

SUBJECT: Amending protections for certain victims of identity theft

COMMITTEE: Pensions, Investments & Financial Services — committee substitute recommended

VOTE: 8 ayes — Capriglione, Lambert, Bhojani, Bryant, Frazier, Plesa, VanDeaver, Vo

0 nays

1 absent — Leo-Wilson

WITNESSES: For — Krista Del Gallo, Texas Council on Family Violence; Brittany Kinsey (*Registered, but did not testify*: Ann Baddour, Briana Gordley, Texas Appleseed)

Against — (*Registered, but did not testify*: Craig Noack, Texas Creditors Bar Association)

On — Paul Nagy, Amrow Resources Corporation; Christy Bussey, Independent Bankers Association of Texas; Bronwyn Blake, Texas Advocacy Project; Angela Littwin (*Registered, but did not testify*: Melodie Durst, Credit Union Coalition of Texas)

BACKGROUND: Some have suggested providing enhanced access to identity theft protection for victims of family violence, human trafficking, and people with disabilities would help victims leave abusive situations and secure employment.

DIGEST: CSHB 4641 would prohibit a creditor, debt collector, or third-party debt collector from attempting to collect a consumer debt or a portion of a consumer debt if the consumer provided:

- a criminal complaint alleging the commission of the offense relating to the fraudulent use or possession of identifying information for which the consumer was a victim, accompanied by

- a statement identifying the consumer debt or the portion of consumer debt that resulted from the offense;
- a court order declaring the consumer a victim of identity theft; or
- if the consumer was a victim of family violence, a victim of human trafficking, or a person with a disability, an affidavit or unsworn declaration declaring the consumer a victim of identity theft.

An unsworn affidavit would have to include a statement that the consumer was a victim of identity theft, documentation verifying the consumer's identity, and a copy of the Federal Trade Commission identity theft victim's report, completed, signed, and filed by the consumer containing certain supporting documentation related to the victim.

A creditor, debt collector, or third-party debt collector who received notice that a consumer debt was a result of identity theft from a victim of identity theft would be required to cease efforts to collect the disputed debt, and send to each person who had received a report relating to the debt that the debt was disputed. Additionally, the above named collectors could not sell or transfer the debt, and could, if the disputed debt or disputed portion of the debt was secured by tangible personal property, enforce the security interest but could not collect or seek to collect any deficiency.

If a creditor, debt collector, or third-party debt collector had a good faith reason to believe that a consumer had disputed a consumer debt based on a misrepresentation that the consumer was a victim of identity theft, the creditor, debt collector, or third-party debt collector could file suit to collect the debt from the consumer, unless the alleged perpetrator of identity theft was named.

In a suit the creditor, debt collector, or third-party debt collector would have to show by clear and convincing evidence that the consumer was not a victim of identity theft and if the consumer prevailed, pay the consumer's court costs, attorney's fees, and damages.

The bill would not apply to consumer debt that was a home loan.

The bill would take effect September 1, 2023.