

By: Davis of Dallas

H.B. No. 2597

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of debt collection agencies and credit  
bureaus; providing civil penalties; authorizing a fee.

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

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

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

(1) a brief description of the adverse information;

(2) the name, address, and telephone number of the  
person who provided the information;

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

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

SECTION 2. Chapter 20, Business & Commerce Code, is amended  
by adding Section 20.056 to read as follows:

Sec. 20.056. REQUEST FOR CONSUMER REPORT FOR ADMINISTRATIVE  
PURPOSES. A consumer reporting agency may not use a request for a  
consumer report from a person for the purposes of updating the  
person's consumer records as a negative factor in any credit

1 scoring methodology.

2 SECTION 3. Sections 20.06(a), (b), (c), (d), and (e),  
3 Business & Commerce Code, are amended to read as follows:

4 (a) If the completeness or accuracy of information  
5 contained in a consumer's file is disputed by the consumer and the  
6 consumer notifies the consumer reporting agency of the dispute, the  
7 agency shall reinvestigate the disputed information free of charge  
8 [~~and record the current status of the disputed information~~] not  
9 later than the 30th business day after the date on which the agency  
10 receives the notice and, pending the results of the  
11 reinvestigation, promptly delete the disputed information from the  
12 consumer's file. The consumer reporting agency shall provide the  
13 consumer with the option of notifying the agency of a dispute  
14 concerning the consumer's file by speaking directly to a  
15 representative of the agency during normal business hours.

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

20 (1) each person who provided any information related  
21 to the dispute; and

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

25 (c) A consumer reporting agency may terminate a  
26 reinvestigation of information disputed by a consumer under  
27 Subsection (a) if the agency reasonably determines that the dispute

1 is frivolous or irrelevant. An agency that terminates a  
2 reinvestigation of disputed information under this subsection  
3 shall promptly notify the consumer of the termination and the  
4 reasons for the termination by mail, or if authorized by the  
5 consumer, by telephone and shall promptly reinsert the information  
6 into the consumer's file. The presence of contradictory  
7 information in a consumer's file does not by itself constitute  
8 reasonable grounds for determining that the dispute is frivolous or  
9 irrelevant.

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

21 (e) Information deleted under Subsection (a) that is found  
22 to be inaccurate or unverifiable by the agency's reinvestigation  
23 under that subsection [~~(d)~~] may not be reinserted in the consumer's  
24 file unless the person who furnishes the information to the  
25 consumer reporting agency reinvestigates and states in writing or  
26 by electronic record to the agency that the information is complete  
27 and accurate.

1 SECTION 4. Section 14.101, Finance Code, is amended to read  
2 as follows:

3 Sec. 14.101. GENERAL DUTIES OF COMMISSIONER. The  
4 commissioner shall enforce this chapter, Subtitles B and C of Title  
5 4, Subchapter F of Chapter 392, Chapter 393 with respect to a credit  
6 access business, and Chapter 394 in person or through an assistant  
7 commissioner, examiner, or other employee of the office.

8 SECTION 5. Section 14.201, Finance Code, is amended to read  
9 as follows:

10 Sec. 14.201. INVESTIGATION AND ENFORCEMENT AUTHORITY.  
11 Investigative and enforcement authority under this subchapter  
12 applies only to this chapter, Subtitles B and C of Title 4,  
13 Subchapter F of Chapter 392, Chapter 393 with respect to a credit  
14 access business, and Chapter 394.

15 SECTION 6. Section 14.251(a), Finance Code, is amended to  
16 read as follows:

17 (a) The commissioner may assess an administrative penalty  
18 against a person who knowingly and wilfully violates or causes a  
19 violation of this chapter, Subchapter F of Chapter 392, Chapter  
20 394, or Subtitle B, Title 4, or a rule adopted under this chapter,  
21 Subchapter F of Chapter 392, Chapter 394, or Subtitle B, Title 4.

