

By: Elkins

H.B. No. 3393

A BILL TO BE ENTITLED

AN ACT

1
2 relating to certain practices of debt collectors and credit
3 bureaus.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 392.202, Finance Code, is amended to
6 read as follows:

7 Sec. 392.202. CORRECTION OF THIRD-PARTY DEBT COLLECTOR'S OR
8 CREDIT BUREAU'S FILES. (a) An individual who disputes the accuracy
9 of an item that is in a third-party debt collector's or credit
10 bureau's file on the individual and that relates to a debt being
11 collected by the third-party debt collector may notify in writing
12 the third-party debt collector [~~or credit bureau~~] of the
13 inaccuracy. The third-party debt collector [~~or credit bureau~~]
14 shall make a written record of the dispute. If the third-party debt
15 collector does not report the dispute to a credit bureau, the
16 third-party debt collector shall cease collection efforts. If the
17 third-party debt collector reports the dispute to a credit bureau,
18 the third-party debt collector shall initiate an investigation of
19 the dispute [~~provide forms for the notice and, when requested,~~
20 ~~assist an individual in preparing the notice~~].

21 (b) Not later than the 30th day after the date a notice of
22 inaccuracy is received, a [~~the~~] third-party debt collector who
23 initiates an investigation [~~or credit bureau~~] shall send a written
24 statement to the individual:

- 1 (1) denying the inaccuracy;
- 2 (2) admitting the inaccuracy; or
- 3 (3) stating that the third-party debt collector [~~or~~
- 4 ~~credit bureau~~] has not had sufficient time to complete an
- 5 investigation of the inaccuracy.

6 (c) If the third-party debt collector [~~or credit bureau~~]

7 admits that the item is inaccurate under Subsection (b), the

8 third-party debt collector [~~or credit bureau~~] shall:

9 (1) not later than the fifth business day after the

10 date of the admission, correct the item in the relevant file; and

11 (2) immediately cease collection efforts [~~on~~

12 ~~correction of the item send to each person who has previously~~

13 ~~received a report from the third-party debt collector or credit~~

14 ~~bureau containing the inaccurate information notice of the~~

15 ~~inaccuracy and a copy of an accurate report].~~

16 (d) If the third-party debt collector [~~or credit bureau~~]

17 states that there has not been sufficient time to complete an

18 investigation, the third-party debt collector [~~or credit bureau~~]

19 shall immediately:

20 (1) change the item in the relevant file as requested

21 by the individual; and

22 (2) [~~send to each person who previously received the~~

23 ~~report containing the information a notice that is equivalent to a~~

24 ~~notice under Subsection (c) and a copy of the changed report; and~~

25 [~~(3)~~] cease collection efforts [~~if the item involves a~~

26 ~~debt~~].

27 (e) On completion by the third-party debt collector [~~or~~

1 ~~credit bureau~~] of the investigation, the third-party debt collector
2 [~~or credit bureau~~] shall inform the individual of the determination
3 of whether the item is accurate or inaccurate. If the third-party
4 debt collector [~~or credit bureau~~] determines that the information
5 was accurate, the third-party debt collector [~~or credit bureau~~] may
6 again report that information and resume collection efforts.

7 SECTION 2. Section 392.304(a), Finance Code, is amended to
8 read as follows:

9 (a) Except as otherwise provided by this section, in debt
10 collection or obtaining information concerning a consumer, a debt
11 collector may not use a fraudulent, deceptive, or misleading
12 representation that employs the following practices:

13 (1) using a name other than the:

14 (A) true business or professional name or the
15 true personal or legal name of the debt collector while engaged in
16 debt collection; or

17 (B) name appearing on the face of the credit card
18 while engaged in the collection of a credit card debt;

19 (2) failing to maintain a list of all business or
20 professional names known to be used or formerly used by persons
21 collecting consumer debts or attempting to collect consumer debts
22 for the debt collector;

23 (3) representing falsely that the debt collector has
24 information or something of value for the consumer in order to
25 solicit or discover information about the consumer;

26 (4) failing to disclose clearly in any communication
27 with the debtor the name of the person to whom the debt has been

1 assigned or is owed when making a demand for money;

2 (5) failing to disclose, except in a formal pleading
3 made in connection with a legal action:

4 (A) [~~clearly in any communication with the~~
5 ~~debtor~~] that the debt collector is attempting to collect a
6 [~~consumer~~] debt and that any information obtained will be used for
7 that purpose, if the communication is the initial written or oral
8 communication with the debtor [~~unless the communication is for the~~
9 ~~purpose of discovering the location of the debtor~~]; or

10 (B) that the communication is from a debt
11 collector, if the communication is a subsequent written or oral
12 communication with the debtor;

13 (6) using a written communication that fails to
14 indicate clearly the name of the debt collector and the debt
15 collector's street address or post office box and telephone number
16 if the written notice refers to a delinquent consumer debt;

17 (7) using a written communication that demands a
18 response to a place other than the debt collector's or creditor's
19 street address or post office box;

20 (8) misrepresenting the character, extent, or amount
21 of a consumer debt, or misrepresenting the consumer debt's status
22 in a judicial or governmental proceeding;

23 (9) representing falsely that a debt collector is
24 vouched for, bonded by, or affiliated with, or is an
25 instrumentality, agent, or official of, this state or an agency of
26 federal, state, or local government;

27 (10) using, distributing, or selling a written

1 communication that simulates or is represented falsely to be a
2 document authorized, issued, or approved by a court, an official, a
3 governmental agency, or any other governmental authority or that
4 creates a false impression about the communication's source,
5 authorization, or approval;

6 (11) using a seal, insignia, or design that simulates
7 that of a governmental agency;

8 (12) representing that a consumer debt may be
9 increased by the addition of attorney's fees, investigation fees,
10 service fees, or other charges if a written contract or statute does
11 not authorize the additional fees or charges;

12 (13) representing that a consumer debt will definitely
13 be increased by the addition of attorney's fees, investigation
14 fees, service fees, or other charges if the award of the fees or
15 charges is subject to judicial discretion;

16 (14) representing falsely the status or nature of the
17 services rendered by the debt collector or the debt collector's
18 business;

19 (15) using a written communication that violates the
20 United States postal laws and regulations;

21 (16) using a communication that purports to be from an
22 attorney or law firm if it is not;

23 (17) representing that a consumer debt is being
24 collected by an attorney if it is not; or

25 (18) representing that a consumer debt is being
26 collected by an independent, bona fide organization engaged in the
27 business of collecting past due accounts when the debt is being

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1 collected by a subterfuge organization under the control and
2 direction of the person who is owed the debt.

3 SECTION 3. This Act takes effect September 1, 2003.