

- SUBJECT:** Allowing turnover orders not to specify property to be seized
- COMMITTEE:** Civil Practices — favorable, without amendment
- VOTE:** 8 ayes — Nixon, Rose, P. King, Madden, Martinez Fischer, Strama, Talton, Woolley
- 0 nays
- 1 absent — Raymond
- WITNESSES:** For — Samuel B. Collins
- Against — None
- BACKGROUND:** Civil Practice and Remedies Code, sec. 31.002, known as the Texas turnover statute, allows a court to issue an injunction or otherwise assist a creditor in collecting certain property after a judgment ordering a debtor to pay has been entered. It applies when the debtor owns nonexempt property that cannot readily be attached or levied on by ordinary legal process. A court may order the debtor to turn over 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, but the court may charge a constable with this duty.
- Several Texas appeals courts in recent years have ruled that a trial court must identify the specific nonexempt property to be seized in a turnover order, rather than refer to broad categories of assets to be seized.
- DIGEST:** HB 729 would amend sec. 31.002 to allow a court to enter a turnover order without identifying in the order the specific property to be seized.
- 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, 2005. It would apply to collection of judgments rendered before, on, or after the effective date.

**SUPPORTERS
SAY:**

Recent appeals courts' decisions requiring the identification of specific property to be seized contradict the intent of the law. The law was meant to put the burden of proof to reveal property on the debtor and to provide an adequate remedy to the creditor. HB 729 would make the intent of the turnover statute clear.

Requiring the creditor to identify the property to be seized creates two problems. First, it puts the burden of proof on the wrong person. Debtors are in the best position to know what assets they own and which assets are necessary to satisfy a judgment. A creditor may not know what a debtor's assets are and those assets can be difficult to determine. Second, disclosing what the creditor intends to seize would enable the debtor to hide the assets or get rid of them before the creditor could obtain them. HB 729 would prevent a debtor from secreting assets.

The bill would not remove protections for the debtor. Turnover is at the discretion of the court, and the judge would remain free to deny it. The defendant may be present at the turnover proceeding to contest seizure of the defendant's assets and may also express concern at the time of seizure. Turnover of the assets is subject to complete judicial review.

HB 729 would not expose constables to liability. In most cases, the receiver designates which property to seize, not the constable. The constable merely accompanies the receiver to seize the assets, so if anyone were to be held liable, it would be the receiver.

**OPPONENTS
SAY:**

HB 729 would make it more difficult for constables and receivers to seize items in a turnover order. Because the order would not have to state the specific assets to be seized, constables would not know what property to seize. For example, if the order said to seize "stock," and a constable seized three shares of stock, this might 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 correct property is seized.

Not specifying in the order the property to be seized would create a loophole for the debtor. If the court's order was general, as in the above example, a court could not hold the defendant in contempt for turning over only the three shares of stock rather than the full 100.

The bill also could subject constables to liability under Civil Practice and Remedies Code, sec. 34.065, which holds officers who fail to levy on

property subject to execution liable to the creditor for the full amount of the debt. If a constable inadvertently failed to seize all the debtor's assets because they were not specified in the order, the constable could be liable. To fully protect the constable, the bill should have a clause immunizing constables from liability.