22 SECTION 7. Section 14.261(a), Finance Code, is amended to  
23 read as follows:

24 (a) In administering this chapter, the commissioner may  
25 accept assurance of voluntary compliance from a person who is  
26 engaging in or has engaged in an act or practice in violation of:

27 (1) this chapter or a rule adopted under this chapter;

- 1           (2) Subchapter F, Chapter 392;  
2           (3) Chapter 393, if the person is a credit access  
3 business, or Chapter 394; or  
4           (4) [~~(3)~~] Subtitle B, Title 4, or a rule adopted under  
5 Subtitle B, Title 4.

6           SECTION 8. Section 14.262, Finance Code, is amended to read  
7 as follows:

8           Sec. 14.262. EFFECT OF ASSURANCE. (a) An assurance of  
9 voluntary compliance is not an admission of a violation of:

- 10           (1) this chapter or a rule adopted under this chapter;  
11           (2) Subchapter F, Chapter 392;  
12           (3) Chapter 393 with respect to a credit access  
13 business or Chapter 394; or  
14           (4) [~~(3)~~] Subtitle B, Title 4, or a rule adopted under  
15 Subtitle B, Title 4.

16           (b) Unless an assurance of voluntary compliance is  
17 rescinded by agreement or voided by a court for good cause, a  
18 subsequent failure to comply with the assurance is prima facie  
19 evidence of a violation of:

- 20           (1) this chapter or a rule adopted under this chapter;  
21           (2) Subchapter F, Chapter 392;  
22           (3) Chapter 393 with respect to a credit access  
23 business or Chapter 394; or  
24           (4) [~~(3)~~] Subtitle B, Title 4, or a rule adopted under  
25 Subtitle B, Title 4.

26           SECTION 9. Sections 392.101(a) and (c), Finance Code, are  
27 amended to read as follows:

1 (a) A third-party debt collector or credit bureau may not  
2 engage in debt collection unless the third-party debt collector or  
3 credit bureau has obtained a surety bond issued by a surety company  
4 authorized to do business in this state as prescribed by this  
5 section. A copy of the bond for a credit bureau must be filed with  
6 the secretary of state. A copy of the bond for a third-party debt  
7 collector must be filed with the consumer credit commissioner.

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

9 SECTION 10. Section 392.202, Finance Code, is amended by  
10 amending Subsections (a), (c), and (d) and adding Subsection (a-1)  
11 to read as follows:

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

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

19 (2) notify each credit bureau, if any, to which the  
20 collector has reported the item that the individual disputes the  
21 accuracy of the item;

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

25 (4) [~~. If the third-party debt collector does not~~  
26 ~~report information related to the dispute to a credit bureau, the~~  
27 ~~third-party debt collector shall~~] cease collection efforts until an

1 investigation of the dispute described by Subsections (b)-(e)  
2 determines the accurate amount of the debt, if any.

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

11 (c) If the third-party debt collector admits that the item  
12 is inaccurate under Subsection (b), the third-party debt collector  
13 shall:

14 (1) not later than the fifth business day after the  
15 date of the admission:

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

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

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

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

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

3 (2) notify any credit bureau informed of the dispute  
4 under Subsection (a) that the third-party debt collector has not  
5 completed an investigation;

6 (3) send to each person who previously received the  
7 report containing the information a notice that is equivalent to a  
8 notice under Subsection (c) and a copy of the changed report; and

9 (4) [~~(3)~~] cease collection efforts.

10 SECTION 11. Sections 392.403(a), (b), and (e), Finance  
11 Code, are amended to read as follows:

12 (a) A person may sue for:

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

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

17 (A) actual damages sustained as a result of a  
18 violation of this chapter; or

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

21 (3) both injunctive relief and damages.

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, including court costs.

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



1 that:

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

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

9 SECTION 12. Chapter 392, Finance Code, is amended by adding  
10 Subchapter F to read as follows:

11 SUBCHAPTER F. LICENSING OF THIRD-PARTY DEBT COLLECTORS

12 Sec. 392.501. DEFINITIONS. In this subchapter:

13 (1) "Commissioner" means the consumer credit  
14 commissioner.

