

Date of Hearing: May 11, 2020

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
AB 2517 (Gloria) – As Amended May 5, 2020

As Proposed to be Amended

SUBJECT: DOMESTIC VIOLENCE: PERSONAL PROPERTY AND LIENS

KEY ISSUE: SHOULD VICTIMS OF DOMESTIC VIOLENCE BE PROTECTED FROM THIRD-PARTY CREDITORS WHEN THEIR ABUSERS HAVE STOLEN THEIR IDENTITIES AND INCURRED DEBTS IN THEIR NAMES?

SYNOPSIS

In addition to physical abuse, an abusive partner can financially abuse their victim by, among other things, forbidding the victim from working or sabotaging their work, controlling how money is spent, withholding money for basic family expenses, such as food, shelter and medicine, not allowing the victim to access bank accounts or to make any financial decisions, forcing the victim to file fraudulent tax returns, running up large amounts of debt on joint accounts, and ruining the victims' credit score. One study has found that nearly every victim of domestic violence has also been economically abused.

This bill seeks to protect victims of domestic violence from being financially abused by their abusers and provides a remedy to address the situation, if needed, by first clarifying that a restraining order issued under the Domestic Violence Protection Act after notice and a hearing can determine the use, possession, and control of real or personal property of the parties to the restraining order during the period the order is in effect, and also the payment of any liens or encumbrances coming due during that same time period. More importantly, the bill allows the court to include in the restraining order a finding that specific debts were incurred as the result of domestic violence and without the consent of the victim, including through identity theft. This should help protect victims against third-party creditors.

The author notes that this bill will “play a critical part in providing some protections judges can use in determining who is responsible for paying off the debt” caused by the domestic violence, and the “bill is essential in helping survivors get back on track faster.” The California Partnership to End Domestic Violence, the bill's sponsor, adds that the economic vulnerabilities due to the current COVID-19 national health emergency puts “survivors at risk of ending up further in poverty or returning to their abusive partners. Every step we take to improve economic security of survivors will help keep them safe during this already tumultuous time.” This bill is supported by groups that advocate on behalf of survivors of domestic violence.

The bill is opposed by the California Land Title Association (CLTA) unless it specifically prohibits a court, as part of a domestic violence order determining the use, possession, and control of real or personal property of the parties, from invalidating the transfer, encumbrance, or conveyance of real property. CLTA argues that this is necessary to protect creditors and innocent purchasers, but it could, unfortunately, protect financial abusers from the harm that their abuse has caused and make victims responsible for debt that they did not knowingly and willingly accrue.

SUMMARY: Allows a court, effective January 1, 2022, to make a finding in a domestic violence restraining order issued after notice and a hearing that specific debts were incurred as a result of domestic violence. Specifically, **this bill:**

- 1) Allows a court, effective January 1, 2022, to issue an order, after notice and a hearing for a domestic violence restraining order, determining the use, possession, and control of real or personal property of the parties to the restraining order during the period the order is in effect, and the payment of any liens or encumbrances coming due during the period that the restraining order is in effect.
- 2) Allows the court, effective January 1, 2022, to include in an order under 1), above, a finding that specific debts were incurred as the result of domestic violence and without the consent of a party. Provides that acts that support this finding may include, but are not limited to, obtaining a party's personal identifying information and using it for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person.
- 3) Requires the Judicial Council to adopt and/or modify any forms necessary to effectuate this bill.

EXISTING LAW:

- 1) Authorizes a court, under the Domestic Violence Protection Act (DVPA), to issue and enforce domestic violence restraining orders, including emergency protective orders (EPOs), temporary restraining orders (TROs), and longer-term or permanent restraining orders (also known as orders after hearing). (Family Code Sections 6200 *et seq.* Unless stated otherwise, all further statutory references are to the Family Code.)
- 2) Permits a court to issue a domestic violence protective order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, credibly impersonating, falsely personating, harassing, telephoning, destroying personal property, contacting, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members. (Family Code Section 6240 *et seq.*, Section 6320 *et seq.*, and Section 6340 *et seq.*)
- 3) Permits a court, when issuing an ex parte protective order, to determine the temporary use, possession, and control of the real or personal property of the parties and the payment of any liens or encumbrances coming due during the period the order is in effect. (Section 6324.)
- 4) Allows a court, after notice and a hearing, to issue any domestic violence restraining order that could be issued ex parte. Allows such an order to last no more than five years. Allows these orders to be renewed either for five years or permanently. (Sections 6340.)
- 5) After notice and a hearing, allows a court to issue an order that restitution be paid to the petitioner for loss of earnings and out-of-pocket expenses, including, but not limited to, expenses for medical care and temporary housing, incurred as a direct result of the abuse inflicted by the respondent or any actual physical injuries sustained from the abuse. (Section 6342.)

