

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 727 (Limón)
Version: February 17, 2023
Hearing Date: May 2, 2023
Fiscal: No
Urgency: No
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SUBJECT

Human trafficking: civil actions

DIGEST

This bill authorizes a plaintiff in an action arising from human trafficking to seek a finding that specific debts were incurred as the result of the trafficking and without the consent of the plaintiff.

EXECUTIVE SUMMARY

Current state law lays out the elements of the crime of human trafficking. Generally requiring a finding that a person deprived or violated the personal liberty of another with specified intent.

Oftentimes, a victim of human trafficking is subjected to economic abuse by the trafficker, incurring and leaving behind a sea of debts in the victim's name. In order to assist victims to overcome the effects of this abuse, this bill authorizes plaintiffs in the civil actions described above to seek from the judge a finding that specific debts were incurred without their consent and as a result of human trafficking. The bill identifies a number of acts that support such a finding, including the unauthorized use of the personal identifying information of the victim to obtain credit or goods or services without the victim's consent. The bill clarifies that such a finding does not affect the priority of any lien or other security interest.

This bill is sponsored by Western Center on Law and Poverty. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Authorizes a victim of human trafficking, as defined, to bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. A prevailing plaintiff may also be awarded attorney's fees and costs. The plaintiff may also be awarded up to three times their actual damages or \$10,000, whichever is greater. In addition, punitive damages may be awarded upon proof of the defendant's malice, oppression, fraud, or duress in committing the act of human trafficking. (Civ. Code § 52.5.)
- 2) Requires that the above action be commenced within seven years of the date on which the trafficking victim was freed from the trafficking situation or, if the victim was a minor when the act of human trafficking against the victim occurred, within 10 years after the date the plaintiff attains the age of majority, except as specified. (Civ. Code § 52.5.)
- 3) Establishes the Rosenthal Fair Debt Collection Practices Act to prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts and to require debtors to act fairly in entering into and honoring such debts. (Civ. Code § 1788 et seq.)
- 4) Requires a debt collector to cease collection activities until completion of a review upon receipt of specified documentation. (Civ. Code § 1788.18.)
- 5) Establishes the Consumer Credit Reporting Agencies Act. The Act prohibits creditors from selling a consumer debt to a debt collector if the consumer is a victim of identity theft, as defined, and with respect to that debt, the creditor has received notice, as provided. (Civ. Code § 1785.1 et seq.)
- 6) Authorizes a victim of identity theft to obtain a civil judgment establishing they are not the person liable for specified debts incurred as a result, enjoining attempts to collect on such debts from the victim, and awarding damages, civil penalties, and attorneys' fees for collection actions when the victim gave written notice of the judgment to the creditor that their identity had been stolen, as provided. (Civ. Code § 1798.93 (Section 1798.93).)
- 7) Authorizes a court to issue an order determining the use, possession, and control of real or personal property of the parties during the period a domestic violence prevention order is in effect and the payment of any liens or encumbrances coming due during that period. The order may include a finding that specific

debts were incurred as the result of domestic violence and without the consent of a party. (Fam. Code § 6342.5.)

- 8) Establishes the Rosenthal Fair Debt Collection Practices Act to prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts and to require debtors to act fairly in entering into and honoring such debts. (Civ. Code § 1788 et seq.)
- 9) Requires a debt collector to cease collection activities until completion of a review upon receipt of specified documentation. (Civ. Code § 1788.18.)
- 10) Establishes the Consumer Credit Reporting Agencies Act. The Act prohibits creditors from selling a consumer debt to a debt collector if the consumer is a victim of identity theft, as defined, and with respect to that debt, the creditor has received notice, as provided. (Civ. Code § 1785.1 et seq.)
- 11) Authorizes a victim of identity theft to obtain a civil judgment establishing they are not the person liable for specified debts incurred as a result, enjoining attempts to collect on such debts from the victim, and awarding damages, civil penalties, and attorneys' fees for collection actions when the victim gave written notice of the judgment to the creditor that their identity had been stolen, as provided. (Civ. Code § 1798.93 (Section 1798.93).)
- 12) Authorizes a court to issue an order determining the use, possession, and control of real or personal property of the parties during the period a domestic violence prevention order is in effect and the payment of any liens or encumbrances coming due during that period. The order may include a finding that specific debts were incurred as the result of domestic violence and without the consent of a party. (Fam. Code § 6342.5.)
- 13) Requires a claimant to cease collection activities, as provided, and undertake a review of the relevant debt, if a debtor provides a sworn certification that the particular debt is a "coerced debt" and submits "adequate documentation." (Civ. Code § 1798.97.2.)
- 14) Defines "coerced debt" as 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. (Civ. Code § 1798.97.1.)
- 15) Defines "adequate documentation" as documentation that identifies a particular debt, or portion thereof, as coerced debt, describes the circumstances under

which the coerced debt was incurred, and is one of a specified set of documentation. (Civ. Code § 1798.97.1.)

