

SUBJECT: Revising procedures for eviction suits and appeals

COMMITTEE: Judiciary & Civil Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Leach, Dyson, Hayes, LaHood, Moody, Schofield
4 nays — Johnson, Dutton, Flores, J. González
1 absent — Landgraf

SENATE VOTE: On final passage (April 10) — 21 - 8 - 1

WITNESSES: None

DIGEST: SB 38 would make revisions and additions to certain procedures for eviction suits under the Property Code.

Venue. SB 38 would require an eviction suit to be brought in the justice precinct in which the relevant property was located. Under certain circumstances, the justice court would be required, on the plaintiff's motion, to transfer the suit to a justice court in an adjacent precinct in the county in which the property was located.

Notice. SB 38 would repeal, revise, and replace various provisions for a landlord's eviction notice. In a suit against a tenant whose right of possession was terminated based on nonpayment of rent, the bill would specify that the landlord was required to provide written notice to the tenant, in the form of either a notice to pay rent or vacate or a notice to vacate, before filing a forcible detainer suit.

If a federal law or rule required a landlord to give notice before requiring the tenant to vacate, the federal requirement would not be a basis to delay or abate the suit. A writ of possession could not be served on a tenant until the period between the delivery of the notice under state law and the service of the writ equaled or exceeded the period prescribed by the federal requirement.

The bill would repeal a provision that prohibited notifying a tenant to vacate before the period to respond to an eviction notice had expired. Instead, the bill would allow the period for a notice to pay rent or vacate or a notice to vacate to, at the landlord's discretion, run concurrently with the period for the tenant to respond.

The bill also would allow a notice to vacate to include the required opportunity to respond. The notice would have to be delivered using at least one of the methods specified in the bill, including by electronic communication if the parties had agreed in writing.

Petition. Under SB 38, to initiate an eviction suit, a sworn petition would have to be filed with the court, including contents required by the Texas Rules of Civil Procedure. A court could adopt local rules, forms, or standing orders for eviction suits in accordance with the Rules of Civil Procedure. A court could not:

- require content other than that required by the Texas Rules of Civil Procedure;
- require any mediation, pretrial conference, or other proceeding before trial; or
- authorize dismissal of an eviction suit on the basis that the petition was improper if it met or could be amended to meet the requirements of the Texas Rules of Civil Procedure.

The bill would require a sheriff or constable to make a diligent effort to serve the petition and accompanying citation for a suit to recover possession within five business days of the petition being filed. If the citation and petition were not so served, the bill would allow the landlord to provide for service by another law enforcement officer who had received appropriate training as determined by the Texas Commission on Law Enforcement.

The bill would require the court to hold the trial of an eviction suit no earlier than the 10th day or later than the 21st day after the petition was

filed. The court could not hold the trial earlier than the fourth day after the tenant was served with the petition and could not postpone the trial for more than seven days unless the parties agreed in writing. If the parties agreed, a justice court could allow parties to appear at a suit proceeding by videoconference, teleconference, or other electronic means.

SB 38 would establish that a justice court in which a petition was filed under the bill would have to adjudicate the right to actual possession of the premises and could not adjudicate title to the premises. Counterclaims and the joinder of suits against third parties would not be permitted in eviction suits.

Summary disposition. SB 38 would authorize a landlord who filed a sworn petition for eviction to include a sworn motion for summary disposition without trial. Notice to a tenant of a landlord's motion for summary disposition would have to be included in the citation for an eviction petition.

If the motion showed that there were no genuinely disputed facts that would prevent a judgment in favor of the landlord, the court could enter judgment in favor of the landlord without a trial, unless the tenant responded within four days of being served and the court determined that there were genuinely disputed facts. The court would be authorized to consider a response filed by a tenant later than the fourth day if the response was filed before judgment had been entered.

The court would have to notify a tenant in writing of a summary judgment for possession by sending a copy of the judgment by first-class mail no later than 48 hours after entering the judgment.

Appeal. SB 38 would repeal and replace certain provisions governing procedures for a party to an eviction suit to appeal the judgment of a justice court in an eviction suit. A party could appeal by filing a bond, cash deposit, or statement of inability to afford payment of court costs with the justice court within five days after the judgment was signed. A tenant who filed an appeal would have to affirm, under penalty of perjury,

the tenant's good faith belief that the tenant had a meritorious defense and that the appeal was not for the purpose of delay.

The justice court would be required to forward the appeal to the county court no earlier than 4 p.m. on the sixth day or later than 4 p.m. on the 10th day after the tenant filed the appeal, except that, if the court confirmed that the tenant had timely paid the required initial rent payment into the justice court registry, the court could forward the papers for the appeal immediately. The county court would be required to hold a trial within 21 days of the papers being delivered.

Rent payment during pending appeal. SB 38 also would repeal, revise, and replace certain provisions governing rent payment during an eviction appeal. The bill would require a tenant to pay rent for one rental pay period, no later than five days after filing an appeal. On or before the beginning of each rental pay period during the pendency of the appeal, the tenant would have to pay rent for one rental period into the justice or county court registry, as applicable, according to the court in which the case was pending.

