

BILL ANALYSIS

Senate Research Center
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H.B. 1334
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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. H.B. 1334 seeks to provide a process for ensuring the validity and financial integrity of appeal bonds filed in eviction cases.

H.B. 1334 amends current law relating to the appeal of a residential eviction suit.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 24, Property Code, by adding Sections 24.00511 and 24.00512, as follows:

Sec. 24.00511. APPEAL BOND FOR CERTAIN EVICTION SUITS. (a) Requires the 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 Section 24.0053 (Payment of Rent During Appeal of Eviction).

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

Sec. 24.00512. CONTEST OF APPEAL BOND. (a) Authorizes the opposing party, if a party appeals the judgment of a justice court in a residential eviction suit for nonpayment of rent by filing an appeal bond, to 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. Requires the justice court, after the notice is filed, to notify the other party and the surety of the contest.

(b) 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.

(c) Provides 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. 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. Requires the justice court, 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, to disapprove the bond. Provides that, 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) Authorizes the party appealing, not later than the fifth day after the date the justice court disapproves an appeal bond, to 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. Provides that, 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 are required to be issued on the payment of the required fee.

(e) 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. Requires the county court to 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. Provides that the failure of the county court to hold a timely hearing is not grounds for approval or denial of the appeal. Prohibits a writ of possession from being issued before the county court issues a final decision on the appeal bond.

(f) Requires the county clerk, after the contest is heard by the county court, to transmit the transcript and records of the case to the justice court. Authorizes the party, if the county court disapproves the appeal bond, not later than the fifth day after the date the court disapproves the appeal bond, 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. Provides that, 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 are required to be issued on the payment of the required fee. Provides that, 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. Requires the county court, if the appeal bond is approved by the county 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.

SECTION 2. Amends Chapter 24, Property Code, by adding Section 24.00521, as follows:

Sec. 24.00521. CONTEST OF APPEAL BOND IN COUNTY COURT. Provides that 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. Authorizes the county court, after the county court has jurisdiction over the eviction suit, to modify the amount or form of the bond and determine the sufficiency of the surety.

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

(a-1) Requires the justice court, in an eviction suit for nonpayment of rent, 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, rather than requires the justice court, if a tenant files a pauper's affidavit in the period prescribed by Section 24.0052 to appeal an eviction for nonpayment of rent, to 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)-(4) Makes no change to these subdivisions; and

(5) Makes a nonsubstantive change.

(a-2) Deletes a reference to Rule 749b(1), Texas Rules of Civil Procedure.

(a-3) Requires a tenant, if a tenant files an appeal bond to appeal an eviction for nonpayment of rent, 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 under Subsection (a) (relating to the amount of rent to be paid during the pendency of an appeal to eviction). Authorizes the plaintiff, 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, to request a writ of possession. Requires the justice court, on request and payment of the applicable fee, to issue the writ of possession immediately and without a hearing. 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.

(a-4) 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, dismissal of the appeal, or order of the court after final hearing. Requires the county court to give precedence to a hearing or motion under this subsection.

SECTION 4. Makes application of this Act prospective in regards to an eviction suit.

SECTION 5. Effective date: January 1, 2016.