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**SB-975 Debt: coerced debts.** (2021-2022)

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**Senate Bill No. 975**

**CHAPTER 989**

An act to add Title 1.81.35 (commencing with Section 1798.97.1) to Part 4 of Division 3 of the Civil Code, relating to debt.

[ Approved by Governor September 30, 2022. Filed with Secretary of State September 30, 2022. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 975, Min. Debt: coerced debts.

Existing law regulates various practices related to debt, including its sale and collection. Existing law provides for various private rights of action, including for a patient against a psychotherapist for sexual contact, as defined and specified, a peace officer against an individual who has filed a false complaint with the officer's employing agency, as specified, and a person against another for sexual harassment, as defined and specified.

This bill would require a claimant, upon receipt from the debtor of adequate documentation AND a sworn written statement that some or all of the debt being collected is coerced debt, to cease collection activities until the claimant completes a review, as defined and specified. The bill would also prohibit a person from causing another person to incur a coerced debt, and would make a person who causes another person to incur a coerced debt civilly liable to the claimant, as specified. The bill would also create a right of action that would allow a debtor to bring an action or file a cross-complaint against a claimant to establish that a particular debt, or portion thereof, is coerced debt, as specified. If a debtor establishes that a particular debt, or portion thereof, is coerced debt, the bill (1) would entitle that debtor to specified relief, including an injunction prohibiting the claimant from holding or attempting to hold the debtor personally liable on the particular debt, or portion thereof, that is coerced debt, or from enforcing a judgment related to the particular debt, or portion thereof, that is coerced debt against the debtor, and (2) would require the court to issue a judgment in favor of the claimant against any person who coerced the debtor into incurring the debt, as specified. The bill would apply only to debts incurred on or after July 1, 2023, except as specified. The bill would declare that its provisions are severable. The bill would define various terms for these purposes.

This bill would require a sworn written certification to be declared under penalty of perjury. By expanding the scope of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** The Legislature finds and declares all of the following:

- (a) Economic abuse is a serious issue impacting survivors of domestic violence, survivors of elder or dependent adult abuse, and foster youth.
- (b) Coerced or fraudulent debts, a common component of economic abuse, can ruin an individual's credit history and financial stability, including by leaving the individual vulnerable to debt collection, substantial payment expectations, and bankruptcy.
- (c) The debt and poor credit score resulting from economic abuse can have long-term consequences for survivors that create barriers to education, housing, and employment opportunities.
- (d) Fifty-two percent of domestic violence survivors report experiencing coerced and fraudulent debt of over \$10,000 per year.
- (e) In cases of elder abuse, family members and other trusted individuals can use their powerful positions to commit this type of abuse and take out debts through coercion or fraud.
- (f) Youth in foster care are particularly at risk for coercion because the lack of a stable adult presence in their life makes them more vulnerable to human trafficking, homelessness, and other abuse.

**SEC. 2.** Title 1.81.35 (commencing with Section 1798.97.1) is added to Part 4 of Division 3 of the Civil Code, to read:

**TITLE 1.81.35. Coerced Debt**

**1798.97.1.** For purposes of this title, the following definitions apply:

(a) "Adequate documentation" means documentation that identifies a particular debt, or portion thereof, as coerced debt, describes the circumstances under which the coerced debt was incurred, and takes the form of any of the following:

(1) A police report.

(2) A Federal Trade Commission identity theft report identifying a particular debt, or portion thereof, as coerced, but not as identity theft.

(3) A court order issued pursuant to Section 6340 of the Family Code relating to domestic violence, Section 213.5 of the Welfare and Institutions Code relating to a dependent or ward of the juvenile court, or Section 15657.03 of the Welfare and Institutions Code relating to elder or dependent adult abuse.

(4) (A) A sworn written certification from a qualified third-party professional based on information they received while acting in a professional capacity.

(B) The documentation described by subparagraph (A) shall be signed by a qualified third-party professional and display the letterhead, address, and telephone number of the office, institution, center, or organization, as appropriate, that engages or employs, whether financially compensated or not, the qualified third-party professional, or, if the qualified third-party professional is self-employed, the documentation shall display the letterhead, address, and telephone number of the qualified third-party professional.

(b) "Claim" means a right to payment, whether or not that right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, or equitable.