The court would be required to disburse the rent to the landlord on request at any time during or after the pendency of the appeal. The bill would provide for the rent amount to be paid in the absence of a rental agreement.

The bill would repeal a provision limiting the rent obligation by certain tenants whose rent was paid in part by a government agency and who objected to a justice court's ruling on the portion of rent to be paid during appeal.

Writs of possession. The bill would amend provisions governing the execution of a writ of possession during an eviction appeal in which the tenant failed to pay the required rent to allow the writ to be executed by other law enforcement officers in addition to the sheriff or constable.

SB 38 would establish that a writ of possession was a ministerial act not

subject to review or delay and would require a sheriff or constable to serve the writ within five days. If the writ was not so served, the landlord could have the writ served by any other law enforcement officer who had received appropriate training.

The bill would revise the definition of “premises” by adding that any outside area or facility must be occupied by or in the possession of a person against whom an eviction suit was filed to meet the definition of premises for the purposes of an eviction suit.

The bill would require the Texas Supreme Court to adopt rules as necessary to clarify eviction procedures consistent with statute as amended by SB 38. This provision of the bill would go into effect on September 1, 2025.

Otherwise, the bill would take effect January 1, 2026, and would apply only to an eviction suit in which the petition was filed on or after that date.

**SUPPORTERS
SAY:**

SB 38 would protect property rights by streamlining the process to evict unauthorized occupants. Under the current process, eviction can take months and involves many procedural technicalities that work against landlords, imposing unnecessary costs on the property owner and potentially allowing property damage or rent delinquency to occur or continue. SB 38 would make the eviction process more timely, fair, and predictable while balancing the rights of owners and residents and improving community safety. The bill would address both growing concerns around the problem of squatters and the more common problems of bad-faith holdovers and serial non-payment of rent by tenants. The bill also would help address the problem of housing affordability and accessibility by reducing landlords’ expenses and ensuring that units could be made available to new tenants more quickly.

The bill would allow property owners to file a motion for a summary judgment without trial in certain cases where the facts were not in dispute, while retaining adequate notice requirements and the right of appeal for a trial for tenants. Summary judgment mechanisms are common in civil law

and are constitutional when proper notice and opportunity are provided, as they would be under SB 38. The bill also would not reduce the existing 3-day notice to vacate but would add structure to trial scheduling and response deadlines that reflect existing court practices in many counties, providing greater uniformity and potentially reducing case duration and backlogs. The bill also would allow for electronic filings and proceedings, enabling modernization of court processes.

Although SB 38 would promote faster adjudication of eviction cases, it would not prevent voluntarily negotiated solutions between landlords and tenants. The bill could instead incentivize such agreements by providing structured timelines. Under the current process, landlords are pressured to initiate legal proceedings as early as possible because of how long the process may take. Providing landlords more certainty about their ability to regain control of their property in a timely fashion would allow them more flexibility to give tenants time to pay overdue rent or otherwise come to an agreement.

SB 38 would take a holistic approach to fix systemic bottlenecks in the eviction process, including addressing the problem of delays in serving writs of possession due to a lack of available manpower among sheriffs and constables by allowing landlords to use trained alternative officers if writs are not served within five days.

The bill would not aim to increase evictions or punish tenants, but would streamline a process that already exists and restore balance to the system to ensure that property owners' rights are respected.

**CRITICS
SAY:**

SB 38 would limit the due process rights of tenants under the Texas Constitution by allowing evictions without a hearing and proper representation. The bill would shorten an already rapid process, and tenants, especially economically disadvantaged individuals, would be unlikely to be able to adequately respond to an eviction notice and motion for summary judgment within the bill's proposed timelines. The current eviction process is not difficult for landlords to comply with, and most evictions are able to be carried out in a timely fashion under this process.

SB 38 would not be specifically tailored to address the problem of squatters, who make up a small fraction of eviction cases, but would apply to all tenants, including those who are only slightly late for rent payment. Most such eviction cases are resolved by negotiation before going to trial, but SB 38 could make such settlements harder to reach due to the shorter timeline. Institutional landlords, especially those from out of state, could be incentivized to remove tenants as quickly as possible with no opportunity for negotiation in order to maximize profits. The problem of squatters could be addressed more directly by limiting the scope of the bill and providing stiffer criminal penalties. Additionally, the problem of delays in serving writs of possession could be addressed more specifically without extensive revisions to eviction proceedings under the bill.

SB 38 could increase evictions in Texas, which could lead to more homelessness, food insecurity, and negative health outcomes. This in turn, could place a greater burden on government services and nonprofits, including homeless shelters, emergency rooms, and food banks. Eviction should be a last resort carried out with fairness and due process, which the bill could threaten.

OTHER
CRITICS
SAY:

SB 38 would substantially increase workloads for justice courts. The bill's requirements would add complexity to the eviction process that could require budget increases, technological upgrades, and additional training for court staff.