

BILL ANALYSIS

C.S.H.B. 1334
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, a tenant is authorized to appeal a judgment in an eviction case by filing a bond, making a cash deposit, or filing a statement of inability to pay with the justice court. However, interested parties contend that there is no process to verify whether an appeal bond is valid nor any requirement that a tenant who files an appeal bond pay money into the court registry to cover the cost of rent while the appeal is pending, which the parties claim can take up to three months. The parties express concern that this lack of a verification process and deposit requirement leads to an abuse of appeal bonds by tenants attempting to delay legitimate evictions. C.S.H.B. 1334 seeks to provide a process for ensuring the validity and financial integrity of appeal bonds filed in eviction cases.

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.H.B. 1334 amends the Property Code to require a justice court in a residential eviction suit for nonpayment of rent to state in the court's judgment the amount of the appeal bond, taking into consideration the money required to be paid into the court registry under statutory provisions governing the payment of rent during the appeal of an eviction. The bill requires the bond, in addition to meeting all other requirements of law, to require the surety to provide the surety's contact information and, if any of the surety's contact information changes, requires the surety to inform the court of the surety's new contact information.

C.S.H.B. 1334, if a party appeals the judgment of a justice court in a residential eviction suit for nonpayment of rent by filing an appeal bond, authorizes the opposing party to contest the bond amount, the form of the bond, or the financial ability of a surety to pay the bond by filing written notice with the justice court contesting the appeal bond on or before the fifth day after the date the appeal bond is filed and by serving a copy on the other party. The bill requires the justice court, after the notice is filed, to notify the other party and the surety of the contest. The bill requires the justice court, not later than the fifth day after the date the contest is filed, to hold a hearing to hear evidence to determine whether to approve or disapprove the amount or form of the bond or the surety. The bill establishes that, if a party contests the amount or form of the bond, the contesting party has the burden to prove, by a preponderance of the evidence, that the amount or form of the bond, as applicable, is insufficient.

C.S.H.B. 1334 requires the party filing the bond, if a party contests the financial ability of a surety to pay the bond, to prove, by a preponderance of the evidence, that the surety has sufficient nonexempt assets to pay the appeal bond. The bill requires the justice court to disapprove a bond if the justice court determines that the amount or form of the bond is insufficient or that the surety does not have sufficient nonexempt assets to pay the appeal bond. The bill makes the failure of the surety to appear at the contest hearing prima facie evidence that the bond should be disapproved. The bill authorizes the appealing party, not later than the fifth day after the date the justice court disapproves an appeal bond, to make a cash deposit, to file a sworn statement of inability to pay with the justice court, or to appeal the decision disapproving the appeal bond to the county court. The bill, if the appealing party fails to take such an authorized action, makes the judgment of the justice court final and requires a writ of possession and other processes to enforce the judgment to be issued on the payment of the required fee.

C.S.H.B. 1334 requires the justice court, if an appeal is filed, to transmit to the county court the contest to the appeal bond and all relevant documents. The bill requires the county court to docket the appeal, to schedule a hearing to be held not later than the fifth day after the date the appeal is docketed, to notify the parties and the surety of the hearing time and date, and to hear the contest de novo. The bill establishes that the failure of the county court to hold a timely hearing is not grounds for approval or denial of the appeal and prohibits the issuance of a writ of possession before the county court issues a final decision on the appeal bond. The bill requires the county clerk, after the contest is heard by the county court, to transmit the transcript and the records of the case to the justice court. The bill authorizes a party, if the county court disapproves the appeal bond and not later than the fifth day after the date of such disapproval, to perfect the appeal of the judgment on the eviction suit by making a cash deposit in the justice court in an amount determined by the county court or by filing a sworn statement of inability to pay with the justice court pursuant to the Texas Rules of Civil Procedure.

C.S.H.B. 1334, if the tenant is the appealing party and a cash deposit in the required amount is not timely made or a sworn statement of inability to pay is not timely filed, makes the judgment of the justice court final and requires a writ of possession and other processes to enforce the judgment to be issued on the payment of the required fee. The bill, if the landlord is the appealing party and a cash deposit is not timely made or a sworn statement of inability to pay is not timely filed, makes the judgment of the justice court final. The bill requires the county court, if the appeal bond is approved by the court, to transmit the transcript and other records of the case to the justice court, and requires the justice court to proceed as if the appeal bond was originally approved.

