

By: Shapleigh

S.B. No. 1519

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of debt collection agencies; imposing criminal penalties.

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

SECTION 1. Sections 392.101(a) and (c), Finance Code, are amended to read as follows:

(a) A third-party debt collector or credit bureau may not engage in debt collection unless the third-party debt collector or credit bureau has obtained a surety bond issued by a surety company authorized to do business in this state as prescribed by this section. A copy of the bond for a credit bureau must be filed with the secretary of state. A copy of the bond for a third-party debt collector must be filed with the Texas Department of Licensing and Regulation.

(c) The bond must be in the amount of \$15,000 [~~\$10,000~~].

SECTION 2. The heading to Subchapter D, Chapter 392, Finance Code, is amended to read as follows:

SUBCHAPTER D. [~~PROHIBITED~~] DEBT COLLECTION PRACTICES [~~METHODS~~]

SECTION 3. Subchapter D, Chapter 392, Finance Code, is amended by adding Sections 392.307 and 392.308 to read as follows:

Sec. 392.307. TOLL-FREE TELEPHONE NUMBER REQUIRED. A debt collector shall maintain at all times a toll-free telephone number that a consumer may call to discuss an alleged consumer debt.

Sec. 392.308. CEASING COMMUNICATIONS. (a) In debt

1 collection, a debt collector may not continue to communicate with a
2 consumer regarding a debt if the consumer notifies the debt
3 collector in writing that the consumer:

4 (1) refuses to pay the debt; or
5 (2) wishes the debt collector to cease further
6 communications with the consumer concerning the debt.

7 (b) Subsection (a) does not prevent a debt collector from:

8 (1) advising the consumer that the debt collector's
9 efforts are being terminated;

10 (2) notifying the consumer that the debt collector or
11 creditor may pursue a legal or equitable remedy ordinarily invoked
12 by the collector or creditor in the collection of consumer debts; or

13 (3) notifying the consumer that the debt collector or
14 creditor intends to invoke a specified legal or equitable remedy.

15 (c) Subsection (a) does not apply to a secured creditor who
16 is sending a notice required under state or federal law.

17 (d) In its initial written communication to a consumer, a
18 debt collector shall include:

19 (1) a notice to the consumer regarding the protections
20 afforded by this chapter, including a brief description of
21 prohibited debt collection practices; and

22 (2) on the front page of the communication, in at least
23 10-point type, the following statement: "A consumer has the right
24 to request in writing that a debt collector cease further
25 communication with the consumer. A written request to cease
26 communication will not prohibit the debt collector from taking any
27 other action authorized by law to collect the debt."

1 SECTION 4. Chapter 392, Finance Code, is amended by adding
2 Subchapter F to read as follows:

3 SUBCHAPTER F. LICENSING OF THIRD-PARTY DEBT COLLECTORS

4 Sec. 392.501. DEFINITIONS. In this subchapter:

5 (1) "Commission" means the Texas Commission of
6 Licensing and Regulation.

7 (2) "Department" means the Texas Department of
8 Licensing and Regulation.

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

12 Sec. 392.503. EXEMPTIONS. This subchapter does not apply
13 to:

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

17 (2) a financial institution, as defined by Section
18 201.101;

19 (3) an attorney; and

20 (4) an insurance company authorized to do business in
21 this state.

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

24 (1) be under oath;

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

27 (A) a corporation, a list of the names and

1 addresses of its officers and directors;

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

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

6 (3) contain the street address of the applicant's
7 principal place of business;

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

10 (5) contain the names of all persons with which the
11 applicant is affiliated, and the principal place of business of
12 each affiliate;

13 (6) contain the name, address, and qualifications of
14 an individual designated as the applicant's supervisor under
15 Section 392.505;

16 (7) include a list of the names, business addresses,
17 and business telephone numbers of all individuals who will contact
18 debtors in this state on behalf of the applicant for the purpose of
19 collection or adjustment of debts; and

20 (8) contain any other relevant information that the
21 department determines appropriate.

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

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

25 (2) an application fee in an amount determined as
26 provided by Section 392.506.

27 Sec. 392.505. DESIGNATION OF SUPERVISOR. A license holder

1 must designate an individual who possesses a minimum of three years
2 of debt collection experience to supervise the license holder's
3 debt collection activities in this state.

4 Sec. 392.506. GENERAL POWERS AND DUTIES OF COMMISSION;
5 FEES. The commission shall:

6 (1) adopt necessary rules to administer and enforce
7 this subchapter; and

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

11 Sec. 392.507. ADMINISTRATION BY DEPARTMENT. (a) The
12 department shall administer and enforce this subchapter.

13 (b) The department may recommend proposed rules to the
14 commission.

