

STATE OF NEW YORK

1309--A

2023-2024 Regular Sessions

IN ASSEMBLY

January 17, 2023

Introduced by M. of A. L. ROSENTHAL, KELLES, WALKER, DARLING, SHIMSKY, BURDICK -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to establishing a right of action for claims arising out of coerced debts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new article 29-HHH to read as follows:

ARTICLE 29-HHH

ACTIONS INVOLVING COERCED DEBTS

Section 604-aa. Definitions.

604-bb. Notice of coerced debt.

604-cc. Coerced debt cause of action and affirmative defense.

§ 604-aa. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Action" means any civil judicial proceeding as defined in section one hundred five of the civil practice law and rules.

2. "Adequate documentation of coerced debt" means documentation that identifies a particular debt, or a portion thereof, as coerced debt, describes the circumstances under which such coerced debt was incurred, and takes the form of any of the following:

(a) a police report;

(b) a federal trade commission identity theft report that identifies a particular debt, or portion thereof, as a coerced debt;

(c) an order from a court of competent jurisdiction setting forth findings of coerced debt; or

(d) a written verification, from a qualified third party to whom the debtor reported the coerced debt, which shall be satisfied by any sworn or notarized statement including the required information as well as the

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 name, mailing address, and email address or telephone number, as appli-
2 cable, of such qualified third party's employer or, if self-employed, of
3 such qualified third party.

4 3. "Coerced debt", in the context of economic abuse, means debt that
5 was incurred as a result of fraud, duress, intimidation, threat, force,
6 coercion, manipulation, undue influence, the non-consensual use of the
7 debtor's personal information, or similar economic abuse perpetrated
8 against a debtor.

9 4. "Creditor" means any person, firm, corporation or organization to
10 whom a debt is owed, due, or asserted to be due or owed, or any assignee
11 for value of said person, firm, corporation or organization, including
12 any debt collection agency or debt collector as defined by section six
13 hundred of this chapter; provided, however, that "creditor" shall not
14 include a person to whom a debt is allegedly owed, due, or asserted to
15 be due or owed, where the person asserting such claim caused the debt to
16 arise by engaging in one or more acts of coercion, as identified in
17 subdivision three of this section, against the debtor.

18 5. "Debt" means any obligation or alleged obligation of a consumer to
19 pay money arising out of a transaction in which the money, property,
20 insurance, or services which are the subject of such transaction are
21 primarily for personal, family, or household purposes, whether or not
22 such obligation has been reduced to a judgment.

23 6. "Debtor" means any natural person who owes or who is asserted to
24 owe a debt.

25 7. "Economic abuse", in the context of intimate relationships or
26 relationships between family or household members as defined by section
27 four hundred fifty-nine-a of the social services law, relationships
28 between victims of human trafficking and traffickers, or relationships
29 between children, the elderly, or individuals eligible for protective
30 services under subdivision one of section four hundred seventy-three of
31 the social services law, and their caregivers, means behavior that is
32 coercive, deceptive, manipulative, or that controls, restrains, or
33 sabotages a person's ability to acquire, use, or maintain economic
34 resources to which they are entitled, including but not limited to using
35 coercion, fraud, or manipulation to:

36 (a) restrict a person's access to money, assets, credit, or financial
37 information;

38 (b) unfairly use a person's personal information or personal economic
39 resources, including money, assets, and/or credit; or

40 (c) exert undue influence over a person's financial and economic
41 behavior or decisions, including but not limited to forcing default on
42 joint or other financial obligations, exploiting powers of attorney,
43 guardianship, or conservatorship, or failing or neglecting to act in the
44 best interests of a person to whom one has a fiduciary duty.