(c) (1) "Claimant" means a person or an entity who has or purports to have a claim against a debtor arising from coerced debt, or that person's or entity's successor or assignee. "Claimant" includes, but is not limited to, a debt collector or a debt buyer.

(2) Notwithstanding paragraph (1), "claimant" shall not include a person who caused the claim described in paragraph (1) to arise through duress, intimidation, threat of force, force, fraud, or undue influence perpetrated against the debtor.

(d) "Coerced debt" means a particular debt, or portion thereof, for personal, family, or household use in the name of a debtor who is a victim of domestic violence, or a victim of elder or dependent adult abuse, or a person who is a foster youth, incurred as a result of duress, intimidation, threat of force, force, fraud, or undue influence.

(1) For purposes of this subdivision, "domestic violence" has the same meaning as in Section 6211 of the Family Code.

(2) For the purposes of this subdivision, "foster youth" has the same meaning as in Section 42238.01 of the Education Code.

(3) For the purposes of this subdivision, "dependent adult" has the same meaning as in Section 15610.23 of the Welfare and Institutions Code.

(4) For the purposes of this subdivision, "elder" has the same meaning as in Section 15610.27 of the Welfare and Institutions Code.

(e) "Debtor" means a person who owes or is otherwise liable for coerced debt.

(f) "Fraud" means an initial fraudulent act that is perpetrated against the debtor.

(g) "Immediate family member" has the same meaning as defined in paragraph (3) of subdivision (h) of Section 1946.7.

(h) "Person" means a natural person.

(i) "Qualified third-party professional" means any of the following:

(1) A domestic violence counselor, as defined in Section 1037.1 of the Evidence Code.

(2) A sexual assault counselor, as defined in Section 1035.2 of the Evidence Code.

(3) A Court-Appointed Special Advocate, as defined in Section 101 of the Welfare and Institutions Code.

(4) A court-appointed attorney, as defined in subdivision (e) of Section 317 of the Welfare and Institutions Code.

(5) A board certified psychiatrist or psychologist.

(6) A licensed marriage and family therapist.

(7) A licensed professional clinical counselor.

(8) A licensed clinical social worker.

(9) A social worker or caseworker employed by an adult protective service agency for the purposes described in Chapter 13 (commencing with Section 15750) of Part 3 of Division 9 of the Welfare and Institutions Code.

(10) A social worker who has completed the child welfare training program described in Article 2 (commencing with Section 16205) of Chapter 3 of Part 4 of Division 9 of the Welfare and Institutions Code.

(j) (1) "Sworn written certification" means a document in which the author declares under penalty of perjury as true any material fact, and which is accompanied by the following, to the extent that an item listed below is relevant to the debtor's allegation that the debt is coerced debt:

(A) A copy of the debtor's driver's license or identification card, as issued by the state.

(B) Any other identification document that supports the statement that the particular debt, or portion thereof, is coerced debt.

(C) An express statement that the debtor did not willingly authorize the use of the debtor's name or personal information for incurring the coerced debt, and specific facts supporting the claim of coerced debt, if available, and, if not all of the debt was coerced, a statement identifying the portion thereof that was coerced.

(D) Any available correspondence disputing the coerced debt after transaction information has been provided to the debtor.

(E) Information, if known by the debtor, including, but not limited to, a credit card number or loan number, that can be used by the claimant to identify the account associated with the coerced debt and the person or persons in whose name the debt was incurred.

(F) The identity of the person or persons who coerced the debtor into incurring the debt and contact information for that person or persons, if known by the debtor, unless the debtor signs a sworn statement that disclosing this information is likely to result in abuse, as defined in Section 6203 of the Family Code, to the debtor or an immediate family member of the debtor.

(G) A telephone number for contacting the person signing the certification concerning any additional information or questions, or direction that further communications to the debtor be in writing only, with the mailing address specified in the statement.

(2) The certification required by this subdivision shall be sufficient if it is in substantially the following form:

"I declare under penalty of perjury that the representations made herein are true, correct, and contain no material omissions of fact.