C.S.H.B. 1334 establishes that a contest under the bill's provisions does not preclude a party from contesting the appeal bond in the county court after the county court has jurisdiction over the eviction suit. The bill authorizes the county court, after the county court has such jurisdiction, to modify the amount or form of the bond and to determine the sufficiency of the surety.

C.S.H.B. 1334 requires a tenant who files an appeal bond to appeal an eviction for nonpayment of rent and not later than the fifth day after the date the tenant filed the appeal bond to pay into the justice court registry the amount of rent to be paid in one rental pay period as determined by the court. The bill authorizes the plaintiff to request a writ of possession if the tenant fails to timely pay that amount into the justice court registry and the transcript has not yet been transmitted to the county court. The bill requires the justice court, on request and payment of the applicable fee, to issue the writ of possession immediately and without a hearing. The bill requires the justice court, regardless of whether a writ of possession is issued, to transmit the transcript and appeal documents to the county court for trial de novo on issues relating to possession, rent, or attorney's fees. The bill authorizes the plaintiff in the eviction suit, on sworn motion and hearing, to withdraw money deposited in the court registry before the final determination in the case, the dismissal of the appeal, or the order of the court after final hearing. The bill requires the county court to give precedence to such a hearing or motion.

EFFECTIVE DATE

January 1, 2016.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1334 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

SECTION 1. Chapter 24, Property Code, is amended by adding Sections 24.00511 and 24.00512 to read as follows:

Sec. 24.00511. APPEAL BOND FOR CERTAIN EVICTION SUITS. (a) In a residential eviction suit for nonpayment of rent, the justice court shall state in the court's judgment the amount of the appeal bond, taking into consideration the money required to be paid into the court registry under Section 24.0053.

(b) In addition to meeting all other requirements of law, the bond must require the surety to provide the surety's contact information, including an address, phone number, and e-mail address, if any. If any of the contact information changes, the surety shall inform the court of the surety's new contact information.

(But see SECTION 1, added Sec 24.00521(a), below.)

Sec. 24.00512. CONTEST OF APPEAL BOND. (a) If a party appeals the judgment of a justice court in a residential eviction suit for nonpayment of rent by filing an appeal bond, the opposing party may contest the bond amount, form of the bond, or financial ability of a surety to pay the bond by filing a written notice with the justice court contesting the appeal bond on or before the fifth day after the date the appeal bond is filed and serving a copy on the other party. After the notice is filed, the justice court shall notify the other party and the surety of the contest.

(But see SECTION 1, added Sec 24.00521(a), Property Code, below.)

(b) Not later than the fifth day after the date the contest is filed, the justice court shall hold a hearing to hear evidence to determine whether to approve or disapprove the amount or form of the bond or the surety.

(But see SECTION 1, added Sec 24.00521(a), Property Code, below.)

(c) If a party contests the amount or form of the bond, the contesting party has the burden to prove, by a preponderance of the evidence, that the amount or form of the

(But see SECTION 1, added Sec. 24.00521(c), Property Code, below.)

(But see SECTION 1, added Sec. 24.00521(b), Property Code, below.)

(But see SECTION 1, added Sec. 24.00521(c), Property Code, below.)

bond, as applicable, is insufficient. If a party contests the financial ability of a surety to pay the bond, the party filing the bond must prove, by a preponderance of the evidence, that the surety has sufficient nonexempt assets to pay the appeal bond. If the justice court determines that the amount or form of the bond is insufficient or the surety does not have sufficient nonexempt assets to pay the appeal bond, the justice court must disapprove the bond. If the surety fails to appear at the contest hearing, the failure to appear is prima facie evidence that the bond should be disapproved.

(d) Not later than the fifth day after the date the justice court disapproves an appeal bond, the party appealing may make a cash deposit, file a sworn statement of inability to pay with the justice court, or appeal the decision disapproving the appeal bond to the county court. If the party appealing fails to make a cash deposit, file a sworn statement of inability to pay, or appeal the decision disapproving the appeal bond, the judgment of the justice court becomes final and a writ of possession and other processes to enforce the judgment must be issued on the payment of the required fee.

(e) If an appeal is filed, the justice court shall transmit to the county court the contest to the appeal bond and all relevant documents. The county court shall docket the appeal, schedule a hearing to be held not later than the fifth day after the date the appeal is docketed, notify the parties and the surety of the hearing time and date, and hear the contest de novo. The failure of the county court to hold a timely hearing is not grounds for approval or denial of the appeal. A writ of possession may not be issued before the county court issues a final decision on the appeal bond.