45 8. "Personal information" includes, but is not limited to, a name,
46 address, telephone or mobile phone number, driver registration number or
47 non-driver identification card number, social security number, email
48 address, social media profile or screen name, place of employment,
49 employee identification number, mother's maiden name, financial services
50 account number or code, savings account number or code, checking account
51 number or code, debit or credit card number or code, automated teller
52 machine number or code, electronic serial number, any personal identifi-
53 cation number or password of a debtor, and a debtor's personal docu-
54 ments, including, but not limited to, such debtor's driver's license or
55 non-driver identification card, passport, permanent resident card, visa,
56 birth certificate, social security card, and any copies thereof or

1 information contained therein. "Personal identification number or pass-
2 word", as used in this subdivision, means any number or alphanumeric
3 code which may be used alone or in conjunction with any other informa-
4 tion to assume the identity of another person or access financial
5 resources or credit information of another person.

6 9. "Pleading" means any complaint, petition, counterclaim, cross-
7 claim, interpleader complaint, third-party complaint or any similar
8 papers asserting a claim and demand for relief required to be filed with
9 the court pursuant to rule twenty-one hundred two of the civil practice
10 law and rules, the rules of the chief administrator of the courts, or
11 any local rule or practice established by the court.

12 10. "Qualified third party" means any (a) law enforcement officer; (b)
13 employee of a court of the state; (c) attorney, physician, psychiatrist,
14 psychologist, social worker, registered nurse, therapist, or clinical
15 professional counselor licensed to practice in any state; (d) person
16 employed by or working on behalf of a government or non-profit office,
17 agency, or service that advises or provides services to persons regard-
18 ing domestic violence, family violence, human trafficking, or abuse of
19 children, the elderly, or dependent adults; or (e) member of the clergy
20 of a church or religious society or denomination.

21 § 604-bb. Notice of coerced debt. 1. Upon receipt of the following, a
22 creditor shall cease collection activities until completion of the
23 review under subdivision three of this section:

24 (a) adequate documentation of coerced debt; and
25 (b) the debtor's sworn or notarized statement that a particular debt
26 being collected, or portion thereof, is coerced debt.

27 2. (a) If a debtor notifies a creditor by any method or circumstance
28 that may constitute economic abuse or coerced debt, such creditor shall
29 provide written notice to such debtor that includes the following text:

30 "UNDER NEW YORK GENERAL BUSINESS LAW 604-BB, YOU HAVE THE RIGHT TO
31 DISPUTE DEBT THAT YOU BELIEVE IS COERCED DEBT. A DEBT IS "COERCED" WHEN
32 IT IS INCURRED IN A CONSUMER'S NAME BECAUSE OF THREATS, INTIMIDATION, OR
33 FORCE BY ANOTHER PERSON.

34 TO DISPUTE COERCED DEBT, YOU MUST SUBMIT A "NOTICE OF COERCED DEBT" IN
35 WRITING. THE "NOTICE OF COERCED DEBT" MUST INCLUDE TWO DOCUMENTS:

36 1 - A SWORN OR NOTARIZED STATEMENT BY YOU, THE ALLEGED DEBTOR, STATING
37 THAT A CERTAIN DEBT OR PORTION OF A DEBT BEING COLLECTED IS COERCED
38 DEBT.

39 2 - "ADEQUATE DOCUMENTATION OF COERCED DEBT"
40 TO PROVIDE "ADEQUATE DOCUMENTATION OF COERCED DEBT," YOU ARE REQUIRED
41 TO PROVIDE ONLY ONE OF THE FOLLOWING DOCUMENTS, BUT YOU MAY PROVIDE MORE
42 THAN ONE.

43 1 - A POLICE REPORT
44 2 - A FEDERAL TRADE COMMISSION IDENTITY THEFT REPORT
45 3 - A COURT ORDER FINDING THAT THE DEBT WAS COERCED
46 4 - A NOTARIZED STATEMENT FROM A "QUALIFIED THIRD PARTY" THAT YOU
47 REPORTED THE COERCED DEBT TO.