\_\_\_\_\_(Date and Place)\_\_\_\_\_ (Signature)\_\_\_\_\_ "

**1798.97.2.** (a) A person shall not cause another person to incur a coerced debt. A person who causes another person to incur a coerced debt in violation of this subdivision shall be civilly liable to the claimant for the amount of the debt, or portion thereof, determined by a court to be coerced debt, plus the claimant's attorney's fees and costs.

(b) Upon receipt of both of the following, a claimant shall cease collection activities until completion of the review provided in subdivision (d):

(1) Adequate documentation.

(2) The debtor's sworn written certification that a particular debt, or portion thereof, being collected is coerced debt.

(c) If a debtor notifies a claimant orally that a particular debt, or portion thereof, being collected is coerced debt, the claimant shall notify the debtor, orally or in writing, that the debtor's notification must be in writing. If a debtor notifies a claimant in writing that a particular debt, or portion thereof, being collected is coerced debt, but omits information required by subdivision (b), and if the claimant does not cease collection activities, the claimant shall provide written notice to the debtor of the additional information that is required.

(d) (1) Within 10 business days of receiving the complete statement and information described in subdivision (b), the claimant shall, if the claimant furnished adverse information about the debtor to a consumer credit reporting agency, notify the consumer credit reporting agency that the account is disputed.

(2) The claimant shall initiate a review considering all of the information provided by the debtor and other information available to the claimant in its file.

(3) Within 10 business days of completing the review, the claimant shall notify the debtor in writing of the claimant's determination and the good faith basis for that determination.

(4) The claimant shall not recommence collection activities until the debtor has been notified in writing of the good faith determination that the information does not establish that the particular debt, or portion thereof, is coerced debt.

(e) No inference or presumption that the debt is valid or invalid, or that the debtor is liable or not liable for the particular debt, or portion thereof, shall arise if the claimant decides after the review described in subdivision (d) to cease or recommence collection activities. The exercise or nonexercise of rights under this section is not a waiver of any other right or defense of the debtor or claimant.

(f) (1) At least 30 days before filing an action pursuant to paragraph (2) of subdivision (a) of Section 1798.97.3 or other action against a claimant in connection with an allegedly coerced debt, a debtor shall submit notice of the debtor's intent to file an action against the claimant and documents that comply with subdivision (b) in writing to the claimant.

(2) The written notice described in paragraph (1) shall be sent by certified mail, overnight delivery, or other method that allows for confirmation of the delivery date.

(3) The written notice described in paragraph (1) shall be sent to an address made available to the debtor by the claimant for receipt of the notice, or, if an address has not been identified by the claimant, to the claimant's principal place of business as identified by the Secretary of State. If an address is unavailable through the Secretary of State's website, the debtor may use the correspondence address of the claimant, or in the case of a debt collector, the address on file with the Department of Financial Protection and Innovation for licensing purposes.

(4) (A) The debtor shall not commence an action described in subdivision (a) of Section 1798.97.3 or other action against a claimant in connection with an allegedly coerced debt if the claimant informs the debtor that it has ceased all efforts to collect on the particular debt, or portion thereof, identified in the written notice pursuant to paragraph (1) and the debtor receives written notice of this cessation before the expiration of the 30-day period.

(B) The debtor may commence an action described in subdivision (a) of Section 1798.97.3 or other action against a claimant in connection with an allegedly coerced debt if either of the following conditions is satisfied:

(i) The 30-day period described in paragraph (1) expires and the collection activities have not ceased or the debtor has not received written notice that collection activities have ceased.

(ii) The debtor receives written notice pursuant to paragraph (4) of subdivision (d) of the claimant's good faith determination that the information does not establish that the particular debt, or portion thereof, is coerced debt.

(5) For purposes of this subdivision, the 30-day period shall begin to run when the claimant receives the written notice.

(g) A claimant that ceases collection activities under this section and does not recommence those collection activities shall do both of the following:

(1) If the claimant has furnished adverse information to a consumer credit reporting agency regarding the debtor and a particular debt, or portion thereof, notify the agency to delete that information no later than 10 business days after making its determination.

(2) If the claimant is a debt collector, notify the creditor no later than 10 business days after making its determination that collection activities have been terminated based upon the debtor's assertion that a particular debt, or portion thereof, being collected is coerced debt.

(h) A claimant that has possession of documents that the debtor is entitled to request from a creditor pursuant to Section 530.8 of the Penal Code may provide those documents to the debtor.

