association; Kevin Dietz; Matt Long)
- Against — None
- BACKGROUND:** Under current law, it is difficult to receive a court order to retrieve property when one family member refuses to allow another to enter their home. This is particularly an issue when a victim of domestic violence leaves the victim's partner and is denied access to the residence.
- DIGEST:** CSHB 2486 would allow people who are denied, by the current occupant, entrance to their residence or former residence to apply to a justice court for an order authorizing the individual to enter the residence accompanied by a peace officer to retrieve personal property.
- The application would be required to:
- certify that the current occupant had denied the person access to the residence;

- certify that the applicant is not the subject of any court order prohibiting entry to the residence, or otherwise prohibited by law from entering the residence;
- allege that the applicant or the applicant's dependent required personal items;
- describe the items with specificity; and
- allege that the applicant or the applicant's dependent would suffer personal or financial harm if the items listed were not retrieved.

Under the bill, if a justice of the peace found sufficient evidence of hardship and urgency and that the allegations in the application were true, the justice of the peace could grant the application and issue an order authorizing the applicant to enter the residence accompanied by a peace officer to retrieve the property.

If a justice of the peace approved an application, a peace officer would be required to accompany and assist the applicant. If the occupant was present at the residence, the peace officer would provide the occupant with a copy of the court order.

An applicant would submit all property retrieved to the peace officer, and the peace officer would:

- create an inventory of the items taken;
- provide a copy to the applicant;
- provide a copy to the current occupant, or if the occupant was not present, leave a copy in a conspicuous place in the residence;
- return the property to the applicant; and
- file the original inventory with the court.

Under this bill, a peace officer would be authorized to use reasonable force in assisting an applicant. If the officer provided assistance in good faith and with reasonable diligence, the officer would not be liable for any acts or omissions that arose when providing assistance or for the wrongful appropriation of any personal property by the applicant.

The bill would create an offense for any person who interfered with a person or peace officer entering a residence to retrieve personal property under a court order. The offense would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000). There would be a defense to prosecution if the actor did not receive a copy of the court order or other notice that the entry was authorized.

The occupant would be able to file a complaint in the court that issued the order, within 10 days, alleging that the applicant appropriated the occupant's property.

This bill would take effect September 1, 2015.