

By: Davis of Dallas

H.B. No. 3529

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the regulation of debt collection agencies and credit
3 bureaus.

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

5 SECTION 1. Chapter 20, Business & Commerce Code, is amended
6 by adding Section 20.055 to read as follows:

7 Sec. 20.055. NOTIFICATION RELATING TO REPORTING OF ADVERSE
8 INFORMATION. Not later than the 10th day after the date adverse
9 information is added to a consumer's file, the consumer reporting
10 agency shall notify the consumer in writing that the information
11 has been added to the consumer's file. The notice must include:

12 (1) a brief description of the adverse information;
13 (2) the name, address, and telephone number of the
14 person who provided the information;

15 (3) an explanation regarding the actions a consumer
16 may take to dispute the adverse information if the information is
17 inaccurate; and

18 (4) the information described by Section 20.03(a)(3).

19 SECTION 2. Sections 20.06(a), (b), (c), (d), and (e),
20 Business & Commerce Code, are amended to read as follows:

21 (a) If the completeness or accuracy of information
22 contained in a consumer's file is disputed by the consumer and the
23 consumer notifies the consumer reporting agency of the dispute, the
24 agency shall reinvestigate the disputed information free of charge

1 ~~[and record the current status of the disputed information]~~ not
2 later than the 30th business day after the date on which the agency
3 receives the notice and, pending the results of the
4 reinvestigation, promptly delete the disputed information from the
5 consumer's file. The consumer reporting agency shall provide the
6 consumer with the option of notifying the agency of a dispute
7 concerning the consumer's file by speaking directly to a
8 representative of the agency during normal business hours.

9 (b) Not later than the fifth business day after the date on
10 which a consumer reporting agency receives notice of a dispute from
11 a consumer in accordance with Subsection (a), the agency shall
12 provide notice of the dispute to:

13 (1) each person who provided any information related
14 to the dispute; and

15 (2) each person who requested a copy of the consumer's
16 report during the six-month period preceding the date of the
17 dispute.

18 (c) A consumer reporting agency may terminate a
19 reinvestigation of information disputed by a consumer under
20 Subsection (a) if the agency reasonably determines that the dispute
21 is frivolous or irrelevant. An agency that terminates a
22 reinvestigation of disputed information under this subsection
23 shall promptly notify the consumer of the termination and the
24 reasons for the termination by mail, or if authorized by the
25 consumer, by telephone and shall promptly reinsert the information
26 into the consumer's file. The presence of contradictory
27 information in a consumer's file does not by itself constitute

1 reasonable grounds for determining that the dispute is frivolous or
2 irrelevant.

3 (d) If disputed information is found to be accurate
4 [~~inaccurate or cannot be verified~~] after a reinvestigation under
5 Subsection (a), the consumer reporting agency [~~, unless otherwise~~
6 ~~directed by the consumer,~~] shall promptly reinsert [~~delete~~] the
7 information into [~~from~~] the consumer's file [~~, revise the consumer~~
8 ~~file, and provide the revised consumer report to the consumer and to~~
9 ~~each person who requested the consumer report within the preceding~~
10 ~~six months~~]. The consumer reporting agency may not report in
11 subsequent reports disputed information found, after a
12 reinvestigation under Subsection (a), to be [~~the~~] inaccurate or
13 unverifiable [~~unverified information in subsequent reports~~].

14 (e) Information deleted under Subsection (a) that is found
15 to be inaccurate or unverifiable by the agency's reinvestigation
16 under that subsection [~~(d)~~] may not be reinserted in the consumer's
17 file unless the person who furnishes the information to the
18 consumer reporting agency reinvestigates and states in writing or
19 by electronic record to the agency that the information is complete
20 and accurate.