15 Sec. 392.508. FINANCIAL STATEMENT. (a) An applicant for a
16 license under this subchapter must file with the application a
17 financial statement that shows the assets and liabilities of the
18 applicant.

19 (b) The financial statement must be sworn to by the
20 applicant if the applicant is an individual or by a partner,
21 officer, or manager if the applicant is a partnership, corporation,
22 trust, joint-stock company, foundation, or association of
23 individuals.

24 (c) Information contained in a financial statement filed
25 under this section is confidential and not public information but
26 is admissible in evidence at a hearing held or an action instituted
27 under this chapter.

1 Sec. 392.509. INVESTIGATION OF APPLICATION. On the filing
2 of an application and payment of the required fees, the department
3 shall conduct an investigation to determine whether to issue the
4 license.

5 Sec. 392.510. APPROVAL OR DENIAL OF APPLICATION. (a) The
6 department shall approve the application and issue to the applicant
7 a license under this subchapter if the department finds that:

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

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

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

13 (B) warrant the belief that the business will be
14 operated lawfully and fairly, within the purposes of this chapter;
15 and

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

18 (b) If the department does not find the eligibility
19 requirements of Subsection (a), the department shall notify the
20 applicant.

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

25 (d) The department shall approve or deny the application not
26 later than the 60th day after the date of the filing of a completed
27 application with payment of the required fees, or if a hearing is

1 held, after the date of the completion of the hearing on the
2 application. The department and the applicant may agree to a later
3 date in writing.

4 Sec. 392.511. DISPOSITION OF FEES ON DENIAL OF APPLICATION.
5 If the department denies the application, the department shall
6 retain the investigation fee.

7 Sec. 392.512. ANNUAL LICENSE FEE. Not later than December
8 1, a license holder shall pay to the department an annual fee for
9 the year beginning the next January 1, in an amount determined as
10 provided by Section 392.506.

11 Sec. 392.513. EXPIRATION OF LICENSE ON FAILURE TO PAY
12 ANNUAL FEE. If the annual fee for a license is not paid before the
13 16th day after the date on which the written notice of delinquency
14 of payment has been given to the license holder, the license expires
15 on the later of:

16 (1) that day; or

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

19 Sec. 392.514. LICENSE SUSPENSION OR REVOCATION. After
20 notice and a hearing the department may suspend or revoke a license
21 if the department finds that:

22 (1) the license holder failed to pay the annual
23 license fee, an examination fee, or another fee imposed by the
24 department;

25 (2) the license holder, knowingly or without the
26 exercise of due care, violated this chapter or a rule adopted or
27 order issued under this chapter; or

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

5 Sec. 392.515. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE
6 OF NEW LICENSE AFTER REVOCATION. The department may reinstate a
7 suspended license or issue a new license on application to a person
8 whose license has been revoked if at the time of the reinstatement
9 or issuance no fact or condition exists that clearly would have
10 justified the department's denial of an original application for
11 the license.

12 Sec. 392.516. SURRENDER OF LICENSE. A license holder may
13 surrender a license issued under this subchapter by delivering to
14 the department:

15 (1) the license; and

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

17 Sec. 392.517. TRANSFER OR ASSIGNMENT OF LICENSE PROHIBITED.
18 A license may not be transferred or assigned.

19 Sec. 392.518. TRUST ACCOUNTS. A license holder that
20 receives or holds funds belonging to another in connection with the
21 provision of debt collection activities under this chapter shall
22 establish and maintain a separate trust account for the deposit and
23 remittance of the funds in a financial institution, the deposits of
24 which are insured by the Federal Deposit Insurance Corporation or
25 its successor or the National Credit Union Share Insurance Fund or
26 its successor.

27 Sec. 392.519. CRIMINAL PENALTY. (a) A person commits an

1 offense if the person acts as a third-party debt collector without
2 holding a license under this subchapter and the person is not
3 otherwise exempt under Section 392.503.

4 (b) A person commits an offense if the person:

5 (1) fails to establish and maintain separate trust
6 accounts as required by Section 392.518; and

7 (2) misappropriates, transfers, or converts to the
8 collector's own benefit the funds held in a trust account for
9 another.

10 (c) An offense under Subsection (a) is a Class A
11 misdemeanor.

12 (d) An offense under Subsection (b) is a third degree
13 felony.

14 SECTION 5. Not later than October 1, 2009, the Texas
15 Commission of Licensing and Regulation shall adopt rules required
16 by Section 392.506, Finance Code, as added by this Act.

17 SECTION 6. A person is not required to obtain a license
18 under Subchapter F, Chapter 392, Finance Code, as added by this Act,
19 until January 1, 2010.

20 SECTION 7. (a) Except as provided by Subsection (b) of this
21 section, this Act takes effect September 1, 2009.

22 (b) Section 392.519, Finance Code, as added by this Act,
23 takes effect January 1, 2010.