

By: Elkins

H.B. No. 3428

Substitute the following for H.B. No. 3428:

By: Solomons

C.S.H.B. No. 3428

A BILL TO BE ENTITLED

AN ACT

relating to financial institution accounts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 276, Finance Code, is amended by adding Sections 276.002 and 276.003 to read as follows:

Sec. 276.002. GARNISHMENT OF FINANCIAL INSTITUTION ACCOUNT. (a) 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, a court may enter a default judgment against the financial institution solely as to the existence of liability and not as to the amount of damages.

(b) 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) 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) The court may award to the garnishor:

(1) damages in the amount determined under Subsection

1 (c); and

2 (2) for good cause shown, reasonable attorney's fees
3 incurred by the garnishor in establishing damages under Subsection
4 (c).

5 (e) Notwithstanding Section 22.004, Government Code, the
6 supreme court may not amend or adopt rules in conflict with this
7 section.

8 Sec. 276.003. USE OF PROCEEDS OF EXTENSION OF CREDIT FOR
9 FINANCIAL INSTITUTION ACCOUNT. (a) An obligor may use proceeds of
10 an extension of credit made by a financial institution for
11 business, commercial, investment, or similar purposes to establish
12 collateral for the extension of credit by:

13 (1) making deposits;

14 (2) purchasing certificates of deposit; or

15 (3) establishing other accounts at the financial
16 institution.

17 (b) The amount of the proceeds used as provided by
18 Subsection (a) is not considered a reduction in the amount of the
19 proceeds of the extension of credit for purposes of Title 4 or for
20 any other purpose.

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

24 (d) This section may not be construed to imply a contrary
25 rule for transactions not covered by this section.

26 SECTION 2. Section 276.002, Finance Code, as added by this
27 Act, applies only to an action filed on or after the effective date

1 of this Act. An action filed before the effective date of this Act,
2 including an action filed before that date in which a party is
3 joined or designated after that date, is governed by the law in
4 effect immediately before the change in law made by this Act, and
5 that law is continued in effect for that purpose.

6 SECTION 3. This Act takes effect September 1, 2005.