

## BILL ANALYSIS

Senate Research Center  
79R14526 HLT-F

H.B. 3428  
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Business & Commerce  
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Engrossed

### AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

H.B. 3428 remedies a current unjust result in the garnishment law. If a bank fails to answer a garnishment, an order can be entered against it for the full amount the judgment debtor owes, regardless of how much, if any, the debtor has on deposit with the institution. The result is a windfall for the judgment creditor and an expense to the financial institution, which has no legal responsibility for the original action against the judgment debtor. Under this bill, a default can still be entered, but not as to the amount of the damages.

H.B. 3428 allows a borrower to deposit proceeds of a loan with the lending financial institution without such proceeds affecting the usury calculation of the borrower's underlying obligation.

### RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Supreme Court is modified in SECTION 1 (Section 276.002, Finance Code) of this bill.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 276, Finance Code, by adding Sections 276.002 and 276.003, as follows:

Sec. 276.002. GARNISHMENT OF FINANCIAL INSTITUTION ACCOUNT. (a) Authorizes a court, notwithstanding the Texas Rules of Civil Procedure, if a financial institution fails to timely file an answer to a writ of garnishment issued before or after a judgment is rendered in the case, to enter a default judgment against the financial institution solely as to the existence of liability and not as to the amount of damages.

(b) Provides that a financial institution against which a default judgment is entered under Subsection (a) is not deemed to have in the financial institution's possession or to have knowledge of sufficient debts, assets, or personal effects of the debtor to satisfy the debtor's obligations to the garnishor.

(c) Provides that, after a default judgment is entered against a financial institution as to the existence of liability as provided by Subsection (a), the garnishor has the burden to establish the amount of actual damages proximately caused to the garnishor by the financial institution's default.

(d) Authorizes the court to award to the garnishor damages in the amount determined under Subsection (c) and, for good cause shown, reasonable attorney's fees incurred by the garnishor in establishing damages under Subsection (c).

(e) Prohibits the supreme court from amending or adopting rules in conflict with this section, notwithstanding Section 22.004, Government Code.

Sec. 276.003. USE OF PROCEEDS OF EXTENSION OF CREDIT FOR FINANCIAL INSTITUTION ACCOUNT. (a) Authorizes an obligor to use proceeds of an extension of credit made by a financial institution for business, commercial, investment, or similar purposes to establish collateral for the extension of credit through certain means.

(b) Provides that the amount of the proceeds used as provided by Subsection (a) is not considered a reduction in the amount of the proceeds of the extension of credit for purposes of Title 4 (Regulation of Interest, Loans, and Financed Transactions) or for any other purpose.

(c) Provides that determination by the obligor that it is beneficial to use proceeds of an extension of credit in the manner described by Subsection (a) is conclusive.

(d) Prohibits this section from being construed to imply a contrary rule for transactions not covered by this section.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2005.