STATE OF NEW YORK

10667

IN ASSEMBLY

August 12, 2022

Introduced by COMMITTEE ON RULES -- (at request of M. of A. L. Rosenthal) -- read once and referred to the Committee on Consumer Affairs and Protection

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. Prohibited practices; right of action.

604-cc. Notice of intention to commence an action; requirements.

604-dd. Exceptions.

§ 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. "Consumer claim" means any obligation of a natural person for the payment of money or its equivalent which is or is alleged to be in default and which arises out of a transaction wherein credit has been offered or extended to a natural person, and the money, property or service which was the subject of the transaction was primarily for personal, family or household purposes. Such term includes an obligation of a natural person who is a co-maker, endorser, guarantor or surety as well as the natural person to whom such credit was originally extended.

3. "Coerced debt" means debt, as defined in subdivision six of section six hundred of this chapter that was incurred as a result of fraud, duress, intimidation, threat, force, identity theft, exploitation of the debtor's personal information or similar economic abuse perpetrated against a debtor or alleged debtor.

4. "Creditor" means any person, firm, corporation or organization to whom a consumer claim is owed, due or asserted to be due or owed, or any

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

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

5. "Debtor" means any natural person who owes or who is asserted to owe a consumer claim.

6. "Personal information" means, in addition to the definition of such term provided in subdivision six of section eight hundred ninety-nine-aaa of this chapter, an address, telephone number, driver's registration number or non-driver identification card number, social security number, email address, social media profile or screen name, place of employment, employee identification number, mother's maiden name, financial services account number or code, savings account number or code, checking account number or code, debit or credit card number or code, automated teller machine number or code, electronic serial number or any personal identification number of a debtor or alleged debtor. As used in this subdivision, "personal identification number" means any number or code which may be used alone or in conjunction with any other information to assume the identity of another person or access financial resources or credit of another person.

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

8. "Qualified third-party professional" means any of the following:

(a) A rape crisis counselor, as defined in subdivision two of section forty-five hundred ten of the civil practice law and rules.

(b) A domestic violence advocate, as defined in subdivision five of section forty-five hundred ten of the civil practice law and rules.

(c) A court-appointed special advocate appointed pursuant to article twenty-one-c of the judiciary law.

(d) An attorney appointed pursuant to the provisions of part four of article two of the family court act.

(e) A board certified or board eligible psychiatrist or psychologist.

(f) A licensed marriage and family therapist, as defined in section eighty-four hundred three of the education law.

(g) A licensed master social worker or licensed clinical social worker, as defined in article one hundred fifty-four of title eight of the education law.

(h) A social worker or caseworker employed by an adult protective services agency pursuant to title one of article nine-b of the social services law or a child protective services agency pursuant to title six of article six of the social services law.

§ 604-bb. Prohibited practices; right of action. 1. (a) No creditor or agent of such creditor shall claim, or attempt or threaten to enforce or otherwise assert any rights with respect to any debt when such creditor knows or has reason to know that such debt is a coerced debt as defined in subdivision three of section six hundred four-aa of this article.

(b) For the purposes of this section, a creditor "knows or has reason to know" that a debt is a coerced debt when such creditor has received a

notice of intention to file an action from an alleged debtor pursuant to section six hundred four-cc of this article; provided, however that nothing in this section shall be construed so as to restrict the power of a court to find that such knowledge or reason to know existed prior to a creditor's receipt of any such notice of intention on the basis of other evidence properly before it.

2. An alleged debtor aggrieved by a violation of this section shall have a right of action in any court of appropriate jurisdiction for the following relief:

(a) A declaratory judgment stating that the debt is invalid and that the alleged debtor is not liable for such coerced debt.

(b) An order enjoining or restraining the alleged creditor from holding or attempting to hold the alleged debtor personally liable for the coerced debt or attempting to obtain or enforce any judgment thereon against such alleged debtor and enjoining and restraining all future collection activities with respect to such debt.

(c) An order dismissing any other cause of action brought by the alleged creditor to enforce or collect the coerced debt from the alleged debtor.

(d) If the alleged creditor has furnished adverse information to a consumer credit reporting agency with respect to such coerced debt, an order directing the alleged creditor to notify such agency to delete all such adverse information.