- 6) Provides that the personal conduct, stay-away, and residence exclusion orders contained in a court order issued after notice and a hearing may, in the discretion of the court, last no more than five years. Allows these orders to be renewed either for five years or permanently. (Section 6345 (a).)
- 7) Provides that, notwithstanding 6), above, the duration of any orders, other than the protective orders described in 6), that are also contained in a court order issued after a domestic violence notice and hearing, including, but not limited to, orders for custody, visitation, support, and disposition of property, are governed by the law relating to those specific subjects. (Section 6345 (b).)
- 8) Allows a person to bring a claim against a claimant, or a cross-complaint if the claimant has brought an action to recover on its claim, to establish that the person is a victim of identity theft in connection with the claimant's claim. Requires the person to establish identity theft by a preponderance of the evidence. Provides that a person who establishes that they are a victim of identity theft is entitled to all of the following, as appropriate:
 - a) A declaration that they are not obligated to the claimant on that claim;
 - b) A declaration that any security interest or other interest the claimant had purportedly obtained in the victim's property in connection with that claim is void and unenforceable;
 - c) An injunction restraining the claimant from collecting or attempting to collect from the victim on that claim, from enforcing or attempting to enforce any security interest or other interest in the victim's property in connection with that claim, or from enforcing or executing on any judgment against the victim on that claim;
 - d) If the victim has filed a cross-complaint against the claimant, the dismissal of any cause of action in the complaint filed by the claimant based on a claim which arose as a result of the identity theft;
 - e) Actual damages, attorney's fees, and costs, as provided, and any equitable relief that the court deems appropriate; and
 - f) A civil penalty, in addition to any other damages, of up to \$30,000 if the victim establishes by clear and convincing evidence that they provided the claimant with notice of the identity theft, the claimant failed to diligently investigate the victim's notice, and the claimant continued to pursue its claim against the victim after the claimant was presented with facts that were later held to entitle the victim to a judgment pursuant to this provision. (Civil Code Section 1798.93.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: In addition to physical abuse, an abusive partner can financially abuse their victim by, among other things, forbidding the victim from working or sabotaging their work, controlling how money is spent, withholding money for basic family expenses, such as food, shelter and medicine, not allowing the victim to access bank accounts or to make any financial decisions, forcing the victim to file fraudulent tax returns, running up large amounts of debt on joint accounts, refusing to pay bills, and ruining the victims' credit score. One study found that nearly every victim of domestic violence has also been economically abused.

This bill seeks to protect victims of domestic violence from being financially abused by their abusers and provide a remedy to address the situation if needed by first clarifying that a restraining order issued under the DVPA after notice and a hearing can determine the use, possession, and control of real or personal property of the parties to the restraining order during the period the order is in effect, and also the payment of any liens or encumbrances coming due during that same time period. More importantly, the bill allows the court to include in the restraining order a finding that specific debts were incurred as the result of domestic violence and without the consent of the victim, including an act of identity theft.

In support of the bill, the author states:

Financial abuse is a very harmful component of domestic violence. It occurs in 99% of domestic violence cases and can include stealing money, credit, property, or identity from a partner; and/or forcing a partner to file fraudulent legal financial documents or overspend on credit cards. AB 2517 will play a critical part in providing some protections judges can use in determining who is responsible for paying off the debt that happened. This bill is essential in helping survivors get back on track faster.

Impacts of domestic violence are widespread. Domestic violence is a serious criminal justice and public health problem most often perpetrated against women. (U.S. Department of Justice, *Nature and Consequences of Intimate Partner Violence: Findings from the National Violence against Women Survey* (2001).) According to the National Intimate Partner and Sexual Violence Survey, more than one in every three women and about one in every three men in the United States have experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime. (Sharon Smith, *et al.*, *The National Intimate Partner and Sexual Violence Survey: 2015 Data Brief – Updated Release*, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, pp. 8-9 (Nov. 2018).) Over a third of all women in the U.S. have experienced some form of psychological aggression by an intimate partner during their lifetime, including 31 percent who experience some form of coercive control. (*Id.* at 21.) These abuses take various forms, but all of them exert a severe negative impact on the psychological and/or physical health of the victim.

