

BILL ANALYSIS

C.S.H.B. 4641

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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Coerced debt is a type of identity theft in which an abuser incurs credit-related transactions using the identity of a victim without their consent. It is an increasingly common form of economic abuse in cases of family violence that can substantially limit a victim's economic self-sufficiency or prevent them from leaving an abusive relationship. Even if a victim manages to escape from an abusive situation, the coerced debt follows, negatively impacting their finances. Missing a debt payment, for example, may lower a person's credit score by more than 100 points. These credit scores consequently affect a victim's ability to secure employment, housing, and insurance. In 2021, the 87th Legislature, Regular Session, passed H.B. 3529, which provided for victims to take legal action against the effects of debt incurred involuntarily by abusers by emphasizing that coerced debt is a form of identity theft. This process, however, is complex and cost-prohibitive, especially for victims of domestic violence, victims of human trafficking, and disabled adults without the means to hire an attorney. C.S.H.B. 4641 seeks to address this issue by providing for enhanced access to identity theft protections for certain victims of coerced debt and identify theft.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 4641 amends the Finance Code to prohibit a creditor, debt collector, or third-party debt collector from attempting to collect a consumer debt or a portion of a consumer debt if the consumer provides the following information:

- a criminal complaint alleging the consumer was a victim of the offense of identity theft under state law or a substantially similar federal law or law in another state, accompanied by a statement identifying the consumer debt or the portion of consumer debt that resulted from the offense;
- a court order issued under state law or a substantially similar federal law or law in another state, declaring the consumer a victim of identity theft; or
- if the consumer is a person with a disability or a victim of family violence or of human trafficking, an affidavit or unsworn declaration declaring the consumer a victim of identity theft.

C.S.H.B. 4641 requires an affidavit or unsworn declaration provided by a consumer who is a person with a disability or a victim of family violence or of human trafficking to include the following information:

- a statement that the consumer is a victim of identity theft;
- documentation verifying the consumer's identity, which may include a copy of the consumer's passport or a copy of a driver's license or state identification card issued to the consumer by the Department of Public Safety;
- a copy of a Federal Trade Commission identity theft victim's report, completed, signed, and filed by the consumer that does the following:
 - affirms that the consumer is a victim of identity theft; and
 - identifies the consumer debt or affected portion of the consumer debt incurred as a result of identity theft;
- supporting documentation that the consumer is a victim of family violence, if applicable, demonstrated by the following documentation:
 - a copy of one or more of specified orders protecting the tenant or an occupant from family violence; or
 - a copy of documentation of the family violence against the tenant or an occupant from a licensed health care services provider or licensed mental health services provider or an advocate who examined or evaluated the victim, as applicable;
- supporting documentation that the consumer is a victim of human trafficking, if applicable, demonstrated by the following documentation:
 - a determination from a federal, state, or tribal governmental entity;
 - a determination from a nongovernmental organization authorized to make that determination;
 - a determination from members of a human trafficking task force, including a victim service provider affiliated with a nongovernmental organization or task force that is authorized by a governmental entity to make that determination;
 - a determination from a court of competent jurisdiction in a case where the issue of whether the consumer is a victim of human trafficking is a central issue of the case; or
 - a statement attesting that the consumer is a victim of human trafficking, signed or certified by the consumer and a person authorized to determine that the consumer is a victim of human trafficking; or
- supporting documentation that the consumer is a person with a disability, if applicable.

C.S.H.B. 4641 requires a creditor, debt collector, or third-party debt collector who receives such notice from a victim of identity theft that a consumer debt is a result of the identity theft to immediately cease efforts to collect the disputed debt or disputed portion of the debt from the victim of identity theft and send to each person who has previously received a report relating to that debt from the creditor that the debt is disputed under the bill's provisions and not collectable from the victim of identity theft. The bill prohibits a creditor, debt collector, or third-party debt collector from selling the debt or transferring it for consideration, except to collect the debt from a responsible person other than the victim of identity theft. The bill authorizes a creditor, debt collector, or third-party debt collector, if the disputed debt or disputed portion of the debt is secured by tangible personal property, to enforce the security interest but prohibits the creditor, debt collector, or third-party debt collector from collecting or seeking to collect any deficiency from the victim of identity theft.

C.S.H.B. 4641 authorizes the creditor, debt collector, or third-party debt collector to file suit in a court of competent jurisdiction to collect the debt from the consumer, unless the alleged perpetrator of identity theft is named in the provided documentation, if the debt collector has a good faith reason to believe that a consumer has disputed a consumer debt or portion of a consumer debt based on a material misrepresentation that the consumer is a victim of identity theft. With respect to such a suit, the bill requires a creditor, debt collector, or third-party debt collector to show by clear and convincing evidence that the consumer is not a victim of identity

theft and, if the consumer prevails in the suit, to pay the consumer's court costs, attorney's fees, and damages.

C.S.H.B. 4641 does not apply to consumer debt that is a home loan.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 4641 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute changes provisions regarding the collection of consumer debt from a victim of identity theft as follows:

- includes a person with a disability among the consumers whose consumer debt is prohibited from being collected if the person provides the required affidavit or unsworn declaration that the consumer is a victim of identity theft, whereas the introduced included a vulnerable person, the definition of which included an elderly person, among those consumers;
- includes a clarification absent from the introduced that the affidavit or unsworn declaration the provision of which prohibits any attempt to collect the debt is an affidavit or unsworn declaration declaring the consumer a victim of identity theft;
- whereas the introduced established the required contents of the affidavit, the substitute establishes the contents of both the affidavit and unsworn declaration; and
- with respect to that affidavit or declaration:
 - includes among the required contents of the affidavit or declaration a copy of a Federal Trade Commission identity theft victim's report, completed, signed, and filed by the consumer, that affirms that the consumer is a victim of identity theft and identifies the relevant debt or portion of debt, whereas the introduced required a statement that identified the relevant debt and detailed the circumstances of the identity theft; and
 - specifies the documents that a victim of family violence or of human trafficking must include in the affidavit or declaration, which the introduced did not do.

Whereas both the introduced and substitute prohibit a creditor, debt collector, or third-party debt collector who receives notice that a consumer debt is a result of identify theft from selling the debt or transferring it for consideration, only the substitute includes an exception to that prohibition that the debt may be sold or transferred to collect the debt from a responsible person other than the victim of identity theft.

The substitute includes the following provisions that were absent from the introduced:

- a provision authorizing a creditor, debt collector, or third-party debt collector, if the disputed debt or disputed portion of the debt is secured by tangible personal property, to enforce the security interest but prohibiting the creditor, debt collector, or third-party debt collector from collecting or seeking to collect any deficiency from the victim of identity theft;
- an authorization for a creditor, debt collector, or third-party debt collector to file suit to collect the debt if the collector has good faith reason to believe that a consumer's dispute of the debt is based on a material misrepresentation that the consumer is a victim of identity theft; and
- with regard to such a suit, a requirement for a creditor, debt collector, or third-party debt collector to show by clear and convincing evidence that the consumer is not a victim of

identity theft and, if the consumer prevails in the suit, to pay the consumer's court costs, attorney's fees, and damages.