

BILL ANALYSIS

Senate Research Center

H.B. 1066
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State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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. Despite a 2005 amendment adding Paragraph (h) to eliminate the problem, at least two recent 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 and to prove that the property exists. The rulings make the turnover procedure ineffective in that the debtor is advised in the turnover application and at the hearing what property the receiver intends to take possession of seize and gives the debtor an opportunity to dispose of the property even before a receiver can be appointed. Further, 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. Imagine entering a property with a constable and spotting a \$40,000 bulldozer, but being unable to seize it.

Recent cases also require a plaintiff to prove that defendant has non-exempt assets that cannot be readily levied upon: often impossible because defendants hide or refuse to disclose assets. The cases also deny receivers the right to sell real property because real property can be readily sold at the courthouse steps. This opinion not only violates common practice and understanding, it results in much lower sales prices.

H.B. 1066 removes any impediment to a receiver's selling real property, clarifies reinforces that a court may enter or enforce an order that requires the turnover of nonexempt property without identifying the specific property subject to turnover.

H.B. 1066 amends current law relating to the collection of certain judgments through court proceeding.

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(a), Civil Practice and Remedies Code, to delete existing text providing that a judgment creditor is entitled to aid from a court of appropriate jurisdiction through injunction or other means in order to reach property to obtain satisfaction on the judgment if the judgment debtor owns property, including present or future rights to property, that cannot readily be attached or levied on by ordinary legal process.

SECTION 2. Provides that the change in law made by this Act applies to the collection of any judgment, regardless of whether the judgment was entered before, on, or after the effective date of this Act.

SECTION 3. Effective date: upon passage or September 1, 2017.