

By: Elkins

H.B. No. 3428

A BILL TO BE ENTITLED

AN ACT

1
2 relating to financial institution accounts, pledges of accounts,
3 and garnishments.

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

5 SECTION 1. Chapter 276, Finance Code, is amended to add a
6 new Section 276.002, as follows:

7 Sec. 276.002. GARNISHMENTS OF FINANCIAL INSTITUTION
8 ACCOUNTS. With respect to any default judgment against a financial
9 institution with respect to any pre-judgment or post-judgment
10 garnishment or similar proceeding, the financial institution is not
11 deemed to have on hand or to know of sufficient debts, assets, or
12 personal effects of the debtor to satisfy the debtor's obligations
13 to the garnishor or creditor. Instead default judgment may be
14 entered solely as to liability, but not as to damages, which shall
15 be deemed undetermined. Instead, the garnishor or creditor shall
16 be required to establish by further service, process, discovery,
17 and findings of fact by the by judge or jury as the case may be, the
18 amount of actual damages proximately caused by the financial
19 institution's failure to answer. The court, for good cause shown,
20 may award attorney's fees to the creditor related to the financial
21 institution's failure to answer.

22 SECTION 2. Chapter 276, Finance Code, is amended to add a
23 new Section 276.003, as follows:

24 Sec 276.003. PLEDGES OF FINANCIAL INSTITUTION ACCOUNTS.

1 With respect to any extension of credit by a financial institution
2 for a business, commercial, investment, or similar purpose, the
3 obligor or account owner may use proceeds of the extension of credit
4 for deposits, certificates of deposit, or other accounts, at the
5 financial institution. A determination by the obligor or owner
6 that there are benefits to be received from using proceeds for
7 deposits, certificates of deposit, or other accounts, at the
8 financial institution, shall be deemed conclusive. Nothing in this
9 section may be construed negatively to imply a contrary rule for
10 transactions not covered by this section.

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