Financial abuse is a form of domestic violence. Abusers may, in addition to physically or psychologically abusing their victims, financially abuse them as well. One study of survivors of domestic violence found that 98 percent had been physically abuse and 99 percent had been economically abused. (Adrienne Adams, *et al.*, *Development of the Scale of Economic Abuse*, *Violence Against Women*, 14(5), 563 (2008).) Abusers typically use violence or threats of violence, whether subtle or not, to keep their victims from working or having access to money, thus ensuring that they have financial control of their victim. Financial abuse can include forbidding a victim to work or sabotaging their work or employment, controlling how money is spent, withholding money for basic family expenses, such as food, shelter and medicine, not allowing the victim access to bank accounts or make any financial decisions, forcing the victim file fraudulent tax returns, running up large amounts of debt on joint accounts, refusing to pay bills, and ruining their victims' credit score.

An abuser can also create personal debt for their victim or force the victim to create the debt themselves, creating additional financial abuse and potential causing long-term harm to the victim and their children. Also called coercive debt, this includes all nonconsensual, credit related transactions. Writes one researcher of this situation: “[C]urrent policies relating to

personal debt do not consider the possibility that the debt may have been generated through coercion, fraud, or threat of harm. Survivors' short-term safety and long-term financial well-being would be enhanced by policies that take into account how personal debts were generated and that create avenues for debt forgiveness or restructuring." (Adrienne Adams, *Measuring the Effects of Domestic Violence on Women's Financial Well-Being*, CFS Research Brief 2011-5.6, p. 5 (Center for Financial Security, University of Wisconsin-Madison 2011).) This bill seeks to do just that.

The California Partnership to End Domestic Violence, the bill's sponsor, explains that financial abuse can include:

[S]tealing money, credit, property or identity from a partner; and/or forcing a partner to file fraudulent legal financial documents or overspend on credit cards. Abusive partners can incur debt without a survivor's consent or coerce a survivor into incurring the debt, including by threats of harm. This debt and the credit score impact can have long-term consequences for survivors and create barriers to educational, housing and employment opportunities. . . . Research shows that access to economic resources is the most likely predictor of whether a survivor will be able to permanently separate from their abusive partners. (Footnotes omitted.)

This bill expands the ability to divide property and debt as part of a restraining order. Under existing law, a court may issue an ex parte order determining the temporary use, possession, and control of the real or personal property of the parties and the payment of any liens or encumbrances coming due during the period the temporary order is in effect. (Section 6324.) The temporary order only lasts 21 days or, if there is good cause, 25 days. (Section 6320.5.) Note, during the COVID-19 pandemic, the California Supreme Court has issued emergency statewide orders extending the time period of temporary restraining orders issued or set to expire during the state of emergency to be continued "for a period of time that the court determines is sufficient to allow for a hearing on the long-term order to occur, for up to 90 days." (California Supreme Court, Emergency Rule No. 8 (b)(2), effective April 6, 2020.)

The court is also able, after notice and a hearing, to issue any domestic violence restraining order that could be issued ex parte, which includes an order determining the temporary use, possession, and control of the real or personal property of the parties and the payment of any liens or encumbrances coming due during the period the order is in effect. (Section 6340.) An order after a hearing -- a personal conduct, stay-away, and residence exclusion order -- can last no more than five years, but it can be renewed for either five years or permanently, without a showing of further abuse since the issuance of the original order and subject to termination or modification by further order of the court. (Section 6345 (a).) However, the duration of any orders, other than those protective orders, that are also contained in a court order issued after notice and a hearing, including, but not limited to, orders for custody, visitation, support, and disposition of property, shall be governed by the law relating to those specific subjects. (Section 6345 (b).) Note, during the COVID-19 pandemic, the California Supreme Court emergency order extends the time period of orders issued after a hearing that are set to expire during the state of emergency to be automatically extended "for up to 90 days from the date of expiration to enable a protected party to seek a renewal of the restraining order." (California Supreme Court, Emergency Rule No. 8 (b)(4), effective April 6, 2020.)

This bill clarifies that an order determining the use, possession, and control of real or personal property of the parties is effective during the period the order is in effect, as is any order impacting the payment of any liens or encumbrances coming due during that same period. This ensures that the court establishing the protective order can also determine whose debt is whose and help protect a victim of financial abuse, whether for five years or even, potentially, permanently.

More importantly, the bill allows a court to include in the protective order after hearing a finding that specific debts were incurred as the result of domestic violence and without the consent of one of the parties. Specifically, the bill provides that acts that support a finding that a debt was incurred as the result of domestic violence may include, but are not limited to, obtaining a party's personal identifying information and using it for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person.

