Written Testimony in Opposition to Kansas House Bill 2754

Submitted by Larry N. Zimmerman, Kansas Credit Attorney Association, Topeka, KS

Dear Rep. Humphries, Rep. Williams, Rep. Osman, and members of the House Committee on Judiciary,

I am writing to you on behalf of the Kansas Credit Attorney Association and our clients to express opposition to HB 2754 as currently written.

We support the goal of assisting victims of financial coercion and would be supportive of modifications which address significant issues resolved in other states.

Some of the issues with the current version before you include:

Statement of Coerced Debt (Notice) – Page 2, Lines 14-15

The triggering event – a "statement of coerced debt" – is vague event. A mere oral statement triggers a host of serious consequences under the bill and there is no clarity about where and how a written statement should be delivered. (Page 2, Lines 14-15)

> By contrast, Connecticut statute Sec. 36a-651 requires the statement to be in writing, attested penalty of perjury, and delivered by certified mail or delivery allowing confirmation of the date the statement is received.

The added precision of the Connecticut model better suits the significant consequences triggered and provides a documented notice date.

Adequate Documentation/Qualified Third Parties – Page 1, Lines 21-34 & Page 3, Lines 4-13

Adequate documentation of coerced debt under this bill may include unreviewed statements (Federal Trade Commission identity theft reports) or statements from unlicensed and unregulated persons. (This deviates significantly from an existing Kansas statute extending similar protections to victims in the Landlord Tenant Act in K.S.A. 58-25,137(c)(1).

> In the Connecticut statute, Sec. 26a-649(10), the qualified third parties must be licensed by the state mirroring similar protections in the Kansas Landlord Tenant Act.

This added accountability increases the confidence in attestations of these parties acting on behalf of debtors and provides robust protections to the debtors.

Time Frame – Page 3, Lines 27-43 and Page 4, Lines 1-21

The proposed bill sets unmanageable timelines creditors and courts. For example, the bill requires dismissal of a court action within 10 days and prohibits any investigation of claims. However, dismissal of an action under K.S.A. 60-241 is discretionary with the court.

> Connecticut statute, Sec. 36a-651, follows a more common fraud trigger rule. Upon receipt of notice from a domestic violence victim, the creditor must, within 10 days, suspend collection efforts for a period of up to sixty days or until it completes an independent investigation. Within 10 days of completion of its investigation, the creditor must then notify the debtor of its determination and the basis for that determination.

This modification provides a more manageable timeline and allows a good faith investigation into a claim of coerced debt. Such investigation is required by courts, by agreements with credit reporting agencies, and for compliance with other federal and state statutes and regulations.

Creditor Definitions – Page 2, Line 15

The requirements imposed by this bill and discussed in the Time Frame section apply to collection agencies despite an agency being merely an agent to the creditor. As an agent, the collection agencies have no legal authority to take the steps demanded.

> Connecticut statute Sec. 36a-649 still includes collection agencies but the fraud investigation timeline is familiar and provides opportunity for communication and resolution between the agency and its client and allows the client to direct action.

A collection agency simply does not have the contractual authority to take the steps demanded of it under this proposed bill.

New Claims and a New Cottage Litigation Industry – Page 5, Lines 20-35

This bill purports to shift liability on a contract from the signor to an alleged perpetrator of coerced debt. The bill allows no investigation of the claims and provides for no adjudication that the accused is an actual perpetrator. No creditor can take the risk in bringing such a claim under the current legal and regulatory framework of Kansas or federal law. This bill actually results in a complete, non-adjudicated discharge of a debt as to the debtor and an accused perpetrator.

This bill also creates a new cottage industry for lawyers seeking maximum recovery for little effort. Compliance with the bill's demands are functionally impossible so any claim of coerced debt will result in litigation and payouts regardless of a creditor's best efforts.

> The Connecticut variant in Sec. 36a-651 provides protections for a debtor going forward but does not create a new cottage industry for lawyers nor does it protect perpetrators with the same vigor as it does victims.

Conclusion

We support efforts to protect victims of domestic violence but believe the current version of the bill is inadequate to provide that protection. We oppose passage of HB 2754 in its current form.

While we do not suggest a wholesale amendment to mirror Connecticut's, we present that version here as an example of victim protections can be workable and effective.