

By: Herrero, Corte, Noriega, Leibowitz,
et al.

H.B. No. 1853

Substitute the following for H.B. No. 1853:

By: Herrero

C.S.H.B. No. 1853

A BILL TO BE ENTITLED

AN ACT

relating to a consumer debt owed by certain military personnel
called to active duty.

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

SECTION 1. Chapter 392, Finance Code, is amended by adding
Subchapter F to read as follows:

SUBCHAPTER F. DEFERRED COLLECTION OF CONSUMER DEBT

Sec. 392.501. DEFERRED COLLECTION OF DEBT OWED BY CERTAIN
MILITARY PERSONNEL CALLED TO ACTIVE DUTY. (a) An individual is
entitled to defer collection of a consumer debt or abate a suit to
collect a consumer debt if the individual:

(1) is a member of:

(A) the state military forces, as defined by
Section 431.001, Government Code; or

(B) a reserve component of the armed forces of
the United States;

(2) is ordered to active duty for a period of 30 days
or more;

(3) incurred the obligation before the date the
individual became aware that the individual's unit was being
ordered to active duty; and

(4) because of the individual's military service, is
earning at least 15 percent less income than on the date the debt
was incurred and, as a result of this loss of income, is unable to

1 pay the debt.

2 (b) To obtain a deferral, an individual must send to the
3 creditor or debt collector:

4 (1) an affidavit stating the facts required to be
5 established by Subsection (a);

6 (2) a copy of a valid military identification card;
7 and

8 (3) a copy of the orders calling the individual to
9 active duty.

10 (c) Not later than the fourth day after the date the
11 individual seeking the deferral sends the affidavit and other
12 documents required for the deferral under Subsection (b) or the
13 date the creditor or debt collector receives those documents,
14 whichever occurs first, the creditor or debt collector shall cease
15 any collection efforts and may not resume those efforts or file suit
16 to collect the consumer debt until the 91st day after the date the
17 individual is no longer on active duty. Sending an account
18 statement or other periodic statement relating to the account that
19 is normally sent in the ordinary course of the creditor's or debt
20 collector's business shall not be considered a demand for payment
21 or other collection effort under this subsection.

22 (d) To obtain an abatement of a pending suit to collect a
23 consumer debt of an individual, an affidavit of the individual or,
24 if authorized by the individual, an affidavit of any spouse,
25 parent, sibling, or adult child of the individual stating the facts
26 required to be established by Subsection (a) and the documents
27 described by Subsections (b)(2) and (3) must be filed in the court

1 in which the suit is pending. On the filing of the affidavit and
2 other documents described by this subsection, the court shall abate
3 the suit until the 91st day after the date the individual no longer
4 is on active duty. The court shall also abate the suit for the same
5 period prescribed by this subsection if, after a hearing, the court
6 finds the individual is entitled to the deferral. The clerk of the
7 court shall deliver a copy of the order abating the suit to the
8 creditor and any applicable debt collector.

9 (e) From the date the creditor or debt collector is required
10 to cease collection efforts under Subsection (c) or the date the
11 court abates a suit under Subsection (d), whichever occurs first,
12 an individual entitled to receive a deferral under this section
13 shall not, during the period of deferral or abatement:

14 (1) be considered to be in default of the obligation;

15 (2) accrue on any portion of the obligation interest
16 at a rate that exceeds the lesser of:

17 (A) six percent a year; or

18 (B) the creditor's quarterly average cost of
19 funds on the date the affidavit or other documents seeking the
20 deferral or abatement are sent or filed in accordance with this
21 section;

22 (3) be subject to a demand for payment of or
23 acceleration of the remaining payments of the obligation;

24 (4) be subject to any increase in the periodic payment
25 amount of the obligation; or

26 (5) at any time be penalized in any other manner by the
27 creditor or debt collector because of the deferral.

1 (f) Notwithstanding the other provisions of this section,
2 if a married individual who qualifies for a deferral or abatement of
3 collection of debt as provided by this section dies, the deferral or
4 abatement continues in effect until the earlier of:

5 (1) the 91st day after the date of the individual's
6 death; or

7 (2) the date the surviving spouse of the individual
8 remarries.

9 Sec. 392.502. EXERCISE OF RIGHTS UNDER SUBCHAPTER NOT TO
10 AFFECT CERTAIN FUTURE TRANSACTIONS. Receipt by an individual of a
11 deferral or abatement of collection of a consumer debt as provided
12 by this subchapter shall not provide the sole basis for:

13 (1) a denial or revocation of an extension of credit by
14 a creditor, debt collector, or other person;

15 (2) a change by a creditor or debt collector in the
16 terms of an existing credit arrangement without the individual's
17 prior consent;

18 (3) a refusal by a creditor or debt collector to extend
19 future credit to the individual in substantially the amount or on
20 substantially the terms requested;

21 (4) an adverse report relating to the creditworthiness
22 of the individual by or to a credit bureau; or

23 (5) an annotation in the individual's file by a credit
24 bureau identifying the individual as a member of the state military
25 forces or a reserve component of the armed forces of the United
26 States.

27 Sec. 392.503. WAIVER OF RIGHT VOID. A provision of a

1 contract or other agreement that purports to be a waiver by an
2 individual of any right provided by this subchapter is contrary to
3 public policy and void.

4 Sec. 392.504. TOLLING OF STATUTE OF LIMITATIONS. The
5 period of an individual's military service may not be included in
6 computing any period limited by the law for the bringing of any
7 action or proceeding under this subchapter.

8 SECTION 2. Subchapter F, Chapter 392, Finance Code, as
9 added by this Act, applies only to a member of the state military
10 forces or a reserve component of the armed forces of the United
11 States who is ordered to report for or is serving on active duty on
12 or after the effective date of this Act.

13 SECTION 3. This Act takes effect immediately if it receives
14 a vote of two-thirds of all the members elected to each house, as
15 provided by Section 39, Article III, Texas Constitution. If this
16 Act does not receive the vote necessary for immediate effect, this
17 Act takes effect September 1, 2005.