

BILL ANALYSIS

C.S.H.B. 285

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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 Servicemember's Civil Relief Act (SCRA) when they are ordered to active duty. However, SCRA protections are limited.

CSHB 285 amends the Finance Code to enhance certain financial protections to military reservists and members of the State Military Forces who experience substantial income hardship when called to active duty. Some of these protections include the deferment of the payment of certain consumer debt as well as the suspension of interest accrual on that debt, and protection against consumer debt collection on that debt for a period ending 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

CSHB 285 amends the Finance Code to defer collection of consumer debt if an individual is a member of the state military forces or a reserve component of the armed forces of the United States, who has been ordered to active duty for no less than 180 days, incurred the obligation before the date the individual was ordered to duty and, because of the individual's military service, is earning at least 10% less income than on the date the debt was incurred and, as a result of this loss of income, is unable to pay the debt.

To obtain a deferral, an individual must send an affidavit to the creditor or debt collector, stating the required facts to be established, and include a copy of a valid military identification and the orders calling the individual to active duty. The creditor or debt collector must cease any collection or legal efforts not later than the fourth day after the documents are sent or upon receipt, whichever is first, and may not resume those efforts until the 91st day after the date the individual is no longer on active duty.

Additionally, methods for obtaining an abatement of a pending suit for the individual are provided. Requirements include filing an affidavit, along with a copy of a valid military identification card and a copy of the orders calling the individual to active duty. Furthermore, if after a hearing, the court finds the individual is entitled to the deferral, regardless of the documents being filed, the court clerk must deliver a copy of the order abating the suit to the creditor and any applicable debt collector.

From the date the creditor or debt collector is required to cease collection efforts or the court abates a suit, whichever comes first, CSHB 285 requires that the qualifying individual will not be considered to be in default, made subject to interest accrual on any portion of the debt, and will not be penalized in any other manner by the creditor or debt collector because of the deferral, among others. If the qualified individual dies, the protection offered will continue until the earlier of the 91st day after the date of the individual's death, or the date the surviving spouse remarries.

Exercising rights under this subchapter shall not be the sole basis for certain creditor/debt collector actions, such as a denial or revocation of an extension of credit, a change in the terms of an existing credit arrangement, a refusal to extend future credit, an adverse report by or to a credit bureau, or an annotation in the individual's file by a credit bureau identifying the individual's military service. Any provision in a contract or agreement by a creditor or debt collector that seeks to waive the rights provided by this subchapter is rendered void as against public policy. CSHB 285 prohibits the inclusion of the period of an individual's military service in computing any period limited by the law for the creditor or debt collector to bring any action or proceeding against an individual who utilizes this subchapter.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

CSHB 285 requires that the individual be ordered to active duty for at least 180 days, and, as a result of military service, is earning at least 10% less income than on the date the debt was incurred, to qualify. The original bill stated that the individual is earning less income than on the date the debt was incurred as a result of military service, and is ordered to active duty for a period of 30 days or more.

CSHB 285 applies to debt collectors as well as creditors, specifies that collection efforts must cease not later than the fourth day after the date the individual sends the affidavit, or the day it is received, whichever occurs first, and may not resume until the 91st day after the date the individual is no longer on active duty. The original bill did not include debt collectors, collection efforts had to cease after receiving the affidavit and other documents, and those efforts could not resume until the 181st day after the date the individual is no longer on active duty. The deferral on the accrual of interest is from the fourth day the creditor or debt collector is sent the affidavit and other documents, or until the date they are received, whichever occurs first, until the 91st day after the date the individual is no longer on active duty. In the original bill, the deferral was from the time the affidavit and documents were received until the 181st day after the date the individual no longer is on active duty.

CSHB 285 states that the court shall abate the suit until the 91st day after the date the individual no longer is on active duty, on the filing of the affidavit and other documents, or after a court finds the individual is entitled to deferral. The original bill stated that if the creditor files no controverting affidavit or if, after a hearing, the court finds the individual entitled to the deferral, the court shall abate the suit until the 181st day after the date the individual no longer is on active duty.

CSHB 285 adds that the period of an individual's military service may not be included in computing any period limited by the law for the creditor or debt collector to bring any action or proceeding against an individual who utilizes this subchapter.