

1-1 By: Elkins (Senate Sponsor - Seliger) H.B. No. 3428
1-2 (In the Senate - Received from the House May 16, 2005;
1-3 May 17, 2005, read first time and referred to Committee on Business
1-4 and Commerce; May 20, 2005, reported favorably by the following
1-5 vote: Yeas 7, Nays 0; May 20, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to financial institution accounts.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Chapter 276, Finance Code, is amended by adding
1-11 Sections 276.002 and 276.003 to read as follows:

1-12 Sec. 276.002. GARNISHMENT OF FINANCIAL INSTITUTION
1-13 ACCOUNT. (a) Notwithstanding the Texas Rules of Civil Procedure,
1-14 if a financial institution fails to timely file an answer to a writ
1-15 of garnishment issued before or after a judgment is rendered in the
1-16 case, a court may enter a default judgment against the financial
1-17 institution solely as to the existence of liability and not as to
1-18 the amount of damages.

1-19 (b) A financial institution against which a default
1-20 judgment is entered under Subsection (a) is not deemed to have in
1-21 the financial institution's possession or to have knowledge of
1-22 sufficient debts, assets, or personal effects of the debtor to
1-23 satisfy the debtor's obligations to the garnishor.

1-24 (c) After a default judgment is entered against a financial
1-25 institution as to the existence of liability as provided by
1-26 Subsection (a), the garnishor has the burden to establish the
1-27 amount of actual damages proximately caused to the garnishor by the
1-28 financial institution's default.

1-29 (d) The court may award to the garnishor:

1-30 (1) damages in the amount determined under Subsection
1-31 (c); and

1-32 (2) for good cause shown, reasonable attorney's fees
1-33 incurred by the garnishor in establishing damages under Subsection
1-34 (c).

1-35 (e) Notwithstanding Section 22.004, Government Code, the
1-36 supreme court may not amend or adopt rules in conflict with this
1-37 section.

1-38 Sec. 276.003. USE OF PROCEEDS OF EXTENSION OF CREDIT FOR
1-39 FINANCIAL INSTITUTION ACCOUNT. (a) An obligor may use proceeds of
1-40 an extension of credit made by a financial institution for
1-41 business, commercial, investment, or similar purposes to establish
1-42 collateral for the extension of credit by:

1-43 (1) making deposits;

1-44 (2) purchasing certificates of deposit; or

1-45 (3) establishing other accounts at the financial
1-46 institution.

1-47 (b) The amount of the proceeds used as provided by
1-48 Subsection (a) is not considered a reduction in the amount of the
1-49 proceeds of the extension of credit for purposes of Title 4 or for
1-50 any other purpose.

1-51 (c) A determination by the obligor that it is beneficial to
1-52 use proceeds of an extension of credit in the manner described by
1-53 Subsection (a) is conclusive.

1-54 (d) This section may not be construed to imply a contrary
1-55 rule for transactions not covered by this section.

1-56 SECTION 2. Section 276.002, Finance Code, as added by this
1-57 Act, applies only to an action filed on or after the effective date
1-58 of this Act. An action filed before the effective date of this Act,
1-59 including an action filed before that date in which a party is
1-60 joined or designated after that date, is governed by the law in
1-61 effect immediately before the change in law made by this Act, and
1-62 that law is continued in effect for that purpose.

1-63 SECTION 3. This Act takes effect September 1, 2005.

