

By: Herrero

H.B. No. 343

A BILL TO BE ENTITLED

AN ACT

relating to consumer debt owed by certain military servicemembers.

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

SECTION 1. Title 5, Finance Code, is amended by adding Chapter 397 to read as follows:

CHAPTER 397. DEFERRED COLLECTION OF CONSUMER DEBT OF CERTAIN
MILITARY SERVICEMEMBERS

Sec. 397.001. DEFINITIONS. In this chapter:

(1) "Combat zone" means an area that has been designated as a combat zone by the President of the United States.

(2) "Consumer" means an individual who has a consumer debt.

(3) "Consumer debt" means an obligation primarily for personal, family, or household purposes and arising from a transaction.

(4) "Creditor" means a party, other than a consumer, to a transaction involving one or more consumers.

(5) "Military servicemember" means a member of:
(A) the armed forces of the United States;
(B) the Texas National Guard or the National Guard of another state; or
(C) a reserve component of the armed forces of the United States.

Sec. 397.002. APPLICABILITY OF CHAPTER. This chapter

1 applies only to a military servicemember who is on federal active
2 duty or is called to federal active duty.

3 Sec. 397.003. DEFERRED COLLECTION OF CONSUMER DEBT OWED BY
4 MILITARY SERVICEMEMBER WOUNDED IN COMBAT ZONE. (a) A military
5 servicemember who incurs a wound or other injury while serving in a
6 combat zone and is hospitalized for treatment of the wound or injury
7 for 21 or more consecutive days is entitled to defer collection of
8 or abate a suit to collect a consumer debt that the servicemember
9 incurred before the date the servicemember was wounded.

10 (b) To obtain a deferral under this section, a servicemember
11 must file with the creditor:

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

14 (2) a copy of a valid military identification card;

15 (3) a copy of the orders calling the servicemember to
16 active duty in a combat zone; and

17 (4) a letter from an attending physician stating that
18 the servicemember was wounded or injured while serving in a combat
19 zone and has been hospitalized for 21 or more consecutive days for
20 treatment of the wound or injury.

21 (c) After receiving the affidavit and other documents
22 required for the deferral under Subsection (b), a creditor shall
23 cease any collection efforts and may not resume those efforts or
24 file suit to collect the consumer debt until:

25 (1) if the servicemember does not have to undergo
26 retraining for military or nonmilitary employment because of the
27 servicemember's wounds or injury, the earlier of:

1 (A) the first anniversary of the date the
2 servicemember is granted a medical release to return to active duty
3 or nonmilitary employment; or

4 (B) the date the servicemember is dishonorably
5 discharged from military service; or

6 (2) if the servicemember has to undergo retraining for
7 military or nonmilitary employment because of the servicemember's
8 wounds or injury, the earlier of:

9 (A) the first anniversary of the date the
10 servicemember completes the retraining; or

11 (B) the date the servicemember is dishonorably
12 discharged from military service.

13 (d) To obtain an abatement of a pending suit to collect a
14 consumer debt of a servicemember under this section, an affidavit
15 of the servicemember or any spouse, parent, sibling, or adult child
16 of the servicemember stating the facts required to be established
17 by Subsection (a) and the documents described by Subsections
18 (b)(2), (3), and (4) must be filed in the court in which the suit is
19 pending. If no controverting affidavit is filed by the creditor or
20 if, after a hearing, the court finds the servicemember is entitled
21 to the deferral, the court shall abate the suit for the same period
22 that would have applied to the servicemember under Subsection (c).
23 The clerk of the court shall deliver a copy of the order abating the
24 suit to the creditor.

25 (e) After the date the creditor receives the documentation
26 necessary for deferral under Subsection (b) or after the date the
27 court abates a suit filed under Subsection (d), as applicable, a

1 servicemember entitled to receive a deferral under this section may
2 not:

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

5 (A) accrual of interest on any portion of the
6 obligation; or

7 (B) a demand for payment of or acceleration of
8 the remaining payments of the obligation; or

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

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

15 (1) the first anniversary of the date of the
16 servicemember's death; or

17 (2) the date the surviving spouse of the servicemember
18 remarries.

19 Sec. 397.004. EXERCISE OF RIGHTS UNDER CHAPTER NOT TO
20 AFFECT CERTAIN FUTURE TRANSACTIONS. Receipt by a servicemember of
21 a deferral or abatement of collection of a consumer debt under this
22 chapter may not provide the sole basis for:

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

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

27 (3) a refusal by a creditor to extend future credit to

1 the servicemember in substantially the amount or on substantially
2 the terms requested;

3 (4) an adverse report relating to the creditworthiness
4 of the servicemember or the servicemember's spouse by or to a credit
5 bureau; or

6 (5) an annotation in the servicemember's file by a
7 credit bureau identifying the servicemember as a member of:

8 (A) the armed forces of the United States;

9 (B) the Texas National Guard or the National
10 Guard of another state; or

11 (C) a reserve component of the armed forces of
12 the United States.

13 Sec. 397.005. WAIVER OF RIGHT VOID. A provision of a
14 contract or other agreement that purports to be a waiver by an
15 individual of any right provided by this chapter is contrary to
16 public policy and void.

17 Sec. 397.006. CIVIL REMEDIES. (a) A person may sue for:

18 (1) injunctive relief to prevent or restrain a
19 violation of this chapter; and

20 (2) actual damages sustained as a result of a
21 violation of this chapter.

22 (b) A person who successfully maintains an action under
23 Subsection (a) is entitled to attorney's fees reasonably related to
24 the amount of work performed and costs.

25 (c) If the attorney general reasonably believes that a
26 person is violating or is about to violate this chapter, the
27 attorney general may bring an action in the name of the state

1 against the person to restrain or enjoin the person from violating
2 this chapter.

3 SECTION 2. Chapter 397, Finance Code, as added by this Act,
4 applies only to a member of the armed forces of the United States,
5 the Texas National Guard or the National Guard of another state, or
6 a reserve component of the armed forces of the United States who is
7 ordered to report for or is serving on federal active duty on or
8 after the effective date of this Act.

9 SECTION 3. This Act takes effect September 1, 2009.