

By: Collier

H.B. No. 291

A BILL TO BE ENTITLED

AN ACT

relating to the collection of consumer debt by debt buyers.

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

SECTION 1. This Act shall be known as the Fair Consumer Debt Collection Act.

SECTION 2. Subchapter D, Chapter 392, Finance Code, is amended by adding Section 392.307 to read as follows:

Sec. 392.307. COLLECTION OF CERTAIN DEBT BY DEBT BUYERS.

(a) In this section:

(1) "Charged-off debt" means a consumer debt that a creditor has determined to be a loss or expense to the creditor instead of an asset.

(2) "Debt buyer" means a person who purchases or otherwise acquires a consumer debt from a creditor or other subsequent owner of the consumer debt, regardless of whether the person collects the consumer debt, hires a third party to collect the consumer debt, or hires an attorney for collection litigation in connection with the consumer debt. The term does not include:

(A) a person who acquires a charged-off debt incidental to the purchase of a portfolio that predominantly consists of consumer debt that has not been charged off; or

(B) a check services company that acquires the right to collect on a paper or electronic negotiable instrument, including an Automated Clearing House (ACH) authorization to debit

1 an account that has not been processed.

2 (3) "Statute of limitations" means a law in this state
3 that prescribes the period during which a person may bring a cause
4 of action.

5 (b) Unless otherwise expressly provided, this section
6 prevails to the extent of any conflict between this section and any
7 other law of this state.

8 (c) A debt buyer may not, directly or indirectly, commence
9 an action against or initiate arbitration with a consumer to
10 collect a consumer debt later than the earlier of:

11 (1) the fourth anniversary of the date of the
12 consumer's last activity on the consumer debt; or

13 (2) the expiration date of any applicable statute of
14 limitations.

15 (d) A cause of action against a consumer for collection of a
16 consumer debt that is barred under Subsection (c) may not be revived
17 by a payment of the consumer debt, an oral or written reaffirmation
18 of the consumer debt, or any other activity on the consumer debt.

19 (e) If a debt buyer is engaged in debt collection for a
20 consumer debt for which a cause of action is barred under Subsection
21 (c), the debt buyer, or a debt collector acting on behalf of the
22 debt buyer, shall provide the following notice in the initial
23 written communication with the consumer relating to debt
24 collection:

25 (1) if the reporting period for including the consumer
26 debt in a consumer report prepared by a consumer reporting agency
27 has not expired under Section 605, Fair Credit Reporting Act (15

1 U.S.C. Section 1681c), and the debt buyer furnishes to consumer
2 reporting agencies information regarding the consumer debt, "THE
3 LAW LIMITS HOW LONG YOU CAN BE SUED ON A DEBT. BECAUSE OF THE AGE OF
4 YOUR DEBT, WE WILL NOT SUE YOU FOR IT. IF YOU DO NOT PAY THE DEBT,
5 [INSERT NAME OF DEBT BUYER] MAY CONTINUE TO REPORT IT TO THE CREDIT
6 REPORTING AGENCIES AS UNPAID FOR AS LONG AS THE LAW PERMITS THIS
7 REPORTING. THIS NOTICE IS REQUIRED BY LAW.";

8 (2) if the reporting period for including the consumer
9 debt in a consumer report prepared by a consumer reporting agency
10 has not expired under Section 605, Fair Credit Reporting Act (15
11 U.S.C. Section 1681c), but the debt buyer does not furnish to
12 consumer reporting agencies information regarding the consumer
13 debt, "THE LAW LIMITS HOW LONG YOU CAN BE SUED ON A DEBT. BECAUSE OF
14 THE AGE OF YOUR DEBT, WE WILL NOT SUE YOU FOR IT. THIS NOTICE IS
15 REQUIRED BY LAW."; or

16 (3) if the reporting period for including the consumer
17 debt in a consumer report prepared by a consumer reporting agency
18 has expired under Section 605, Fair Credit Reporting Act (15 U.S.C.
19 Section 1681c), "THE LAW LIMITS HOW LONG YOU CAN BE SUED ON A DEBT.
20 BECAUSE OF THE AGE OF YOUR DEBT, WE WILL NOT SUE YOU FOR IT, AND WE
21 WILL NOT REPORT IT TO ANY CREDIT REPORTING AGENCY. THIS NOTICE IS
22 REQUIRED BY LAW."

23 (f) A notice required under Subsection (e) must be in at
24 least 12-point type that is boldfaced, capitalized, or underlined
25 or otherwise conspicuously set out from the surrounding written
26 material.

27 SECTION 3. Section [392.402](#), Finance Code, is amended by

1 adding Subsection (d) to read as follows:

2 (d) This section does not apply to a violation of Section
3 392.307.

4 SECTION 4. Section 392.404(a), Finance Code, is amended to
5 read as follows:

6 (a) A violation of this chapter is a deceptive trade
7 practice under Subchapter E, Chapter 17, Business & Commerce Code,
8 and is actionable under that subchapter. This subsection does not
9 apply to a violation of Section 392.307.

10 SECTION 5. The changes in law made by this Act apply only to
11 an action of a debt buyer to collect a consumer debt if the action
12 occurs on or after the effective date of this Act. An action of a
13 debt buyer to collect a consumer debt that occurs before the
14 effective date of this Act is governed by the law in effect
15 immediately before that date, and the former law is continued in
16 effect for that purpose.

17 SECTION 6. This Act takes effect December 1, 2017.