

BILL ANALYSIS

Senate Research Center

H.B. 996
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Business & Commerce
5/11/2019
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 996 amends current law relating to the collection of consumer debt by debt buyers.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Requires this Act to be known as the Fair Consumer Debt Collection Act.

SECTION 2. Amends Subchapter D, Chapter 392, Finance Code, by adding Section 392.307, as follows:

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

(a) Defines "charged-off debt" as a consumer debt that a creditor has determined to be a loss or expense to the creditor instead of an asset. Defines "debt buyer" as 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 to pursue collection litigation in connection with the consumer debt. Provides that 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 an account that has not been processed.

(b) Provides that, unless otherwise expressly provided, this section prevails to the extent of any conflict between this section and any other law of this state.

(c) Prohibits a debt buyer from, directly or indirectly, commencing an action against or initiating arbitration with a consumer to collect a consumer debt after the expiration of the applicable limitations period provided by Section 16.004 (Four-Year Limitations Period), Civil Practice and Remedies Code, or Section 3.118 (Statute of Limitations), Business & Commerce Code.

(d) Provides that, if an action to collect a consumer debt is barred under Subsection (c), the cause of action is not revived by a payment of the consumer debt, an oral or written reaffirmation of the consumer debt, or any other activity on the consumer debt.

(e) Requires a debt buyer, or a debt collector acting on behalf of a debt buyer, if the debt buyer is engaged in debt collection for a consumer debt for which an

action to collect the debt is barred under Subsection (c), to provide the following notice in the initial written communication with the consumer relating to the debt collection:

(1) if the reporting period for including the consumer debt in a consumer report prepared by a consumer reporting agency has not expired under Section 605, Fair Credit Reporting Act (15 U.S.C. Section 1681c), and the debt buyer furnishes to a consumer reporting agency information regarding the consumer debt, "THE LAW LIMITS HOW LONG YOU CAN BE SUED ON A DEBT. BECAUSE OF THE AGE OF YOUR DEBT, WE WILL NOT SUE YOU FOR IT. IF YOU DO NOT PAY THE DEBT, [INSERT NAME OF DEBT BUYER] MAY CONTINUE TO REPORT IT TO CREDIT REPORTING AGENCIES AS UNPAID FOR AS LONG AS THE LAW PERMITS THIS REPORTING. THIS NOTICE IS REQUIRED BY LAW.";

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

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

(f) Requires a notice required under Subsection (e) to be in at least 12-point type that is boldfaced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material.

SECTION 3. Amends Section 392.402, Finance Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Provides that Subsection (d) is an exception to the provision of this section (Criminal Penalty) that a person commits an offense if the person violates this chapter (Debt Collection).

(d) Provides that this section does not apply to a violation of Section 392.307.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2019.