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PERSPECTIVE

New California legislation to extend bankruptcy like protections to domestic violence victims

By Alphonse Provinziano

A new California law taking effect this year will help domestic violence victims who are being financially controlled escape their abusers through a process-like-bankruptcy, without hurting their credit history. Senate Bill 975 will help extend the kinds of protection from creditors typically offered in bankruptcy court to verified victims of domestic violence, allowing them to get debt wiped out and reassigned to the abuser.

Victims are often trapped in abusive relationships due to their financial situation. Some do not have their own income or savings accounts, much less the credit history needed to rent a place or borrow money to start over. In some cases, abusers go even farther – signing up for credit cards in the victim's name and racking up debt in order to make it harder for them to leave or as revenge for the end of a relationship.

Under current law, victims have little recourse other than filing for Chapter 7 bankruptcy, which destroys their credit.

Abusers get away with this tactic because the law presumes that married couples are working together. But the Senate proposal puts this behavior on par with the trustee of an estate or other financial decision-maker who has broken their fiduciary duties through reckless or self-interested behavior.

There are some common-sense limits in the bill to prevent misuse, including a five-year statute of limitations.

The debtor must be a victim of domestic violence, dependent adult or elder abuse or foster youth, and the debt incurred as a result of duress, intimidation, threat of force, force, fraud, or undue influence. It must be documented by a police or FTC report, court order, or sworn statement by a qualified professional such as a social worker, psychiatrist, or court-appointed counselor.

The debt protections also do not affect secured debt, such as mortgages on homes. Senate Bill 975 will give victims several rights, including suspension of collections while a review is conducted of the debt, undergoing a process to establish that the debt is coerced, and a cross-complaint against any debt collection action to establish that the debt is coerced.

If the court determines that it is coerced debt, other remedies include getting attorneys' fees paid by an abuser who knowingly filed false motions, requiring the abuser to pay the debt, and requiring any third party who benefited from the coerced debt to repay creditors. Victims could also seek declaratory relief by having the court enter into its record certain facts related to the debt.

When it goes into effect later this year, this new bill will dramatically reshape California's legal landscape for victims of domestic violence who have faced financial hardship as they seek to take back control over their lives. It will also reduce the incentives in place for abusers to attempt to punish their victims for leaving, or taking on debt they previously thought they wouldn't have to repay. Lastly, the bill will provide a clear and straightforward process to ensure creditors aren't hurt in the process.

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