(f) After the contest is heard by the county court, the county clerk shall transmit the transcript and records of the case to the justice court. If the county court disapproves the appeal bond, the party may, not later than the fifth day after the date the court disapproves the appeal bond, perfect the appeal of the judgment on the eviction suit by making a cash deposit in the justice court in an amount determined by the county court or by filing a sworn statement of inability to pay with the justice court pursuant to the Texas Rules of Civil

Procedure. If the tenant is the appealing party and a cash deposit in the required amount is not timely made or a sworn statement of inability to pay is not timely filed, the judgment of the justice court becomes final and a writ of possession and other processes to enforce the judgment must be issued on the payment of the required fee. If the landlord is the appealing party and a cash deposit is not timely made or a sworn statement of inability to pay is not timely filed, the judgment of the justice court becomes final. If the appeal bond is approved by the county court, the court shall transmit the transcript and other records of the case to the justice court, and the justice court shall proceed as if the appeal bond was originally approved.

No equivalent provision.

(But see SECTION 1, added Sec. 24.00512(a), Property Code, above.)

(But see SECTION 1, added Sec. 24.00512(b), Property Code, above.)

(But see SECTION 1, added Sec. 24.00512(c), Property Code, above.)

SECTION 1. Chapter 24, Property Code, is amended by adding Section 24.00521 to read as follows:

Sec. 24.00521. CONTEST OF TENANT APPEAL BOND. (a) If a tenant appeals a judgment of a justice court in a residential eviction suit by filing an appeal bond pursuant to the Texas Rules of Civil Procedure, the landlord may contest the bond because of the amount of the bond or the financial ability of a surety to pay the bond by filing a contest with the justice court. After the contest is filed, the justice court shall notify the tenant of the contest not later than the first working day after the date the contest is filed. Not later than the fifth day after the date the contest is filed, the justice court shall hear evidence and determine whether to approve or disapprove the amount of the bond or the surety. If the landlord contests the amount of the bond, the landlord has the burden to prove, by a preponderance of the evidence, that the amount of the bond is insufficient. If the landlord contests the financial ability of a surety to pay the bond, the tenant must prove, by a preponderance of the evidence, that the surety is financially sound. If the justice court determines that the amount of the bond is insufficient, the surety is not financially sound, or both, the justice court must disapprove the bond. If the tenant or the surety fails to appear at the contest hearing, the failure to appear is prima facie evidence that the bond should be

disapproved.

(b) Not later than the fifth day after the date the justice court disapproves an appeal bond, the tenant may appeal the decision to the county court. On request, the justice court shall certify to the county court the contest to the appeal bond and all relevant documents. The county court shall hold a hearing not later than the fifth day after the date the decision is appealed and shall hear the contest de novo. A writ of possession may not be issued before the county court issues a final decision on the appeal bond.

(c) After the contest is heard by the county court, the clerk of the county court shall transmit the transcript and records of the case to the justice court. If the county court disapproves the appeal bond, the tenant may, not later than the fifth day after the date the county court disapproves the appeal bond, perfect the appeal of the judgment on the eviction suit by making a cash deposit in an amount determined by the county court or by filing a sworn statement of inability to pay with the justice court pursuant to the Texas Rules of Civil Procedure. If a cash deposit in the required amount is not timely made or a sworn statement of inability to pay is not timely filed, a writ of possession may be issued.

No equivalent provision.

SECTION 2. Section 24.0053, Property Code, is amended by amending Subsections (a-1) and (a-2) and adding Subsections (a-3) and (b-1) to read as follows:

(a-1) If a tenant files a pauper's affidavit in the period prescribed by Section 24.0052 or an appeal bond pursuant to the Texas Rules of Civil Procedure to appeal an eviction for

(But see SECTION 1, added Sec. 24.00512(e), Property Code, above.)

(But see SECTION 1, added Secs. 24.00512(d) and (f), Property Code, above.)

SECTION 2. Chapter 24, Property Code, is amended by adding Section 24.00521 to read as follows:

Sec. 24.00521. CONTEST OF APPEAL BOND IN COUNTY COURT. A contest under Section 24.00512 does not preclude a party from contesting the appeal bond in the county court after the county court has jurisdiction over the eviction suit. After the county court has jurisdiction over the eviction suit, the county court may modify the amount or form of the bond and determine the sufficiency of the surety.

