

SUBJECT: Allowing turnover orders not to identify specific property to be seized

COMMITTEE: Civil Practices —favorable, without amendment

VOTE: 5 ayes — Nixon, Gattis, King, Rose, Woolley

0 nays

1 present not voting — Y. Davis

3 absent — Capelo, Hartnett, Krusee

WITNESSES: For — Samuel B. Collins

Against — Cecil Lacey

BACKGROUND: Civil Practices and Remedies Code, sec. 31.002 is the Texas turnover statute. In a case after a judgment has been entered ordering a debtor to pay a specific amount to the judgment creditor, the procedure in the turnover statute allows the court to issue an injunction or render other aid as necessary to allow the creditor to collect if the debtor owns property that cannot be readily attached or levied on by ordinary legal process and is not exempt from attachment for the satisfaction of liabilities. A court may order the debtor to turn over the property, apply the property to the satisfaction of the judgment, or appoint a receiver to take possession of the property, sell it, and pay the proceeds to the creditor up to the amount of the debt. A court-appointed receiver normally is used for this process, but the court also may charge a constable with this duty.

The Dallas Court of Appeals stated in *Burns v. Miller, Hiersche, Martens & Hayward, P.C.*, 948 S.W.2d 317, 324 (Tex.App.-Dallas 1997), that a trial court must identify the specific nonexempt property to be seized in a turnover order. The Beaumont Court of Appeals stated in *Roebuck v. Horn*, 74 S.W.3d 160, 163 (Tex.App.-Beaumont 2002), that a reference to broad categories of assets, such as “books,” “stocks,” or “cash” does not contain the necessary degree of specificity required in a turnover order.

DIGEST: HB 791 would allow a court to enter or enforce an order under the Texas turnover statute that required the turnover of nonexempt property, without identifying the specific property subject to turnover in the order.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003. It would apply to the collection of any judgment, regardless of whether it was rendered before, on, or after the effective date.

SUPPORTERS SAY: HB 791 would make the intent of the Texas turnover statute clear. The decisions from the Beaumont and Dallas appeals courts run contrary to the intent of the statute. Requiring that a creditor identify the property to be seized puts the burden of proof on the wrong person — the creditor. Debtors are in the best position to know what assets they own and which assets are necessary to satisfy a judgment. Creditors generally do not know what the assets of a debtor are and often it is very difficult to determine those assets. For these reasons, the turnover statute does not require creditors to name specific property to be seized.

HB 791 would prevent debtors from hiding assets or getting rid of them before a creditor could seize them. If assets specifically were identified in a turnover order, some debtors would attempt to thwart the order by purposely getting rid of those assets.

The bill would not remove protections that currently exist for judgment debtors. It merely would clarify and protect the rights of creditors as they exist under the current Texas turnover statute.

OPPONENTS SAY: HB 791 would make it more difficult for constables and receivers to seize the items under a turnover order. Because the order would not be required to specifically state the assets to be seized, constables would not know whether or not they had seized the correct property. For example, if the order said to seize “stock,” and a constable seized three shares of stock, this may not satisfy an order that was intended to require the seizure of 100 shares of stock. Receivers and constables need clear instructions to ensure that the correct property is seized.