48 EXAMPLES OF "QUALIFIED THIRD PARTIES" ARE SOCIAL WORKERS AND ATTOR-
49 NEYS; DOCTORS, NURSES, AND THERAPISTS; EMPLOYEES FROM GOVERNMENT OR
50 NON-PROFIT AGENCIES THAT WORK WITH SURVIVORS OF VIOLENCE; MEMBERS OF THE
51 CLERGY; ELECTED OFFICIALS; AND LAW ENFORCEMENT OFFICERS.

52 NO MATTER WHICH FORM OF "ADEQUATE DOCUMENTATION OF COERCED DEBT" YOU
53 PROVIDE, IT MUST IDENTIFY THE PARTICULAR DEBT, STATE THAT IT IS COERCED
54 DEBT, AND DESCRIBE THE CIRCUMSTANCES THAT CAUSED THE DEBT TO BE
55 INCURRED.

1 TO DISPUTE DEBT THAT YOU BELIEVE IS COERCED DEBT, PLEASE SEND THE
2 REQUIRED DOCUMENTS TO (DESIGNATED ADDRESS). AFTER RECEIVING YOUR NOTICE
3 OF COERCED DEBT, WE WILL INVESTIGATE YOUR CLAIM AND RESPOND IN WRITING
4 WITHIN 35 BUSINESS DAYS. FOR MORE INFORMATION, PLEASE CALL (DESIGNATED
5 PHONE NUMBER)."

6 (b) If a debtor notifies a creditor in writing that a particular debt
7 being collected, or portion thereof, is coerced debt, but omits informa-
8 tion under subdivision one of this section, and if such creditor does
9 not cease such collection activities, such creditor shall provide writ-
10 ten notice to such debtor of the additional information that is
11 required.

12 3. (a) Within ten business days of receiving the information under
13 subdivision one of this section, the creditor shall, if such creditor
14 furnishes adverse information about the debtor to a consumer reporting
15 agency, notify such consumer reporting agency that the account is
16 disputed.

17 (b) Within thirty business days of receiving the information under
18 subdivision one of this section, the creditor shall complete a review
19 considering all information provided by the debtor and other information
20 available to such creditor in such creditor's file. In connection with
21 such review and communication of the outcome of such review, the credi-
22 tor shall:

23 (i) neither directly nor indirectly contact the individual accused of
24 causing the coerced debt to be incurred;

25 (ii) use only the contact information the debtor provides with the
26 information under subdivision one of this section when attempting to
27 contact such debtor and shall not use any other contact information,
28 even if associated with the account under review, when attempting to
29 contact such debtor; and

30 (iii) not disclose the documents, information, or contact information
31 the debtor provides with the information under subdivision one of this
32 section to any other person, including, but not limited to, joint
33 account holders, without such debtor's express written authorization.
34 For purposes of this subparagraph, sending documents, information, or
35 contact information the debtor provides under subdivision one of this
36 section to a mailing or electronic mail address other than the one
37 provided by the debtor constitutes unlawful disclosure to a third party,
38 even if such mail or electronic mail address is associated with the
39 account.

40 (c) Within five business days of completing the review under paragraph
41 (b) of this subdivision, a creditor who recommences collection activ-
42 ities based on such review shall notify the debtor in writing of such
43 creditor's determination and the good faith basis for such determi-
44 nation, and shall enclose all documents and information upon which such
45 creditor bases its determination therewith. Such written notice shall
46 include a notice of the debtor's right to appeal under subdivision four
47 of this section.

48 (d) Within five business days of completing the review under paragraph
49 (b) of this subdivision, a creditor who ceases collection activities
50 under this section and, based on such review, does not recommence such
51 collection activities, shall:

52 (i) notify the debtor in writing that it is ceasing collection activ-
53 ities based on such debtor's claim of coerced debt;

54 (ii) contact any consumer reporting agencies to which it furnishes
55 information about the debtor and the particular debt and instruct such
56 consumer reporting agencies to delete such information; and

1 (iii) if the creditor is also a debt collector or debt collection
2 agency, as defined in section six hundred of this chapter, notify the
3 original creditor that it has ceased collection activities because the
4 debt was found to be a coerced debt.