- 16) Authorizes an alleged debtor to bring an action against an alleged creditor to establish that the alleged creditor's claim arises from a coerced debt. In an action brought by an alleged creditor to recover a claim against the alleged debtor, the alleged debtor may file a cross-complaint against the alleged creditor to establish that the claim is a coerced debt. (Civ. Code § 1798.97.3.)
- 17) Requires an alleged debtor to plead the allegations of coerced debt with particularity and to attach adequate documentation and a sworn written certification to the complaint or cross-complaint, as provided. (Civ. Code § 1798.97.3.)
- 18) Authorizes a claimant to move the court to make written findings regarding evidence related to the person who caused the coerced debt to be incurred. (Civ. Code § 1798.97.3.)
- 19) Provides that if the debtor establishes by a preponderance of the evidence 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. (Civ. Code § 1798.97.3.)
- 20) Prohibits a person from causing another person to incur a coerced debt. A person in violation 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. (Civ. Code § 1798.97.2.)
- 21) Allows a creditor to collect against others and use all rights and remedies against a person who caused a coerced debt or against a person who benefited from a coerced debt, as provided. (Civ. Code § 1798.97.3.)
- 22) Exempts from the above provisions secured debts. (Civ. Code § 1798.97.3.)

This bill:

- 1) Authorizes a plaintiff in an action for damages resulting from human trafficking, to seek from the judge a finding that specific debts were incurred as the result of trafficking and without the consent of the plaintiff.

- 2) Provides that the acts that may support this finding include, but are not limited to, the crimes proscribed by Section 530.5 of the Penal Code.
- 3) Clarifies that a finding shall not affect the priority of any lien or other security interest.

COMMENTS

1. Human trafficking

Human trafficking is the world's fastest growing criminal enterprise, bringing in annual profits in the tens of billions of dollars. Human trafficking is generally defined as the use of force, coercion, or fraud to obtain coerced labor or personal services. Existing law provides that any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services is guilty of the crime of human trafficking.

The International Labour Organization estimates that approximately 40 million people were victims of some form of human slavery worldwide in 2016.¹ This includes 24.9 million in forced labor, meaning they were being "forced to work under threat or coercion as domestic workers, on construction sites, in clandestine factories, on farms and fishing boats, in other sectors, and in the sex industry." Over 70 percent of these victims were women and girls and 1 in four victims were children. In their 2019 Data Report, the U.S. National Human Trafficking Hotline (NHTH) identified over 22,000 victims and survivors and over 4,300 traffickers.²

The U.S. State Department has estimated that the incidence of human trafficking and slavery has only gotten worse during the COVID-19 pandemic:

The economic and social distress generated by the pandemic and related mitigation efforts exacerbated risks for vulnerable and marginalized populations. These included women and children, people affected by travel restrictions and stay-at-home orders, communities in areas of food insecurity, and survivors of trafficking, as well as persons directly and indirectly affected by the disruption of economic activities and reduced livelihood options. Due to school closures, some children lacked access to education, shelter, and/or food. Survivors of trafficking faced an

¹ *Global Estimates of Modern Slavery* (2017) International Labour Organization, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf. All internet citations are current as of April 24, 2023.

² *2019 Data Report*, U.S. National Human Trafficking Hotline, <https://humantraffickinghotline.org/sites/default/files/Polaris-2019-US-National-Human-Trafficking-Hotline-Data-Report.pdf>.

increased risk of potential re-victimization due to financial and emotional hardships during the crisis.³

Traffickers look for people who are susceptible for a variety of reasons, including psychological or emotional vulnerability, lack of a social safety net, natural disasters, political instability, or economic hardship.

Relevant here, the financial distress of these victims only gets worse. As the federal Consumer Financial Protection Bureau (CFPB) describes it:

While being trafficked, many victims suffer from financial abuse, which is a common tactic used by traffickers to further exploit victims. Survivors and support organizations report that traffickers employ financial abuse as a means to earn money and as a method of control. After destroying their victims' credit history and racking up charges in their names, traffickers know their victims will be unable to rent an apartment, purchase a car to go to work, or even find a job with a living wage.

The consequences of financial abuse often follow survivors as they attempt to rebuild their financial lives.⁴

The CFPB details the potential consequences:

- **Unemployment, costly insurance, and limited housing options.** [Credit reporting agencies (CRA)] collect consumers' credit information, including payment histories, debt loads, maximum credit limits, names and addresses of current creditors, and other elements of credit relationships. Consumer reports can inform a company's decision about whether to make a job offer, an insurance company's decision on whether to provide insurance and at what cost, a bank's mortgage or a landlord's rental decision, and even a utility company's decision on whether to require a deposit before turning on the lights. Negative information on credit reports, regardless of validity or accuracy, can severely limit survivors' abilities to rebuild their lives.
- **Bills, charges, and expensive credit lines.** Survivors are often left with the bills and charges racked up by traffickers in survivors' names and on their accounts. In addition to having to manage the actual bills and charges, if outstanding bills and charges are reported to CRAs, survivors can face prohibitively high costs to access the credit essential to restoring their financial stability.