21 SECTION 3. Sections 392.101(a) and (c), Finance Code, are
22 amended to read as follows:

23 (a) A third-party debt collector or credit bureau may not
24 engage in debt collection unless the third-party debt collector or
25 credit bureau has obtained a surety bond issued by a surety company
26 authorized to do business in this state as prescribed by this
27 section. A copy of the bond for a credit bureau must be filed with

1 the secretary of state. A copy of the bond for a third-party debt
2 collector must be filed with the Texas Department of Licensing and
3 Regulation.

4 (c) The bond must be in the amount of \$500,000 [~~\$10,000~~].

5 SECTION 4. Section 392.202, Finance Code, is amended by
6 amending Subsections (a), (c), and (d) and adding Subsection (a-1)
7 to read as follows:

8 (a) An individual who disputes the accuracy of an item that
9 is in a third-party debt collector's or credit bureau's file on the
10 individual and that relates to a debt being collected by the
11 third-party debt collector may notify in writing the third-party
12 debt collector of the inaccuracy. The third-party debt collector
13 shall:

14 (1) make a written record of the dispute;

15 (2) notify each credit bureau, if any, to which the
16 collector has reported the item that the individual disputes the
17 accuracy of the item;

18 (3) initiate an investigation of the dispute described
19 by Subsections (b)-(e), if the collector reports information
20 related to the dispute to a credit bureau; and

21 (4) [~~. If the third-party debt collector does not~~
22 ~~report information related to the dispute to a credit bureau, the~~
23 ~~third-party debt collector shall~~] cease collection efforts until an
24 investigation of the dispute described by Subsections (b)-(e)
25 determines the accurate amount of the debt, if any.

26 (a-1) [~~If the third-party debt collector reports~~
27 ~~information related to the dispute to a credit bureau, the~~

1 ~~reporting third-party debt collector shall initiate an~~
2 ~~investigation of the dispute described by Subsections (b)-(e) and~~
3 ~~shall cease collection efforts until the investigation determines~~
4 ~~the accurate amount of the debt, if any.]~~ This section does not
5 affect the application of Chapter 20, Business & Commerce Code, to a
6 third-party debt collector subject to that chapter.

7 (c) If the third-party debt collector admits that the item
8 is inaccurate under Subsection (b), the third-party debt collector
9 shall:

10 (1) not later than the fifth business day after the
11 date of the admission:

12 (A) ~~[7]~~ correct the item in the relevant file; and

13 (B) notify any credit bureau informed of the
14 dispute under Subsection (a) that the item is inaccurate; and

15 (2) immediately cease collection efforts related to
16 the portion of the debt that was found to be inaccurate and on
17 correction of the item send, to each person who has previously
18 received a report from the third-party debt collector containing
19 the inaccurate information, notice of the inaccuracy and a copy of
20 an accurate report.

21 (d) If the third-party debt collector states that there has
22 not been sufficient time to complete an investigation, the
23 third-party debt collector shall immediately:

24 (1) change the item in the relevant file as requested
25 by the individual;

26 (2) notify any credit bureau informed of the dispute
27 under Subsection (a) that the third-party debt collector has not

1 completed an investigation;

2 (3) [~~(2)~~] send to each person who previously received
3 the report containing the information a notice that is equivalent
4 to a notice under Subsection (c) and a copy of the changed report;
5 and

6 (4) [~~(3)~~] cease collection efforts.

7 SECTION 5. Sections 392.403(a), (b), and (e), Finance Code,
8 are amended to read as follows:

9 (a) A person may sue for:

10 (1) injunctive relief to prevent or restrain a
11 violation of this chapter; [~~and~~]

12 (2) subject to Subsection (e), damages in an amount
13 equal to the greater of:

14 (A) actual damages sustained as a result of a
15 violation of this chapter; or

16 (B) \$1,000 or, if the person is 65 years of age or
17 older, \$5,000 for each violation of the same nature; or

18 (3) both injunctive relief and damages.

19 (b) A person who successfully maintains an action under
20 Subsection (a) is entitled to attorney's fees reasonably related to
21 the amount of work performed and costs, including court costs.