SECTION 3. Section 24.0053, Property Code, is amended by amending Subsections (a-1) and (a-2) and adding Subsections (a-3) and (a-4) to read as follows:

(a-1) In an eviction suit for nonpayment of rent, if [H] a tenant files a pauper's affidavit in the period prescribed by Section 24.0052 or an appeal bond pursuant to the Texas

nonpayment of rent,

the justice court shall provide to the tenant a written notice at the time the pauper's affidavit or appeal bond is filed that contains the following information in bold or conspicuous type:

- (1) the amount of the initial deposit of rent stated in the judgment that the tenant must pay into the justice court registry;
- (2) whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;
- (3) the calendar date by which the initial deposit must be paid into the justice court registry;
- (4) for a court that closes before 5 p.m. on the date specified by Subdivision (3), the time the court closes; and
- (5) a statement that failure to pay the required amount into the justice court registry by the date prescribed by Subdivision (3) may result in the court issuing a writ of possession without hearing.

(a-2) The date by which an initial deposit must be paid into the justice court registry under Subsection (a-1)(3) must be within five days of the date the tenant files the pauper's affidavit or appeal bond as required by the [Rule 749b(1),] Texas Rules of Civil Procedure.

(a-3) If a tenant files an appeal bond in an eviction suit for nonpayment of rent, in addition to the notice required by Subsection (a-1), the justice court shall provide to the tenant a written notice at the time the appeal bond is filed. The written notice must contain the following information in bold or conspicuous type:

- (1) the amount of the costs on appeal from a judgment of the justice court that the tenant must pay into the justice court registry;
- (2) whether the costs on appeal from the justice court must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;
- (3) the calendar date by which the costs of appeal must be paid into the justice court registry;
- (4) for a court that closes before 5 p.m. on

Rules of Civil Procedure [to appeal an eviction for nonpayment of rent],

the justice court shall provide to the tenant a written notice at the time the pauper's affidavit or appeal bond is filed that contains the following information in bold or conspicuous type:

- (1) the amount of the initial deposit of rent stated in the judgment that the tenant must pay into the justice court registry;
- (2) whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;
- (3) the calendar date by which the initial deposit must be paid into the justice court registry;
- (4) for a court that closes before 5 p.m. on the date specified by Subdivision (3), the time the court closes; and
- (5) a statement that failure to pay the required amount into the justice court registry by the date prescribed by Subdivision (3) may result in the court issuing a writ of possession without a hearing.

(a-2) The date by which an initial deposit must be paid into the justice court registry under Subsection (a-1)(3) must be within five days of the date the tenant files the pauper's affidavit as required by the [Rule 749b(1),] Texas Rules of Civil Procedure.

No equivalent provision.

the date specified by Subdivision (3), the time the court closes; and
(5) a statement that failure to pay the costs of appeal into the justice court registry by the date prescribed by Subdivision (3) may result in the court issuing a writ of possession without hearing.

(b-1) If the tenant appeals the eviction suit by filing an appeal bond pursuant to the Texas Rules of Civil Procedure and the tenant fails to pay the initial deposit of rent under Subsection (a-1) or the costs on appeal as required by the justice court under Subsection (a-3), the appeal is not perfected and the justice court on request shall immediately issue a writ of possession without hearing.

No equivalent provision.

No equivalent provision.

SECTION 3. The change in law made by this Act applies only to an eviction suit filed on or after the effective date of this Act. A suit filed before the effective date of this Act is governed by the law in effect

No equivalent provision.

(a-3) If a tenant files an appeal bond to appeal an eviction for nonpayment of rent, the tenant must, not later than the fifth day after the date the tenant filed the appeal bond, pay into the justice court registry the amount of rent to be paid in one rental pay period as determined by the court under Subsection (a). If the tenant fails to timely pay that amount into the justice court registry and the transcript has not yet been transmitted to the county court, the plaintiff may request a writ of possession. On request and payment of the applicable fee, the justice court shall issue the writ of possession immediately and without a hearing. Regardless of whether a writ of possession is issued, the justice court shall transmit the transcript and appeal documents to the county court for trial de novo on issues relating to possession, rent, or attorney's fees.

(a-4) On sworn motion and hearing, the plaintiff in the eviction suit may withdraw money deposited in the court registry before the final determination in the case, dismissal of the appeal, or order of the court after final hearing. The county court shall give precedence to a hearing or motion under this subsection.

SECTION 4. The change in law made by this Act applies only to an eviction suit filed on or after the effective date of this Act. A suit filed before the effective date of this Act is governed by the law in effect

immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4. This Act takes effect January 1, 2016.

immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 5. This Act takes effect January 1, 2016.