Finally, the bill requires the Judicial Council to update its forms based on the bill's provisions so that victims can easily seek the relief they are entitled to under the bill. This provision is particularly important since the vast majority of victims of domestic violence (up to 90 percent or even more by Judicial Council estimates) are unrepresented and must try, the best they are able, to seek relief on their own.

Existing law provides protections against third-party creditors in cases of identity theft, and this bill would help victims of domestic violence who are also victims of identity theft. Under Civil Code Section 1798.93, a victim of identity theft may bring an independent action, or file a cross-claim in an action by a creditor to collect on a debt, to establish that they are a victim of identity theft and thus not liable for the debt. If they can establish this by a preponderance of the evidence, they are entitled to all of the following, as appropriate:

- a) A declaration that they are not obligated to the creditor on that claim;
- b) A declaration that any security interest or other interest the creditor had purportedly obtained in their property in connection with that claim is void and unenforceable;
- c) An injunction restraining the creditor from collecting or attempting to collect from them in any way on that claim;
- d) If they filed a cross-complaint against the creditor, the dismissal of any cause of action in the complaint filed by the creditor based on a claim which arose as a result of the identity theft;
- e) Actual damages, attorney's fees, and costs, as provided, and any equitable relief that the court deems appropriate; and
- f) A civil penalty, in addition to any other damages, of up to \$30,000 if they can establish by clear and convincing evidence that they provided the creditor with notice of the identity theft, the creditor failed to diligently investigate their notice, and the creditor continued to pursue its claim against them after the creditor was presented with facts that were later held to entitle them to a judgment in their favor.

As discussed above, this bill allows a family court to include in a protective order, issued after notice and a hearing, a finding that specific debts were incurred as the result of domestic violence and without the consent of a party. The bill specifically provides that acts that support such a finding can include, but are not limited to, obtaining a party's personal identifying information and using it for any unlawful purpose, such as an abuser getting a credit card in their victim's name without their victim's consent. Used together with the relief provided to victims of identity theft in Civil Code Section 1798.93, this should help protect domestic violence victims from third parties who go after them to collect on debt that was unlawfully established in their name. This is broad relief that should help provide protection, from third-party creditors, for victims of financial abuse whose abusers have stolen their identity and established debt in their names. This will help these victims and their families regain their economic security and help keep them from reunifying with their abusers for financial support.

Are third-party creditors bound by the court's holding? Concern may be raised that a creditor who had no way of knowing that debt was accrued through domestic violence and identity theft is innocent as well and should not be prevented from collecting on credit that it believes it rightfully extended to the survivor. Moreover, it is unfair to bind the creditor by a decision made by the family court in the domestic violence action that the creditor was not a party to.

It is true that a creditor would not necessarily be bound by the family court's decision. Res judicata, or claims preclusion in California, prevents parties from relitigating that same cause of action that has been resolved on the merits in a final judgment. (See *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896.) However, that only applies to a second action involving the *same* parties or those in privity (in a legal relationship) with them. (*Id.* at 897.) Moreover, the issue to be relitigated must be identical to what was resolved in the initial proceedings. (*Pacific Lumber Co. v. State water resources Control Board* (2006) 37 Cal.4th 921, 943.) In any action between the creditor and the survivor to collect on the debt, the creditor will not have been a party to the domestic violence action and very likely not in privity with the abuser (though in some cases, where the creditor is a friend or family member, that may not be true).

Thus, while a survivor may be able to use the finding in a domestic violence restraining order, holding that a debt was accrued as the result of domestic violence and in actuality was identity theft, in the creditor's subsequent action to recover on the debt, the creditor can submit evidence to the court to dispute that finding. The court in the civil action will determine who has the stronger argument, based on a preponderance of the evidence.

It is important to note that the creditor may be well advised not to challenge the survivor unless they have actual evidence supporting their contention that the survivor's debt is not the result of domestic violence and identity theft. Civil Code Section 1798.93 (e) provides that in that civil case, the court may award, in addition to any other damages, a civil penalty of up to \$30,000 if the domestic violence survivor can establish, by clear and convincing evidence, that they provided the creditor with notice of the identity theft, the creditor failed to diligently investigate their notice, and the creditor continued to pursue its claim against them after it was presented with facts that were later held to entitle the survivor to a judgment in the survivor's favor. This is not an insignificant penalty, and may cause creditors to think twice about challenging a family court's findings.

