

ASSEMBLY THIRD READING

AB 2517 (Gloria)

As Amended May 13, 2020

Majority vote

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.

Major Provisions

- 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.

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 Domestic Violence Prevention Act (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.

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% had been physically abuse and 99% 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.

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. (Family Code Section 6324.) The temporary order only lasts 21 days or, if there is good cause, 25 days. (Family Code 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. (Family Code 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. (Family Code 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. (Family Code 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% or even more by Judicial Council estimates) are unrepresented and must try, the best they are able, to seek relief on their own.

According to the Author:

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.

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.

Arguments in Opposition:

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.

FISCAL COMMENTS:

According to the Assembly Appropriations committee, minor and absorbable costs (GF/Trial Court Trust fund) to the courts in additional workload to make findings regarding the origins of specified debt in domestic violence cases and for Judicial Council to modify existing forms.

VOTES:

ASM JUDICIARY: 11-0-0

YES: Mark Stone, Gallagher, Chau, Chiu, Gonzalez, Holden, Kalra, Kiley, Maienschein, Obernolte, Reyes

ASM APPROPRIATIONS: 18-0-0

YES: Gonzalez, Bigelow, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Megan Dahle, Diep, Eggman, Fong, Gabriel, Eduardo Garcia, Petrie-Norris, McCarty, Robert Rivas, Voepel

UPDATED:

VERSION: May 13, 2020

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FN: 0002805