15 (2) "Finance commission" means the Finance Commission  
16 of Texas.

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

20 Sec. 392.503. EXEMPTIONS. This subchapter does not apply  
21 to:

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

25 (2) a financial institution, as defined by Section  
26 201.101; and

27 (3) an insurance company authorized to do business in

1 this state.

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

4 (1) be under oath;

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

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

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

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

13 (3) contain the street address of the applicant's  
14 principal place of business;

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

17 (5) contain the names of all persons with which the  
18 applicant is affiliated, and the principal place of business of  
19 each affiliate; and

20 (6) 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 commissioner:

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

25 (2) an application fee in an amount determined as  
26 provided by Section 392.505.

27 Sec. 392.505. GENERAL POWERS AND DUTIES OF FINANCE

1 COMMISSION; FEES. The finance commission shall:

2 (1) adopt necessary rules to administer and enforce  
3 this subchapter; and

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

7 Sec. 392.506. ADMINISTRATION BY COMMISSIONER. (a) The  
8 commissioner shall administer and enforce this subchapter.

9 (b) The commissioner may recommend proposed rules to the  
10 finance commission.

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

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

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

24 Sec. 392.508. INVESTIGATION OF APPLICATION. On the filing  
25 of an application and payment of the required fees, the  
26 commissioner shall conduct an investigation to determine whether to  
27 issue the license.

1       Sec. 392.509. APPROVAL OR DENIAL OF APPLICATION. (a) The  
2 commissioner shall approve the application and issue to the  
3 applicant a license under this subchapter if the commissioner finds  
4 that:

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

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

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

10                   (B) warrant the belief that the business will be  
11 operated lawfully and fairly, within the purposes of this chapter;  
12 and

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

15       (b) If the commissioner does not find the eligibility  
16 requirements of Subsection (a), the commissioner shall notify the  
17 applicant.

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

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

1       Sec. 392.510. DISPOSITION OF FEES ON DENIAL OF APPLICATION.

2       If the commissioner denies the application, the commissioner shall  
3       retain the investigation fee.

4       Sec. 392.511. ANNUAL LICENSE FEE. Not later than December  
5       1, a license holder shall pay to the commissioner an annual fee for  
6       the year beginning the next January 1, in an amount determined as  
7       provided by Section 392.505.

8       Sec. 392.512. EXPIRATION OF LICENSE ON FAILURE TO PAY  
9       ANNUAL FEE. If the annual fee for a license is not paid before the  
10       16th day after the date on which the written notice of delinquency  
11       of payment has been given to the license holder, the license expires  
12       on the later of:

13               (1) that day; or

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

16       Sec. 392.513. LICENSE SUSPENSION OR REVOCATION. After  
17       notice and a hearing the commissioner may suspend or revoke a  
18       license if the commissioner finds that:

19               (1) the license holder failed to pay the annual  
20       license fee, an examination fee, or another fee imposed by the  
21       commissioner;

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

25               (3) a fact or condition exists that, if it had existed  
26       or had been known to exist at the time of the original application  
27       for the license, clearly would have justified the commissioner's

1 denial of the application.

2 Sec. 392.514. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE  
3 OF NEW LICENSE AFTER REVOCATION. The commissioner may reinstate a  
4 suspended license or issue a new license on application to a person  
5 whose license has been revoked if at the time of the reinstatement  
6 or issuance no fact or condition exists that clearly would have  
7 justified the commissioner's denial of an original application for  
8 the license.

9 Sec. 392.515. SURRENDER OF LICENSE. A license holder may  
10 surrender a license issued under this subchapter by delivering to  
11 the commissioner:

12 (1) the license; and

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

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

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

22 SECTION 14. Not later than October 1, 2013, the Finance  
23 Commission of Texas shall adopt rules required by Section 392.505,  
24 Finance Code, as added by this Act.

25 SECTION 15. A person is not required to obtain a license  
26 under Subchapter F, Chapter 392, Finance Code, as added by this Act,  
27 until January 1, 2014.

1 SECTION 16. This Act takes effect September 1, 2013.