

PUBLIC COMMENTS

HB 2918

HOUSE COMMITTEE ON JUDICIARY & CIVIL JURISPRUDENCE

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Hearing Date: April 21, 2021 8:00 AM

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I have represented several hundred debtors over the past 30 years, and I have represented many judgment debtors in turnover receivership proceedings. Based on that experience, I am opposed to HB 2918. First, subsection (f) of the turnover statute should not be amended. It was passed by the Legislature back in the 1980s to protect wages and retirement checks from seizure through turnover, because turnover is the most oppressive tool for collecting judgments. The apparent intent of the amendment is to permit turnover receivers to seize wages and retirement checks of judgment debtors, something the Legislature recognized over 30 years ago was not in the public interest. Instead, turnover was intended for use against the self-employed who have the means to hide assets, not against ordinary wage-earners and retirees. The change to subsection (f), if passed, will permit debt buyers who sue tens of thousands of Texans a year to seize wages and retirement checks from consumer debtors without notice or even an opportunity for a new hearing. Second, new subsection (i) denies trial judges all discretion in deciding whether to appoint turnover receivers whenever notice of the application has been sent to the judgment debtor. There is no basis for this limit in judicial discretion. It appears that losers in court are trying to get their way by denying courts all discretion. Subsection (i) provides that trial judges must appoint temporary receivers unless the judgment debtor appears and raises exemptions. Exemptions, though, are not the only defenses to the appointment of temporary receivers. For example, I recently persuaded a judgment creditor to terminate a receivership, because there was evidence that my client had never been served in the underlying lawsuit - she is female, but the citation return showed service on a male. When a judgment debtor does not get actual service in the underlying suit, the judgment being collected is void and turnover is inappropriate. Subsection (i) would not permit a trial judge to consider such a defense. In addition, many times the only significant liquid assets are joint bank accounts in which the judgment debtor has a right to withdraw funds but has not deposited any of the funds in the account. The funds in such joint accounts, though, are legally owned only by the party to the account who deposited the funds. Subsection (i), though, would not permit that defense. In addition, subsection (i) imposes a rebuttable presumption that a turnover receiver should be appointed based solely on only three factors: (1) notice to the judgment debtor, (2) no appearance by the debtor, and (3) no raising of exemptions. This new subsection assumes that there are no other factors in considering whether turnover receivers should be appointed, and that is simply not true. Moreover, it sets no standard on the type of notice to be given to judgment debtors. Overall, this bill is unbalanced and unfair.