

By: Herrero

H.B. No. 342

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 180 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 at least 10 percent 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.

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

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

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

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

9 (c) Not later than the fourth day after the date the
10 individual seeking the deferral sends the affidavit and other
11 documents required for the deferral under Subsection (b) or the
12 date the creditor or debt collector receives those documents,
13 whichever occurs first, the creditor or debt collector shall cease
14 any collection efforts and may not resume those efforts or file suit
15 to collect the consumer debt until the 91st day after the date the
16 individual is no longer on active duty.

17 (d) To obtain an abatement of a pending suit to collect a
18 consumer debt of an individual, an affidavit of the individual or,
19 if authorized by the individual, an affidavit of any spouse,
20 parent, sibling, or adult child of the individual stating the facts
21 required to be established by Subsection (a) and the documents
22 described by Subsections (b)(2) and (3) must be filed in the court
23 in which the suit is pending. On the filing of the affidavit and
24 other documents described by this subsection, the court shall abate
25 the suit until the 91st day after the date the individual no longer
26 is on active duty. The court shall also abate the suit for the same
27 period prescribed by this subsection regardless of whether any of

1 the documents described by this subsection have been filed with the
2 court if, after a hearing, the court finds the individual is
3 entitled to the deferral. The clerk of the court shall deliver a
4 copy of the order abating the suit to the creditor and any
5 applicable debt collector.

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

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

12 (2) be made subject to accrual of interest on any
13 portion of the obligation;

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

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

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

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

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

26 (2) the date the surviving spouse of the individual
27 remarries.

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

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

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

10 (3) a refusal by a creditor or debt collector to extend
11 future credit to the individual in substantially the amount or on
12 substantially the terms requested;

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

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

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

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

27 SECTION 2. Subchapter F, Chapter 392, Finance Code, as

1 added by this Act, applies only to a member of the state military
2 forces or a reserve component of the armed forces of the United
3 States who is ordered to report for or is serving on active duty on
4 or after the effective date of this Act.

5 SECTION 3. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2009.