

CHAPTER 891

H.B. No. 1119

An Act relating to forcible entry and detainer.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Chapter 24, Property Code, is amended by amending Sections 24.003 through 24.008 and adding Section 24.009 to read as follows:

Sec. 24.003. **SUBSTITUTION OF PARTIES.** If a tenancy for a term expires while the tenant's *suit* [~~action~~] for forcible entry is pending, the landlord may prosecute the *suit* [~~action~~] in the tenant's name for the landlord's benefit and at the landlord's expense. It is immaterial whether the tenant received possession from the landlord or became a tenant after obtaining possession of the property.

Sec. 24.004. JURISDICTION. A justice court in the precinct in which the real property is located has jurisdiction in forcible entry and detainer and forcible detainer suits [actions].

Sec. 24.005. NOTICE TO VACATE FOR DEFAULT [NONPAYMENT OF RENT]. (a) ~~A [If a tenancy is longer than from week to week, a]~~ landlord must give a tenant who defaults, ~~under a written lease or an oral rental agreement, [in the payment of rent]~~ at least three days' written notice to vacate the leased premises before the landlord files a suit [an action] for forcible entry and detainer or forcible detainer, unless a landlord and a tenant contract otherwise in a written ~~for an oral~~ lease.

(b) *If the lease or applicable law requires the landlord to give a tenant an opportunity to respond to a notice of proposed eviction, a notice to vacate may not be given until the period provided for the tenant to respond to the eviction notice has expired.*

(c) The notice to vacate shall be given in person or by mail at the leased premises. The notice period is calculated from the day on which the notice is delivered.

(d) *A notice to vacate shall be considered a demand for possession for purposes of Subsection (b) of Section 24.002 of this code.*

Sec. 24.006. ATTORNEY'S FEES AND COSTS OF SUIT. (a) *Except as provided by Subsection (c) of this section, to [Fo] be eligible to recover attorney's fees and costs of suit in a forcible entry and detainer suit or a forcible detainer suit [action], a landlord must give a tenant who is unlawfully retaining possession of the landlord's premises a written demand to vacate the premises. The demand must be sent by registered or certified mail at least 10 days before the date the suit [action] is filed.*

(b) The demand must state that if the tenant does not vacate the premises within 10 days and the landlord files a suit [an action], the court may enter a judgment against the tenant for the costs of suit and reasonable attorney's fees.

(c) *If the landlord provides a tenant notice under this section or if a written lease entitles the landlord to recover attorney's fees, the prevailing party is entitled to recover reasonable attorney's fees and costs of suit. [A prevailing landlord may recover:*

~~(1) reasonable attorney's fees, if the tenant does not vacate the premises before the court renders judgment; or~~

~~(2) reasonable attorney's fees plus the costs of the suit if the tenant vacates the premises after the suit is filed but before judgment is rendered.]~~

Sec. 24.007. APPEAL. A final judgment of a county court in a forcible entry and detainer suit or a forcible detainer suit may not be appealed on the issue of possession unless the premises in question are being used for residential purposes only. *A judgment of a county court may not under any circumstances be stayed pending appeal unless, within 10 days of the signing of the judgment, the appellant files a supersedeas bond in an amount set by the county court. In setting the supersedeas bond the county court shall provide protection for the appellee to the same extent as in any other appeal, taking into consideration the value of rents likely to accrue during appeal, damages which may occur as a result of the stay during appeal, and other damages or amounts as the court may deem appropriate [action may not be appealed unless the judgment awards damages greater than \$100].*

Sec. 24.008. EFFECT ON OTHER ACTIONS. A forcible entry and detainer suit or a forcible detainer suit [action] does not bar a suit [an action] for trespass, damages, waste, rent, or mesne profits.

Sec. 24.009. NONLAWYER REPRESENTATION. *In forcible detainer suits in justice court for nonpayment of rent or holding over beyond a rental term, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys. In any forcible detainer or forcible entry and detainer suit in justice court, an authorized agent requesting or obtaining a default judgment need not be an attorney.*

SECTION 2. This Act takes effect immediately except that Sections 24.005, 24.006, and 24.007, Property Code, as amended by this Act, take effect September 1, 1985, and apply only to notices to vacate given and suits filed on or after September 1, 1985, and to appeals of judgments that become final on or after September 1, 1985. Notices to vacate given and suits for forcible entry and detainer or for forcible detainer filed before September 1, 1985, and appeals of judgments in suits for forcible entry and detainer or for forcible detainer that become final before September 1, 1985, are governed by the law in effect at the time notice was given, suit was filed, or judgment became final, and the former law is continued in effect for this purpose.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 24, 1985, by a non-record vote; House concurred in Senate amendments to H.B. No. 1119 on May 17, 1985, by a non-record vote; passed by the Senate, with amendments, on May 15, 1985, by the following vote: Yeas 31, Nays 0.

Approved: June 15, 1985

Effective: August 26, 1985, except as provided for in Section 2 (re: Property Code).