

By: Meyer, Plesa

H.B. No. 4641

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the collection of consumer debt incurred by certain
3 individuals as a result of identity theft.

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

5 SECTION 1. Subchapter D, Chapter 392, Finance Code, is
6 amended by adding Section 392.308 to read as follows:

7 Sec. 392.308. CONSUMER VICTIM OF IDENTITY THEFT. (a) In
8 this section:

9 (1) "Family violence" has the meaning assigned by
10 Section 71.004, Family Code.

11 (2) "Human trafficking" means conduct that
12 constitutes an offense under Section 20A.02, Penal Code.

13 (3) "Identity theft" means:

14 (A) a violation of Section 521.051, Business &
15 Commerce Code, or a substantially similar federal law or law in
16 another state; or

17 (B) a criminal offense described by Section
18 32.51, Penal Code, or a substantially similar federal law or law in
19 another state.

20 (4) "Person with a disability" has the meaning
21 assigned by Section 48.002, Human Resources Code.

22 (b) This section does not apply to consumer debt that is a
23 home loan, as defined by Chapter 343.

24 (c) A creditor, debt collector, or third-party debt

1 collector may not attempt to collect a consumer debt or a portion of
2 a consumer debt if the consumer provides:

3 (1) a criminal complaint alleging the commission of an
4 offense under Section 32.51, Penal Code, or a substantially similar
5 federal law or law in another state, for which the consumer was a
6 victim, accompanied by a statement identifying the consumer debt or
7 the portion of consumer debt that resulted from the offense;

8 (2) a court order issued under Section 521.103,
9 Business & Commerce Code, or a substantially similar federal law or
10 law in another state, declaring the consumer a victim of identity
11 theft; or

12 (3) if the consumer is a victim of family violence, a
13 victim of human trafficking, or a person with a disability, an
14 affidavit or unsworn declaration under Chapter 132, Civil Practice
15 and Remedies Code, declaring the consumer a victim of identity
16 theft.

17 (d) An affidavit or unsworn declaration under Subsection
18 (c)(3) must include:

19 (1) a statement that the consumer is a victim of
20 identity theft;

21 (2) documentation verifying the consumer's identity,
22 which may include a copy of the consumer's passport or a copy of a
23 driver's license or state identification card issued to the
24 consumer by the Department of Public Safety;

25 (3) a copy of a Federal Trade Commission identity
26 theft victim's report, completed, signed, and filed by the
27 consumer:

1 (A) affirming that the consumer is a victim of
2 identity theft; and

3 (B) identifying the consumer debt or affected
4 portion of the consumer debt incurred as a result of identity theft;
5 and

6 (4) supporting documentation that the consumer is:

7 (A) a victim of family violence, as demonstrated
8 by:

9 (i) a copy of one or more of the following
10 orders protecting the tenant or an occupant from family violence:

11 (a) a temporary ex parte order issued
12 under Chapter 83, Family Code;

13 (b) a protective order issued under
14 Chapter 85, Family Code; or

15 (c) an order of emergency protection
16 under Article 17.292, Code of Criminal Procedure; or

17 (ii) a copy of documentation of the family
18 violence against the tenant or an occupant from:

19 (a) a licensed health care services
20 provider who examined the victim;

21 (b) a licensed mental health services
22 provider who examined or evaluated the victim; or

23 (c) an advocate as defined by Section
24 93.001, Family Code, who assisted the victim;

25 (B) a victim of human trafficking, as
26 demonstrated by:

27 (i) a determination from a federal, state,

1 or tribal governmental entity;

2 (ii) a determination from a nongovernmental
3 organization authorized to make a determination that a consumer is
4 a victim of human trafficking by a governmental entity under
5 Subparagraph (i);

6 (iii) a determination from members of a
7 human trafficking task force, including a victim service provider
8 affiliated with a nongovernmental organization or task force that
9 is authorized to make a determination that a consumer is a victim of
10 human trafficking by a governmental entity described by
11 Subparagraph (i);

12 (iv) a determination that the consumer is a
13 victim of human trafficking from a court of competent jurisdiction
14 in a case where the issue of whether the consumer is a victim of
15 human trafficking is a central issue of the case; or

16 (v) a statement attesting that the consumer
17 is a victim of human trafficking, signed or certified by the
18 consumer and a person described by Subparagraph (i), (ii), (iii),
19 or (iv); or

20 (C) a person with a disability.

21 (e) A creditor, debt collector, or third-party debt
22 collector who receives notice that a consumer debt is a result of
23 identity theft from a victim of identity theft in accordance with
24 Subsection (c):

25 (1) shall immediately cease efforts to collect the
26 disputed debt or disputed portion of the debt from the victim of
27 identity theft;

1 (2) shall send to each person who has previously
2 received a report relating to that debt from the creditor, debt
3 collector, or third-party debt collector notice that the debt is
4 disputed under this section and not collectable from the victim of
5 identity theft;

6 (3) may not sell the debt or transfer it for
7 consideration, except to collect the debt from a responsible person
8 other than the victim of identity theft; and

9 (4) may, if the disputed debt or disputed portion of
10 the debt is secured by tangible personal property, enforce the
11 security interest under Chapter 9, Business & Commerce Code, but
12 may not collect or seek to collect any deficiency from the victim of
13 identity theft.

14 (f) If a creditor, debt collector, or third-party debt
15 collector has a good faith reason to believe that a consumer has
16 disputed a consumer debt or portion of a consumer debt under this
17 section based on a material misrepresentation that the consumer is
18 a victim of identity theft, the creditor, debt collector, or
19 third-party debt collector may file suit in a court of competent
20 jurisdiction to collect the debt from the consumer, unless the
21 alleged perpetrator of identity theft is named in documentation
22 provided by the consumer under Subsection (c).

23 (g) In a suit under Subsection (f), the creditor, debt
24 collector, or third-party debt collector must:

25 (1) show by clear and convincing evidence that the
26 consumer is not a victim of identity theft; and

27 (2) if the consumer prevails in the suit, pay the

1 consumer's court costs, attorney's fees, and damages.

2 SECTION 2. This Act takes effect September 1, 2023.