22 (e) The court may increase an amount of actual damages in an
23 action brought under Subsection (a) to an amount not to exceed three
24 times the amount of actual damages sustained if the court finds
25 that:

26 (1) the violation has occurred with sufficient
27 frequency to constitute a pattern or practice; or

1 (2) the debt collector or third-party debt collector
2 wilfully and knowingly committed the violation. [~~A person who~~
3 ~~successfully maintains an action under this section for violation~~
4 ~~of Section 392.101, 392.202, or 392.301(a)(3) is entitled to not~~
5 ~~less than \$100 for each violation of this chapter.~~]

6 SECTION 6. Chapter 392, Finance Code, is amended by adding
7 Subchapter F to read as follows:

8 SUBCHAPTER F. LICENSING OF THIRD-PARTY DEBT COLLECTORS

9 Sec. 392.501. DEFINITIONS. In this subchapter:

10 (1) "Commission" means the Texas Commission of
11 Licensing and Regulation.

12 (2) "Department" means the Texas Department of
13 Licensing and Regulation.

14 Sec. 392.502. LICENSE REQUIRED. A person may not act as a
15 third-party debt collector under this chapter unless the person
16 holds a license issued under this subchapter.

17 Sec. 392.503. EXEMPTIONS. This subchapter does not apply
18 to:

19 (1) a real estate broker or salesperson licensed under
20 Chapter 1101, Occupations Code, who is acting within the course and
21 scope of that license;

22 (2) a financial institution, as defined by Section
23 201.101; and

24 (3) an insurance company authorized to do business in
25 this state.

26 Sec. 392.504. APPLICATION REQUIREMENTS. (a) The
27 application for a license under this subchapter must:

1 (1) be under oath;

2 (2) contain the name of the applicant and if the
3 applicant is:

4 (A) a corporation, a list of the names and
5 addresses of its officers and directors;

6 (B) a partnership, a list of the names and
7 addresses of its partners; or

8 (C) a limited liability company, a list of the
9 names and addresses of its members and managers;

10 (3) contain the street address of the applicant's
11 principal place of business;

12 (4) contain all names under which the applicant
13 engages in debt collection activities;

14 (5) contain the names of all persons with which the
15 applicant is affiliated, and the principal place of business of
16 each affiliate; and

17 (6) contain any other relevant information that the
18 department determines appropriate.

19 (b) On the filing of a license application, the applicant
20 shall pay to the commission:

21 (1) an investigation fee not to exceed \$200; and

22 (2) an application fee in an amount determined as
23 provided by Section 392.505.

24 Sec. 392.505. GENERAL POWERS AND DUTIES OF COMMISSION;
25 FEES. The commission shall:

26 (1) adopt necessary rules to administer and enforce
27 this subchapter; and

1 (2) set application, licensing, and renewal fees in an
2 amount reasonable and necessary to cover the cost of administering
3 and enforcing this subchapter.

4 Sec. 392.506. ADMINISTRATION BY DEPARTMENT. (a) The
5 department shall administer and enforce this subchapter.

6 (b) The department may recommend proposed rules to the
7 commission.

8 Sec. 392.507. FINANCIAL STATEMENT. (a) An applicant for a
9 license under this subchapter must file with the application a
10 financial statement that shows the assets and liabilities of the
11 applicant.

12 (b) The financial statement must be sworn to by the
13 applicant if the applicant is an individual or by a partner,
14 officer, or manager if the applicant is a partnership, corporation,
15 trust, joint-stock company, foundation, or association of
16 individuals.

17 (c) Information contained in a financial statement filed
18 under this section is confidential and not public information but
19 is admissible in evidence at a hearing held or an action instituted
20 under this chapter.

21 Sec. 392.508. INVESTIGATION OF APPLICATION. On the filing
22 of an application and payment of the required fees, the department
23 shall conduct an investigation to determine whether to issue the
24 license.