5 4. A debtor who receives written notice under paragraph (c) of subdivi-
6 vision three of this section that the creditor will recommence
7 collection activities based on such creditor's determination under
8 subdivision three of this section may make a request to the creditor
9 that the creditor reconsider such determination to recommence collection
10 activities within thirty days of the date of mailing of such written
11 determination. A debtor requesting reconsideration of a creditor's
12 determination to recommence collection activities shall be permitted to
13 submit additional adequate documentation of coerced debt, as defined in
14 this article. Submitting a request for reconsideration of the determi-
15 nation to the creditor shall not be a condition to bringing an action
16 under section six hundred four-cc of this article.

17 5. No inference or presumption that the debt is valid or invalid, or
18 that the debtor is liable or not liable for such debt, shall arise if
19 the creditor decides after completing the review under subdivision three
20 of this section to cease or recommence the debt collection activities.
21 The exercise or non-exercise of rights under this section shall not
22 constitute a waiver of any other right or defense of the debtor or debt
23 collector.

24 6. Ceasing collection activities under this section shall not toll the
25 statute of limitations period on any action to collect the debt.

26 7. If at any time any individual or entity, including, but not limited
27 to the creditor, such creditor's assignor, or any assignee, recommences
28 collection activities on the debt after ceasing collection activities on
29 such debt based on such creditor's review of such debtor's notice of
30 coerced debt, such debtor may submit a subsequent notice of coerced
31 debt. A subsequent notice of coerced debt submitted under this subdivi-
32 sion shall be governed by subdivisions one through six of this section.

33 8. A debtor injured by a violation of this section shall have a cause
34 of action against the creditor to recover statutory damages of one thou-
35 sand dollars, actual damages, if any, and the costs and attorneys' fees
36 reasonably incurred in bringing such action. Where a creditor's
37 violation of this section is deemed willful, a debtor shall be entitled
38 to punitive damages.

39 § 604-cc. Coerced debt cause of action and affirmative defense. 1. A
40 person shall not cause another person to incur a coerced debt. A person
41 who causes another person to incur a coerced debt in violation of this
42 subdivision shall be civilly liable to the creditor, and/or the debtor
43 in whose name such coerced debt was incurred if such debtor has already
44 paid all or part of such coerced debt, for the amount of such debt, or
45 portion thereof, determined by the court to be a coerced debt, as well
46 as such creditor's and/or debtor's costs and attorneys' fees reasonably
47 incurred in bringing the action. An action under this subdivision shall
48 be commenced within three years of the later of: (a) the creditor's
49 determination that all or part of such debt is coerced debt; or (b) a
50 court's determination that all or part of such debt is coerced debt.

51 2. (a) A debtor shall have a cause of action against a creditor in any
52 court having jurisdiction to issue a declaratory judgment establishing
53 that a debt or portion of a debt asserted to be owed to such creditor is
54 a coerced debt. Notwithstanding section one thousand one of the civil
55 practice law and rules, any individual alleged to have caused such
56 coerced debt to be incurred shall not be a necessary party to such

1 action. Such action shall not be commenced and maintained unless the
2 following conditions are satisfied:

3 (i) (1) the debtor provides by first class mail with certification of
4 mailing, certified mail, overnight delivery, or other method that allows
5 for confirmation of the date of mailing, the notice of coerced debt or
6 subsequent notice of coerced debt under section six hundred four-bb of
7 this article, provided, however, that receipt of the notice of coerced
8 debt shall not be a condition to bringing such action if it is sent in a
9 properly addressed envelope; and

10 (2) the thirty-day period under paragraph (b) of subdivision three of
11 section six hundred four-bb of this article has expired and the debtor
12 has not received written notice that collection activities have ceased;
13 or

14 (ii) the debtor receives a written determination under paragraph (c)
15 of subdivision three of section six hundred four-bb of this article that
16 the particular disputed debt is not coerced debt.

