

## **BILL ANALYSIS**

C.S.H.B. 1853

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Defense Affairs & State-Federal Relations  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, certain financial aspects of military reservists are generally protected through the federal government's Servicemembers Civil Relief Act when they are ordered to active duty, however, protections are limited. CSHB 1853 enhances certain financial protections to military reservists and members of the State Military Forces. Some of these protections include the deferment of consumer debt, interest rate caps and the prohibition of certain consumer debt collection within a period of time until after the servicemember returns from active duty.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1 indicates that certain military personnel called to active duty may defer collection of debt owed, or that they may abate a suit to collect a consumer debt if he or she:

1. is a member of the state military forces or a reserved component of the armed forces of the United States;
2. is ordered to active duty for 30 days or more;
3. incurred the debt before the date the individual became aware that the individual's unit was being ordered to active duty;
4. is earning at least 15% less on active duty than on the date the debt was incurred and is unable to pay that debt because of the loss of income.

It requires that an individual file the following with the creditor to receive a deferral of debt:

1. an affidavit stating the facts that were required to be established (previously listed);
2. a copy of a valid military i.d.;
3. a copy of the orders calling the individual to active duty.

It also requires that the creditor cease any collection efforts upon receiving the affidavit and other necessary documents required for the deferral, and not resume those efforts or file suit to collect the debt until the 91st day after the date the individual is no longer on active duty.

This SECTION also ensures that after a creditor is required to cease collection efforts or after the date the court abates a suit filed, the debt owed by the individual receiving the deferral will not:

1. be considered to be in default;
2. accrue more interest than the lesser of six percent or the creditor's quarterly cost of funds;
3. be in demand for payment;
4. be accelerated;
5. result in the individual being penalized in any other manner by the creditor.

It stipulates that if an individual chooses his or her right to defer debt collection or abate a suit, it will not be the sole basis for the following:

1. a denial of an extension of credit by a creditor or other person;
2. a change by the creditor or debt collector in the terms of an existing credit arrangement;

3. a refusal by a creditor to extend future credit to the individual in substantially the amount or the terms requested;
4. an adverse report relating to the creditworthiness of the individual by or to a credit bureau;
5. an annotation in the individual's file by a credit bureau identifying the individual as a member of the state military forces or a reserve component of the U.S. armed forces.

Finally, it provides that a provision of a contract or other agreement that contends to be a waiver by an individual of any right provided by Subchapter F is contrary to public policy and void.

SECTION 2 specifies that this applies only to a member of the state military forces or a reserve component of the armed forces of the United States who is ordered to report for or is serving on active duty on or after the effective date of the Act.

### **EFFECTIVE DATE**

This Act takes effect immediately if it receives the necessary vote, otherwise it takes effect September 1, 2005.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

Throughout CSHB 1853, language has been amended to reduce the deferment period after a reservist returns from active duty from 180 days to 90 days. In addition, the committee substitute also applies the provisions to debt collectors.

CSHB 1853 also specifically modifies the sections of the bill as follows:

SECTION 1 states that the individual is entitled to a deferment of debt or an abatement of suit to collect a debt after he or she is made aware that the individual's unit is ordered to active duty. It also adds that the individual ordered to active duty must be earning 15 percent less than when the individual incurred the debt.

Amends original bill by changing in Subsection (b)(on line 2), "file with" to "send to".

It clarifies when creditors will be required to cease collection efforts on the debt owed by reservists. The committee substitute reduces the time that deferment must extend to from 180 days to 90 days after the individual is no longer on active duty. The committee substitute also stipulates that a periodic statement relating to these debts shall not be considered a demand for payment or other collection efforts.

It adds language that would allow another to obtain an abatement of a pending suit to collect a consumer debt if that person is authorized by the individual. It also amends this Subsection to give courts the opportunity to hear evidence to determine if deferral is appropriate. It also changes the date to which a court may abate a suit from 180 days to 90 days.

It changes "After" to "From" to include the day the creditor receive the documentation necessary for deferral, and changes the language to conform to the changes made in Subsection (c). Adds a formula to calculate the amount of interest that will occur when deferment begins. Includes that an individual cannot be subject to any increase in the periodic payment amounts.

It changes the date to which deferral or abatement of collection of debt occurs from 180 days to 90 days for an reservist's spouse should the reservist die.

Adds Section 392.504, Tolling of Statute of Limitation. This Section states that a period of an individual's military service may not be included in computing any period limited by the law for the bringing of any action or proceeding.