BILL ANALYSIS

Senate Research Center
79R3276 MFC-D

H.B. 729
By: Nixon (Janek)
Jurisprudence
4/2/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently there is a loophole in the law that allows debtors to hide some of their assets within the turnover statute. The turnover statute is a post-judgment remedy enacted to shift the burden of disclosure of assets from the judgment-creditor to the judgment-debtor. The turnover goal is to force the debtor to disclose the assets he or she owns, that are not exempt by law, to be used towards payment.

However, at least two lower court decisions appear to require property subject to turnover to a court-appointed receiver to be specifically identified by the creditor in the application for a turnover order. The rulings make the turnover procedure ineffective in that the debtor is advised in the turnover application what property the receiver intends to take possession of and gives the debtor an opportunity to dispose of the property even before a receiver can be appointed. Furthermore, in the event specific assets are unknown at the time of the application to the court, a creditor would be precluded from utilizing the statute.

As proposed, H.B. 729 clarifies that a court may enter or enforce an order that requires the turnover of nonexempt property without identifying the specific property subject to turnover.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 31.002, Civil Practice and Remedies Code, by adding Subsection (h) to authorize a court to enter or enforce an order under this section that requires the turnover of nonexempt property without identifying in the order the specific property subject to turnover.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2005.