17 (b) The submission of an appeal under subdivision four of section six
18 hundred four-bb of this article of the creditor's decision to recommence
19 debt collection activities based on such creditor's review of the
20 debtor's notice of coerced debt is not a condition to commencing an
21 action under this subdivision.

22 3. In an action under subdivision two of this section, a debtor shall
23 plead the allegations of coerced debt with particularity and shall
24 attach the documents provided to the creditor pursuant to subdivision
25 one of section six hundred four-bb of this article to any complaint.

26 4. A debtor who establishes by a preponderance of the evidence in an
27 action pursuant to subdivision two of this section that a debt or
28 portion of a debt asserted to be owed to the creditor is coerced debt
29 shall be entitled to the following relief:

30 (a) a declaratory judgment stating that the debt or portion thereof is
31 coerced debt and that the alleged debtor shall not be liable for such
32 coerced debt;

33 (b) an order enjoining or restraining the creditor from holding or
34 attempting to hold the debtor personally liable for the coerced debt or
35 attempting to obtain or enforce any judgment thereon against such debtor
36 and enjoining and restraining all future collection activities with
37 respect to such debt;

38 (c) an order dismissing any other cause of action brought by the cred-
39 itor to enforce or collect the coerced debt from the debtor;

40 (d) if the creditor has furnished adverse information to a consumer
41 reporting agency with respect to such coerced debt, an order directing
42 the creditor to notify such agency to delete all such adverse informa-
43 tion; and

44 (e) the costs and attorneys' fees reasonably incurred in bringing such
45 action.

46 5. In any action by a creditor against a debtor to collect a debt, it
47 shall be an affirmative defense to such action that all or a portion of
48 the debt is coerced debt. Providing notice to the creditor under
49 section six hundred four-bb of this article shall not be a prerequisite
50 to asserting such defense; provided, however, the documents described in
51 subdivision one of section six hundred four-bb of this article shall be
52 annexed to the debtor's answer. A debtor who prevails on an affirmative
53 defense of coerced debt shall be entitled to the costs and attorneys'
54 fees reasonably incurred in defending against the action. Notwithstand-
55 ing section one thousand one of the civil practice law and rules, any

1 individual alleged to have caused such coerced debt to be incurred shall
2 not be or become a necessary party to such action.

3 6. An action pursuant to subdivision two of this section shall be
4 commenced within three years after the date on which the debtor provided
5 the notice of coerced debt pursuant to section six hundred four-bb of
6 this article to the creditor; provided, however, that if such creditor,
7 its assignor, or any assignee recommences collection activities on the
8 debt after ceasing collection activities on such debt based on such
9 creditor's review of the debtor's claim of coerced debt, such debtor
10 shall have the right to file a subsequent notice of coerced debt pursu-
11 ant to subdivision seven of section six hundred four-bb of this article
12 and the statute of limitations shall commence on the date on which such
13 debtor provided such subsequent notice of coerced debt.

14 7. If requested by the debtor, the court presiding over any action in
15 which coerced debt is raised as a claim or affirmative defense shall
16 take appropriate steps necessary to prevent abuse of such debtor or an
17 immediate family member of such debtor, including but not limited to the
18 sealing of court records, the redaction of such debtor's or their imme-
19 diat family member's personal information, and/or directing that any
20 disposition or hearing be held remotely.

21 8. The provisions of this article shall not be construed so as to
22 prevent a creditor from enforcing any claim or collecting judgment aris-
23 ing out of a lawful debt or portion thereof from any other person or
24 entity other than the coerced debtor.

25 9. For debts secured by real or personal property, the private cause
26 of action and affirmative defense authorized by this section shall
27 affect only the debtor's liability for any deficiency after the foreclo-
28 sure, repossession, or surrender and disposition of the subject collat-
29 eral.

30 § 2. This act shall take effect on the ninetieth day after it shall
31 have become a law.