**1798.97.3.** (a) (1) A debtor may bring an action against a claimant to establish that a particular debt, or portion thereof, is coerced debt.

(2) In an action brought by a claimant to recover a particular debt against the debtor, the debtor may file a cross-complaint to establish that the particular debt, or portion thereof, is coerced debt. The notice described in subdivision (f) of Section 1798.97.2 shall not be required as a prerequisite to filing a cross-complaint.

(3) A debtor shall plead the allegations of coerced debt with particularity and shall do either of the following:

(A) Attach the documents provided to the claimant pursuant to subdivision (b) of Section 1798.97.2 to any complaint.

(B) Attach the documents identified in subdivision (b) of Section 1798.97.2 to any cross-complaint.

(b) If the debtor establishes by a preponderance of the evidence in an action described in subdivision (a) that the particular debt, or portion thereof, is coerced debt, the debtor shall be entitled to the following relief:

(1) A declaratory judgment that the debtor is not obligated to the claimant on the particular debt, or portion thereof, that is coerced debt.

(2) An injunction prohibiting the claimant from holding or attempting to hold the debtor personally liable on the particular debt, or portion thereof, that is coerced debt, and prohibiting the claimant from enforcing a judgment related to the particular debt, or portion thereof, that is coerced debt against the debtor.

(3) An order dismissing any cause of action brought by the claimant to enforce or collect on the particular debt from the debtor or, if only a portion of the debt is established as coerced debt, an order directing that the complaint and judgment, if any, in the action be amended to reflect only the portion of the particular debt that is not coerced debt.

(c) (1) If the debtor establishes by a preponderance of the evidence in an action described in subdivision (a) that the particular debt, or portion thereof, is coerced debt, the court shall issue a judgment in favor of the claimant against the person or persons who coerced the debtor into incurring the debt in the amount of the debt, or portion thereof, that is coerced debt, provided that the person or persons who coerced the debtor into incurring the debt or debts has been brought within the jurisdiction of the court and joined as a party to the action and the evidence supports such a judgment.

(2) The court presiding over the action shall take appropriate steps necessary to prevent abuse, as defined in Section 6203 of the Family Code, of the debtor or an immediate family member of the debtor, including, but not limited to, sealing court records, redacting personally identifiable information about the debtor and any immediate family member of the debtor, and directing that any deposition or evidentiary hearing be conducted remotely.

(d) A debtor who files knowingly false motions, pleadings, or other papers or engages in other tactics that are frivolous or intended to cause unnecessary delay against a claimant shall be liable for the claimant's attorney's fees and costs in defending the lawsuit.

(e) The claimant may move the court to make written findings regarding evidence related to the person who caused the coerced debt to be incurred.

(f) Where some or all of a claim is established as having arisen from coerced debt, a claimant shall have standing, and may use all rights and remedies, to collect by any lawful means that claim, or portion thereof, from the person or persons determined to have coerced the debt, or against a person who used or possessed money, goods, services, or property obtained through coerced debt.

(g) The statute of limitations for a claimant to bring an action to collect coerced debt from any person determined to have coerced the debt shall run from the date of the court's determination that the person caused the duress, intimidation, threat of force, force, fraud, or undue influence giving rise to the coerced debt at issue and shall be brought within five years of that determination.

**1798.97.4.** (a) This title does not apply to secured debts.

(b) This title does not require a court to order a claimant to refund any moneys already paid on a debt that is determined to be coerced.

(c) This title does not diminish the rights of a claimant to recover payment for a coerced debt from the person or persons who coerced a debtor into incurring that debt.

(d) This title does not reduce or eliminate any other rights or defenses available to a debtor or claimant pursuant to any other law.

**1798.97.5.** (a) Except as set forth in subdivision (b), this title applies only to debts incurred on or after July 1, 2023.

(b) Notwithstanding subdivision (a), a debtor may file a cross-complaint described by paragraph (2) of subdivision (a) of Section 1798.97.3 in an action filed by a claimant to collect a debt incurred prior to July 1, 2023, in which case, this title applies to that action, unless a final judgment has been entered in that action.

**1798.97.6.** If any provision of this title or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this title that can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

**SEC. 3.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.