25 Sec. 392.509. APPROVAL OR DENIAL OF APPLICATION. (a) The
26 department shall approve the application and issue to the applicant
27 a license under this subchapter if the department finds that:

1 (1) the applicant meets the application requirements
2 of Section 392.504;

3 (2) the financial responsibility, experience,
4 character, and general fitness of the applicant are sufficient to:

5 (A) command the confidence of the public; and

6 (B) warrant the belief that the business will be
7 operated lawfully and fairly, within the purposes of this chapter;
8 and

9 (3) the applicant has obtained a surety bond as
10 required by Section 392.101.

11 (b) If the department does not find the eligibility
12 requirements of Subsection (a), the department shall notify the
13 applicant.

14 (c) If an applicant requests a hearing on the application
15 not later than the 30th day after the date of notification under
16 Subsection (b), the applicant is entitled to a hearing not later
17 than the 60th day after the date of the request.

18 (d) The department shall approve or deny the application not
19 later than the 60th day after the date of the filing of a completed
20 application with payment of the required fees, or if a hearing is
21 held, after the date of the completion of the hearing on the
22 application. The department and the applicant may agree to a later
23 date in writing.

24 Sec. 392.510. DISPOSITION OF FEES ON DENIAL OF APPLICATION.
25 If the department denies the application, the department shall
26 retain the investigation fee.

27 Sec. 392.511. ANNUAL LICENSE FEE. Not later than December

1 1, a license holder shall pay to the department an annual fee for
2 the year beginning the next January 1, in an amount determined as
3 provided by Section 392.505.

4 Sec. 392.512. EXPIRATION OF LICENSE ON FAILURE TO PAY
5 ANNUAL FEE. If the annual fee for a license is not paid before the
6 16th day after the date on which the written notice of delinquency
7 of payment has been given to the license holder, the license expires
8 on the later of:

9 (1) that day; or

10 (2) December 31 of the last year for which an annual
11 fee was paid.

12 Sec. 392.513. LICENSE SUSPENSION OR REVOCATION. After
13 notice and a hearing the department may suspend or revoke a license
14 if the department finds that:

15 (1) the license holder failed to pay the annual
16 license fee, an examination fee, or another fee imposed by the
17 department;

18 (2) the license holder, knowingly or without the
19 exercise of due care, has committed multiple violations of this
20 chapter or a rule adopted or order issued under this chapter; or

21 (3) a fact or condition exists that, if it had existed
22 or had been known to exist at the time of the original application
23 for the license, clearly would have justified the department's
24 denial of the application.

25 Sec. 392.514. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE
26 OF NEW LICENSE AFTER REVOCATION. The department may reinstate a
27 suspended license or issue a new license on application to a person

1 whose license has been revoked if at the time of the reinstatement
2 or issuance no fact or condition exists that clearly would have
3 justified the department's denial of an original application for
4 the license.

5 Sec. 392.515. SURRENDER OF LICENSE. A license holder may
6 surrender a license issued under this subchapter by delivering to
7 the department:

8 (1) the license; and

9 (2) a written notice of the license's surrender.

10 Sec. 392.516. TRANSFER OR ASSIGNMENT OF LICENSE PROHIBITED.
11 A license may not be transferred or assigned.

12 SECTION 7. Section 392.403, Finance Code, as amended by
13 this Act, applies only to a cause of action that accrues on or after
14 the effective date of this Act. A cause of action that accrues
15 before the effective date of this Act is governed by the law as it
16 existed immediately before the effective date of this Act, and the
17 former law is continued in effect for that purpose.

18 SECTION 8. Not later than October 1, 2009, the Texas
19 Commission of Licensing and Regulation shall adopt rules required
20 by Section 392.505, Finance Code, as added by this Act.

21 SECTION 9. A person is not required to obtain a license
22 under Subchapter F, Chapter 392, Finance Code, as added by this Act,
23 until January 1, 2010.

24 SECTION 10. This Act takes effect September 1, 2009.