³ *Trafficking in Persons Report* (June 2021) United States Department of State, <https://www.state.gov/wp-content/uploads/2021/09/TIPR-GPA-upload-07222021.pdf>.

⁴ CFPB *Seeks to Halt Negative Credit Reporting for Survivors of Human Trafficking* (Apr. 7, 2022) CFPB, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-seeks-to-halt-negative-credit-reporting-for-survivors-of-human-trafficking/>.

Signed into law in December 2021, the Debt Bondage Repair Act prohibits CRAs from providing consumer reports that contain negative information about a survivor of trafficking from any period the survivor was being trafficked. The CFPB issued rules to prevent CRAs from including negative information resulting from abuse; CFPB Director Rohit Chopra explained: “As survivors of human trafficking go through the recovery process, they shouldn't be penalized for abuse they have endured. The CFPB's proposal will help ensure that survivors can work to rebuild their lives, including accessing credit, opening a bank account, and finding a job.”⁵

This bill seeks to similarly assist survivors of human trafficking as they look to deal with the financial fallout of being trafficked.

2. Rebuilding survivors' lives

Section 236.1 of the Penal Code lays out the elements of the crime of human trafficking. The law provides that a person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services or to carry out a violation of specified crimes against children, is guilty of human trafficking.

In order to provide victims of such trafficking the ability to make themselves whole, Section 52.5 of the Civil Code provides them a cause of action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. Section 52.5 further authorizes a plaintiff to be awarded up to three times the plaintiff's actual damages or \$10,000, whichever is greater. A prevailing plaintiff may also be awarded attorney's fees, costs, and punitive damages.

This bill provides another level of protection for these victims by authorizing them to seek a finding that specific debts were incurred as a result of trafficking and were incurred without the victim's consent.

According to the author:

Economic coercion plays a significant role in human trafficking. Individuals who experience coerced debt commonly face years of debt repayment, financial and housing instability, and even poverty. SB 727 will help break this cycle of abuse by establishing crucial consumer and credit protections for human trafficking survivors who have been coerced into taking on debt without their consent. The bill prohibits creditors and debt collectors from collecting this debt. By recognizing coerced debt as abuse, we can further define control over finances as being central to autonomy, safety and security.

⁵ *Ibid.*

This follows related legislation that has focused on victims of financial abuse. Similar language to this bill is found in AB 2517 (Gloria, Ch. 245, Stats. 2020). AB 2517 authorizes courts 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 and without the consent of the victim. In addition, AB 1243 (B. Rubio, Ch. 273, Stats. 2021) provides that restraining orders for elder or dependent adults may include certain remedies related to financial abuse or isolation, including a finding that specific debts were incurred as a result of financial abuse.

Last year, SB 975 (Min, Ch. 989, Stats. 2022) created a non-judicial process for addressing a debt incurred in the name of a debtor through duress, intimidation, threat, force, or fraud of the debtor's resources or personal information for personal gain. SB 975 authorizes a cause of action through which a debtor can enjoin a creditor from holding the debtor personally liable for such "coerced debts" and a cause of action against the perpetrator in favor of the claimant.

SUPPORT

Western Center on Law & Poverty (co-sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 278 (Dodd, 2023) provides that a person who assists in taking, secreting, appropriating, obtaining, or retaining property for a wrongful use has committed financial abuse, if the person knew or should have known that this conduct is likely to be harmful to an elder or dependent adult. SB 278 is set to be heard in this Committee the same day as this bill.

Prior Legislation:

SB 975 (Min, Ch. 989, Stats. 2022) *See* Comment 2.

AB 2553 (Grayson, 2022) would have established the California Multidisciplinary Alliance to Stop Trafficking Act to review collaborative models between governmental and nongovernmental organizations for protecting victims and survivors of trafficking, among other related duties. AB 2553 died in the Senate Appropriations Committee.

SB 373 (Min, 2021) would have prohibited a debt collector from collecting or attempting to collect a consumer debt if the consumer provides documentation, as specified, to the debt collector that the debt, or any portion of the debt, is the result of economic abuse,

as defined. The bill would have prohibited a debt collector from requiring a court order or a police report to prove that the debt is the result of economic abuse. This bill died in the Senate Banking and Financial Institutions Committee.

AB 430 (Grayson, Ch. 265, Stats. 2021) allowed the use of a Federal Trade Commission identity theft report, in lieu of a police report, when a victim of identity theft seeks civil protections pursuant to the Rosenthal Fair Debt Collection Practices Act, the Identity Theft Law, and the Penal Code, as specified.

AB 1243 (B. Rubio, Ch. 273, Stats. 2021) *See* Comment 2.

SB 1141 (Rubio, Ch. 248, Stats. 2020) codifies and elaborates on case law defining when a restraining order under the Domestic Violence Prevention Act may be issued because a person was “disturbing the peace of the other party,” which includes coercive control.

AB 2517 (Gloria, Ch. 245, Stats. 2020) *See* Comment 2.
