

By: Lozano

H.B. No. 953

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) "Consumer reporting agency" has the meaning assigned by Section 20.01, Business & Commerce Code.

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

(6) "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

1 the United States.

2 Sec. 397.002. APPLICABILITY OF CHAPTER. This chapter
3 applies only to a military servicemember who is on federal active
4 duty or is called to federal active duty.

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

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

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

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

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

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

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

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

4 (A) the first anniversary of the date the
5 servicemember is granted a medical release to return to active duty
6 or nonmilitary employment; or

7 (B) the date the servicemember is dishonorably
8 discharged from military service; or

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

12 (A) the first anniversary of the date the
13 servicemember completes the retraining; or

14 (B) the date the servicemember is dishonorably
15 discharged from military service.

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

1 (e) After the date the creditor receives the documentation
2 necessary for deferral under Subsection (b) or after the date the
3 court abates a suit filed under Subsection (d), as applicable, a
4 servicemember entitled to receive a deferral under this section may
5 not:

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

8 (A) accrual of interest on any portion of the
9 obligation; or

10 (B) a demand for payment of or acceleration of
11 the remaining payments of the obligation; or

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

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

18 (1) the first anniversary of the date of the
19 servicemember's death; or

20 (2) the date the surviving spouse of the servicemember
21 remarries.

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

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

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

3 (3) a refusal by a creditor to extend future credit to
4 the servicemember in substantially the amount or on substantially
5 the terms requested;

6 (4) an adverse report relating to the creditworthiness
7 of the servicemember or the servicemember's spouse by or to a
8 consumer reporting agency; or

9 (5) an annotation in the servicemember's file by a
10 consumer reporting agency identifying the servicemember as a member
11 of:

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

13 (B) the Texas National Guard or the National
14 Guard of another state; or

15 (C) a reserve component of the armed forces of
16 the United States.

17 Sec. 397.005. WAIVER OF RIGHT VOID. A provision of an
18 agreement that purports to be a waiver by an individual of any right
19 provided by this chapter is contrary to public policy and void.

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

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

23 (2) actual damages sustained as a result of a
24 violation of this chapter.

25 (b) A person who successfully maintains an action under
26 Subsection (a) is entitled to recover reasonable attorney's fees
27 and court costs.

1 (c) If the attorney general reasonably believes that a
2 person is violating or is about to violate this chapter, the
3 attorney general may bring an action in the name of the state
4 against the person to restrain or enjoin the person from violating
5 this chapter.

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

12 SECTION 3. This Act takes effect September 1, 2011.