The author has agreed to amendments to delay the effective date of the legislation so that the

Judicial Council has more time to update forms. As currently in print, the bill is effective on July 1, 2021. Before it is effective, the Judicial Council must create or update forms necessary to effectuate the bill. Given the COVID-19 pandemic, the Judicial Council has requested additional time to create or update the forms. The author has agreed to push the effective date of the bill back to January 1, 2022 to give the Judicial Council the extra time it needs, and the following amendment does just that:

On page 2, line 16, delete “July 1, 2021” and insert:

January 1, 2022

The bill is opposed by the title insurance industry unless amended to make a transfer, encumbrance, or conveyance of real property specifically exempt from the restraining orders under the bill. The California Land Title Association (CLTA), which represents the title insurance industry, opposes the bill unless it is amended to specifically prevent a court, as part of a domestic violence order determining the use, possession, and control of real or personal property of the parties, from invalidating a transfer, encumbrance, or conveyance of real property. CLTA explains its concerns with the bill as now in print:

While we support the underlying purpose of the bill, we strongly oppose the bill’s lack of an express provision clarifying that a court could not invalidate a properly executed and recorded lien in issuing a ruling determining the temporary use, possession, and control of real property. Without such a provision, AB 2517 stands to create a new class of victim in the form of adversely affected innocent third parties that have unknowingly engaged in transactions involving real property subject to liens that were incurred in connection with instances of domestic violence. . . .

If lenders are forced to view every loan secured by real property, such as a second mortgage or home equity line of credit, as one that could be potentially invalidated due to acts outside their knowledge, loans could become more difficult or costly to obtain, thereby negatively impacting all California consumers seeking to utilize those funds for various uses, such as home improvements, paying off higher-interest debts, etc.

It is important to keep in mind that a victim of theft, including identity theft, is protected from creditors, whether or not the theft involves real property. The author is working to address CLTA’s concerns, and, should this bill pass the Committee, Committee staff has agreed to help them resolve their issues, if possible, while still ensuring that victims of domestic violence are protected from financial abuse.

ARGUMENTS IN SUPPORT: The bill’s sponsor, The California Partnership to End Domestic Violence, writes in support:

This bill aims to help survivors who have experienced [financial] abuse by establishing some protections the court can use in determining who is responsible for paying off the incurred debt. Currently Domestic Violence Restraining Orders allows judges to assign specific debts to be paid by the restrained party. By adding space for the judge to also identify which debts were incurred as a result of the domestic violence and through theft of the protected party’s identity, the survivor will be able to use the restraining order as proof for civil debt relief under Civil 1798.93 which requires a person to establish a preponderance of the evidence. The COVID-19 pandemic created or deepened economic hardships for

thousands of Californians, including survivors and their families. These economic vulnerabilities put survivors at risk of ending up further in poverty or returning to their abusive partners. Every step we take to improve economic security of survivors will help keep them safe during this already tumultuous time.

Adds the California Low-Income Consumer Coalition:

Financial abuse occurs in the great majority of domestic violence cases and can include stealing money, credit, property, or identity from a partner. It may also include forcing a partner to file fraudulent legal financial documents or overspend on credit cards. Abusive partners can incur debt without a survivor's consent, or coerce a survivor into incurring the debt by threats of harm. This debt and the credit score impact can have long-term consequences for survivors, and create barriers to educational, housing, and employment opportunities. Since these debts are incurred through the abusive partner stealing the survivor's identity, it is important for survivors to have the tools to access existing federal and state protections for identity theft and debt defense.

Enacting this legislation will help survivors who have experienced such abuse by establishing protections the court can use in determining who is responsible for the incurred debt. Currently, Domestic Violence Restraining Orders allow the judge to assign specific debts to be paid by the restrained party. By adding a space for the judge to also identify which debts were incurred because of the domestic violence and through theft of the survivor's identity, the survivor will be able to use the restraining order as documentation for civil debt relief protections under current law, which requires a person to have proof of the abuse. This new regime would also allow survivors to provide the restraining order to creditors to notify them of the identity theft.

REGISTERED SUPPORT / OPPOSITION:

Support

The California Partnership to End Domestic Violence (sponsor)
California Low-Income Consumer Coalition
Casa de Esperanza
Community Resource Center
National Association of Social Workers, California Chapter
Peace Over Violence
Project: PeaceMakers, Inc.
StrengthUnited
Walnut Avenue Family & Women's Center

Opposition

California Land Title Association (unless amended)

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