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Hon. Elaine Marzola
Chair, Assembly Committee on Commerce and Labor
Via Email To: AsmCL@asm.state.nv.us

March 17, 2025

To the Members of the Assembly Committee on Commerce and Labor:

Creditor's Rights Attorneys of Nevada ("CRAN") is a trade group of attorneys who represent creditors in all courts in Nevada, from Main Street to Wall Street, from Justice Court to the Supreme Court. CRAN's members work takes place at all levels of all courts in Nevada. I have been a creditor's rights attorney in Nevada since 2015. I planned to testify before the Committee at today's hearing, but the Internet connection cutoff before I could do so. I hope that you will consider these written remarks in your deliberations on AB 250.

At the outset, I thank the bill's sponsors who have been open to CRAN's input on AB 250 and have proposed a conceptual amendment to AB 250 that addresses some of CRAN's concerns. Hopefully, the sponsors will continue to work with CRAN on the bill.

For now, however, CRAN opposes AB 250. The bill's intentions are to protect those coerced into acquiring debt by wrongdoers. This is a laudable goal. As people testifying in support of the bill noted, AB 250's purpose is to shield the victim from the consequences of coerced debt. But AB 250 transforms a person's assertion that a particular debt is coerced into a powerful weapon. First, it establishes a rebuttable presumption that a debt is coerced debt based on a debtor's oral or written notice to the creditor. Creditors will rarely, if ever, have the knowledge or evidence necessary to rebut that presumption. Second, it requires a creditor to immediately stop efforts to collect on the alleged coerced debt and return all payments made on the debt by that person to them. This incentivizes debtors to assert that a debt is coerced even when it may not be. Third, it grants a private right of action against creditors for actual damages, punitive damages, and attorney's fees if the creditor violates AB 250.

In most civil cases, the party asserting a fact—like that a contract exists—has the burden of proving that fact by a preponderance of the evidence. Under AB 250, however, a person can shift the burden of proof to the creditor. After this burden shifting, the creditor must prove that a debt was not coerced. It is famously difficult to prove a negative. *See e.g., Nayab v. Cap. One Bank (USA), N.A.*, 942 F.3d 480, 494 (9th Cir. 2019) (discussing the policy of putting the burden of proving a negative on the party with access to the relevant facts). In most cases where AB 250 is

likely to be invoked, the creditor won't know that the debt is a product of coercion until the person making that claim notifies the creditor. The coercer and the person coerced have access to the necessary facts, information, and evidence. Creditors shouldn't bear the burden of disproving a debtor's assertion when the debtor has all the relevant information and strong incentives to allege coercion.

Under AB 250 if a debtor filed a police report—which means the debtor told a police officer that the debt is the product of coercion or economic abuse—and then provided that report to the creditor with the minimal notice required by AB 250. At that moment, the creditor must decide whether it can try to overcome the presumption in court. *See*, AB 250, § 6(a). If the debtor is a victim of domestic violence, the creditor will be in the untenable position of “blaming the victim.” If the creditor is uncertain of its chances in court, it must cease trying to collect the debt from the debtor. If the creditor tries to overcome the presumption and fails, AB 250 gives the debtor power to sue the creditor for actual and punitive damages. *See*, AB 250, § 2(8). How can a creditor obtain evidence supporting or overcoming that claim absent court action?

Each of the “qualified third parties” that can sign an affidavit in support of an allegation of a coerced debt—a law enforcement officer, provider of healthcare services, or someone who assists victims of crimes—is a person either trained to believe person reporting to them, or a person whose duty of investigation stops at collecting the report. While most of those discussing AB 250 at the hearing concentrated on the police report, the list of “adequate documentation” is nonexclusive—it includes, “without limitation”—the listed documents. *See*, AB 250, § 10(a). To be considered “adequate documentation,” the documents provided to the creditor must be sufficiently similar to AB 250's example documents. As presently proposed, therefore, AB 250 transforms hearsay into a rebuttable presumption that the debt is coerced, without affording an avenue for discovery. The debtor doesn't even need to identify the perpetrator, much less assert the coercion in a divorce case or before entry of judgment in a debt collection case.

Although the conceptual amendment exempts certain types of debts from being “coerced debt,” it doesn't address credit card or other unsecured debt. Currently, Chapter 97A of the N.R.S. makes a cardholder liable when a credit card account is used for the cardholder's benefit. *See*, N.R.S. § 97A.030 (defining “beneficial use”); N.R.S. § 97A.150(1)(b) (making a cardholder liable for “charges” made by anyone that “result in a beneficial use to the cardholder.”). But AB 250 would keep the cardholder from being responsible for coerced debt even if the cardholder benefited from the credit extended. Thus, if adopted in its current state, AB 250 would create a serious conflict within Nevada law.

Perhaps more can be done to shield victims from the consequences of coerced debts. Arming unscrupulous debtors with the power to punish a creditor trying to collect legitimate debts based on little more than the debtor's say-so isn't a shield; it's a sword.

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Thus, CRAN opposes AB 250.

Respectfully,

/s/ Brian K. Partridge

Legislative Chair,

Creditor's Rights Attorneys of Nevada