

## **BILL ANALYSIS**

C.S.H.B. 3428  
By: Elkins  
Financial Institutions  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Chapter 276, Finance Code, involves accounts maintained by financial institutions.

Currently, under the Texas Rules of Civil Procedure, a garnishor may obtain a default judgment against a financial institution, the garnishee, for the full amount owed by a debtor notwithstanding due process issues.

The purpose of this bill is to clarify the burdens, liabilities, and responsibilities of financial institutions in garnishment cases.

C.S.H.B. 3428 provides for garnishment of financial institution accounts.

### **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. 3428 amends Chapter 276, Finance Code, as follows:

The substitute authorizes a court to enter a default judgment against a financial institution solely as to the existence of liability if the institution fails to timely file an answer to a writ of garnishment.

The substitute provides that a financial institution against whom a default judgment is entered is not deemed to possess or have knowledge of debts, assets, etc. of the debtor to satisfy the debtor's obligations.

The substitute provides that the garnishor has the burden to establish the amount of actual damages caused by the financial institution following a default judgment.

The substitute authorizes a court to award damages and attorney's fees.

The substitute prohibits the Supreme Court from amending or adopting rules in conflict with this section.

The substitute authorizes an obligor to use proceeds of an extension of credit to make certain deposits, purchase certificates of deposit, or establish other accounts. The amount of the proceeds used is not considered a reduction in the amount of the proceeds of the extension of credit for purposes of Title 4 or any other purpose.

### **EFFECTIVE DATE**

September 1, 2005

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## **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B. 3428 differs from the original because it is a Legislative Council draft which includes form changes.

The substitute modifies the original by removing the creditor from having the burden of proving damages as a result of the default judgment.

The substitute modifies the original by adding language that the Supreme Court may not amend or adopt rules in conflict with the Act

The substitute modifies the original by changing the title of Section 276.00 to state "Use of Proceeds of Extension of Credit for Financial Institutions Account."

The substitute modifies the original by adding language that provides that the amount of the proceeds used as an extension of credit for a financial institution account is not considered a reduction in the amount of the proceeds of the extension of credit for purposes of Title 4 or any other purpose.