

By: Herrero

H.B. No. 285

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 was ordered to active duty; and

(4) because of the individual's military service, is earning less income than on the date the debt was incurred.

(b) To obtain a deferral, an individual must file with the creditor:

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

3 (2) a copy of a valid military identification card;
4 and

5 (3) a copy of the orders calling the individual to
6 active duty.

7 (c) After receiving the affidavit and other documents
8 required for the deferral under Subsection (b), a creditor shall
9 cease any collection efforts and may not resume those efforts or
10 file suit to collect the consumer debt until the 181st day after the
11 date the individual is no longer on active duty.

12 (d) To obtain an abatement of a pending suit to collect a
13 consumer debt of an individual, an affidavit of the individual or
14 any spouse, parent, sibling, or adult child of the individual
15 stating the facts required to be established by Subsection (a) and
16 the documents described by Subsections (b)(2) and (3) must be filed
17 in the court in which the suit is pending. If no controverting
18 affidavit is filed by the creditor or if, after a hearing, the court
19 finds the individual is entitled to the deferral, the court shall
20 abate the suit until the 181st day after the date the individual no
21 longer is on active duty. The clerk of the court shall deliver a
22 copy of the order abating the suit to the creditor.

23 (e) After the date the creditor receives the documentation
24 necessary for deferral under Subsection (b) or after the date the
25 court abates a suit filed under Subsection (d), as applicable, an
26 individual entitled to receive a deferral under this section shall
27 not:

1 (1) be considered to be in default of the obligation
2 and be made subject to:

3 (A) accrual of interest on any portion of the
4 obligation; or

5 (B) a demand for payment of or acceleration of
6 the remaining payments of the obligation; or

7 (2) be penalized in any other manner by the creditor
8 because of the deferral.

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

13 (1) the 181st day after the date of the individual's
14 death; or

15 (2) the date the surviving spouse of the individual
16 remarries.

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

21 (1) a denial or revocation of an extension of credit by
22 a creditor or other person;

23 (2) a change by a creditor in the terms of an existing
24 credit arrangement;

25 (3) a refusal by a creditor to extend future credit to
26 the individual in substantially the amount or on substantially the
27 terms requested;

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

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

7 Sec. 392.503. WAIVER OF RIGHT VOID. A provision of a
8 contract or other agreement that purports to be a waiver by an
9 individual of any right provided by this subchapter is contrary to
10 public policy and void.

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

16 SECTION 3. This Act takes effect immediately if it receives
17 a vote of two-thirds of all the members elected to each house, as
18 provided by Section 39, Article III, Texas Constitution. If this
19 Act does not receive the vote necessary for immediate effect, this
20 Act takes effect September 1, 2007.