



Legal Strategies to Address Coerced Debt in Texas

Part 1

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Presentation Overview

1. Definition of coerced debt
2. Definition of identity theft in Texas
3. How to pull a credit report to get information about ID theft or coerced debt
4. Utilizing Texas Business & Commerce Code Chapter 521 to get an ID theft order

What is coerced debt?

“Any non-consensual credit-related transaction that occurs within an abusive intimate relationship.”

On average, survivors incur \$15,936 in coerced or fraudulent debt in each year. (FreeFrom survey)

Credit Related Transactions:

- Credit cards
- Auto loans
- High-cost loans (payday/title)
- Utilities
- Student loans
- Mortgages
- Other



Coerced debt

Occurs when the abuser in a violent or coercive relationship obtains credit in the victim's name via **fraud** or **duress**

Coerced debt

Enabled by the **growth** of
consumer credit and corresponding
depersonalization of the credit system

3 Effects of Coerced Debt



Financial Dependence



Credit Report Problems



Financial Hardship

Definition of ID theft in Texas

Identity theft under Texas Criminal law:

- Section 32.51(b), Texas Penal Code:
 - (b) A person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of:
 - (1) identifying information of another person without the other person's consent or effective consent;

What Is Effective Consent?

Texas Penal Code Sec. 1.07. DEFINITIONS.

(a) In this code:

(19) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by force, threat, or fraud;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable decisions; or

(D) given solely to detect the commission of an offense.

Texas Penal Code §32.31

Credit Card or Debit Card Abuse

- An offense is a state jail felony, unless committed against the elderly (felony in the third degree)
- TPC §32.31(b) lists different offenses. Most common in coerced debt scenarios is (b)(1)(A):
 - with intent to obtain a benefit fraudulently, he presents or uses a credit card or debit card with knowledge that the card has not been issued to him and is not used with the effective consent of the cardholder

Definition of Identity Theft in Texas Business and Commerce Code Ch. 521

Sec. 521.051. UNAUTHORIZED USE OR POSSESSION OF PERSONAL IDENTIFYING INFORMATION.

(a) A person may not obtain, possess, transfer, or use personal identifying information of another person without the other person's consent or effective consent and with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person's name.

(a-1) For purposes of this section, "effective consent" includes consent given by a person legally authorized to act on behalf of the person from whom consent is required. Consent is not effective if:

- (1) induced by force, threat, fraud, or coercion; or
- (2) given by a person who by reason of youth, mental illness, or intellectual disability is known by the actor to be unable to make reasonable decisions.



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All about credit reports

Getting your reports

You can get a free report once every 12 months from each of the three nationwide consumer credit reporting companies. That means if you order a report from one of the companies on March 1, you can't get another report from the same company until March 2 next year.

To ask for your report online:

You can ask for your free credit report from <https://www.AnnualCreditReport.com>. Make sure you are on this site before ordering your report. This is the official site, authorized by the Federal government, for you to get your free reports. You usually can get your report immediately by ordering online.

You may also ask for your report by phone or mail, but it may take up to 15 days for you to get it.

To ask for your report by phone:

- Call 1-877-322-8228
- You will go through a simple verification process over the phone.

To ask for your report by mail:

- Download the [request form](#) (You need an Adobe viewer to view the requested form. Download the free [Adobe viewer](#))
- Print and complete the form

Mail the completed form to:

Annual Credit Report Request Service
P.O. Box 105281
Atlanta, GA 30348-5281

For more information visit www.consumerfinance.gov/askcfpb/311/how-do-i-get-a-copy-of-my-credit-report.html

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2

Review Accounts

Assess for fraud:

“Do you recognize this account?”

“No” indicates possible fraud

“Describe the circumstances surrounding the opening of this account?”

Listen / asses for fraudulent activity, such as him using her personal info to open account



2

Review Accounts

Assess for fraud with use of revolving credit:

“Has X ever used this account without you knowing?”

“Yes” indicates possible fraud



2

Review Accounts

Assess for coercion:

“Describe the circumstances leading up to the opening of this account?”

“Did X have any influence on your decision to open this account?”

If yes: “What do you think would happen if you said no?”

Listen / assess for threat of harm for non-compliance



2

Review Accounts

Assess for coercion with use of revolving credit:

“Has X ever pressured you to use or let him use this account when you didn’t want to?”

If yes: *“What do you think would happen if you said no?”*

Listen / assess for threat of harm for non-compliance



3

Discuss Other Debt

Assess for debt not on credit report:

“Often we have debt that is not on the credit report. Sometimes a debt that would normally be on a credit report doesn’t show up because the system isn’t perfect. Also, there are some types of debts that just don’t appear on credit reports, such as payday loans or rental centers. Do you owe money to any of other people/places?”



If “yes,” repeat relevant questions from Step 2 to assess for fraud and coercion

Ch. 521 of the Texas Business and Commerce Code

- Holistic relief: ID theft victim can get an order declaring her to be an identity theft victim. Helps victims who need to remove their identity from fraudulent public records and/or who have received no cooperation from creditors in removing their identity from fraudulent accounts.
- A police report (criminal complaint alleging commission of an offence under TPC 32.51) is supporting evidence in these cases.

Texas Identity Theft Enforcement & Protection Act

Texas Business & Commerce Code Chapter 521

- §§ 521.001-521.002
 - defines: PII, sensitive PII, and IDT victim;
- §§ 521.051-521.053
 - defines IDT
 - imposes duty on businesses to protect SPII
 - data breach notification
- §§ 521.101-521.105
 - Court order declaring person to be an IDT victim
- §§ 521.151-521.152
 - AG enforcement
 - DTPA tie in

Texas – PII & Sensitive PII

- “Information that alone or in conjunction with other information identifies an individual . . .”
- Sensitive PII is “a person’s first name or first initial and last name combined with unencrypted information” . . .” that would permit access to accounts, and information related to a person’s mental or physical health, healthcare, or payment for healthcare”

PII

- name
- date of birth
- government issued ID number
- mother's maiden name
- biometric data
- electronic ID numbers
- telecommunication access devices.

Sensitive PII

- combination of name and
- government issued ID number
- account number
- debit/credit card number
- security code
- access code or
- password

Order Declaring Victim of IDT

- Standing = injured by a violation of § 521.051 or filed a criminal complaint alleging IDT under TX Penal Code § 32.51
- Burden = preponderance
- Jurisdiction = district court
- Venue = where victim lives, where IDT occurred, or where impostor lives
- Identity of impostor need not be known

STEPS:

1. File application and proposed order in appropriate district court
 - Redact victim's PII
 - Call clerk to assist with e-filing
2. Set hearing
3. Send notice (not service of citation) to known impostor and anyone who will receive order
4. Attend hearing
 - Victim will usually be the sole witness
 - Mark & admit all documentary evidence
5. Get a copy of signed order

Questions?

For questions or to join the TCCD GoogleGroup Community

Email us at:

texascoalitiononcoerceddebt@gmail.com

Check out our Coerced Debt Toolkit for more information and resources:

<http://financialabusehelp.org/>