3. In any action alleging a violation of this section, it shall be the burden of the party asserting such violation to plead and prove by a preponderance of the evidence that:

(a) The alleged debt is a coerced debt; and

(b) The creditor knew or had reason to know that the debt was coerced and thereafter engaged in collection activities in violation of this section.

4. In any action by a creditor against an alleged debtor arising out of a consumer claim, as defined in subdivision two of section six hundred four-aa of this article, such alleged debtor may interpose a claim for relief pursuant to this section by the filing and service upon such creditor or any appropriate third-party of any pleading authorized by the civil practice law and rules.

5. (a) An action pursuant to this section shall be commenced within four years after the date on which the alleged debtor knew, or with reasonable diligence should have discovered the existence of the coerced debt; provided, however, that no such action shall be commenced or maintained unless such alleged debtor shall have provided written notice of intention to commence such action in accordance with the provisions of section six hundred four-cc of this article.

(b) For the purposes of this article, an action is "commenced" by the filing and service of a pleading asserting a claim and demand for relief pursuant to this section by an alleged debtor against a creditor or other appropriate party in accordance with the requirements of the civil practice law and rules.

6. No pleading asserting a demand for relief pursuant to this article shall be accepted for filing unless:

(a) At least thirty days shall have elapsed from the date that the notice of intention to commence an action was sent by the alleged debtor to the creditor in accordance with the provisions of section six hundred four-cc of this article; and

(b) A copy of such notice of intention and any response thereto shall be annexed to such pleading.

7. Actions and proceedings brought pursuant to this article may be instituted in any court of this state having jurisdiction to issue an injunction. Such court shall exercise exclusive, continuing jurisdiction over such action or proceeding for a period of ten years following the commencement of such action or proceeding to allow for the joinder of claims arising out of coerced debts against the same creditor or creditors, regardless of whether a final judgment has been entered as to any such creditor in the original action or proceeding. The court may, prior to the expiration of such ten-year time period, extend its continuing jurisdiction over any such matter where it finds good cause for such extension.

8. In the event that any action or proceeding brought by an alleged debtor pursuant to this section shall be found by the court to be frivolous, as defined in section eighty three hundred three-a of the civil practice law and rules, the creditor shall be entitled to recover from the alleged debtor the costs and attorney's fees reasonably incurred in defending such frivolous action, claim, counterclaim, defense or cross-claim or other pleadings.

§ 604-cc. Notice of intention to commence an action; requirements. 1. An alleged debtor shall, prior to commencement of any action pursuant to this article, provide a written notice of intention to commence such action at least thirty days prior to the commencement thereof in accordance with the provisions of this section.

2. (a) The notice of intention described in subdivision one of this section shall be delivered to the alleged creditor's principal office, or an agent designated for service of process upon such creditor as indicated by the business entity records available on the department of state's website.

(b) Every such notice of intention shall identify the allegedly coerced debt and shall include a description of specific facts supporting the allegations of coercion with respect to such debt. Such statement shall contain or be accompanied by at least one or more of the following:

(i) A copy of a valid police report filed by the alleged debtor indicating that the debt being collected by the creditor was incurred as a result of fraud, duress, intimidation, threat, force, identity theft, exploitation of the debtor's personal information or other economic abuse.

(ii) A copy of a federal trade commission ID theft report finding that the debt was incurred as a result of fraud, duress, intimidation, threat, force, identity theft, exploitation of the debtor's personal information or other economic abuse.

(iii) An order of protection issued pursuant to section 530.12 of the criminal procedure law or article eight of the family court act relating to domestic violence, an order of protection issued pursuant to article three of the family court act relating to juvenile delinquency or pursuant to article seven of the family court act relating to persons in need of supervision, or pursuant to article ten of the family court act relating to placement and permanency proceedings, a court order enjoining or otherwise addressing elder abuse or abuse of dependent children or adults, or any judicial or quasi-judicial order or judgment involving the alleged debtor that identifies instances of fraud, duress, intimidation, threat, force, or exploitation of the debtor's personal information with respect to the debt sought to be collected.

(iv) (A) Documents or records of a qualified third-party professional, as defined in subdivision five of section six hundred four-aa of this

article, consisting of information acquired while acting in a professional capacity relating to fraud, duress, intimidation, threat, force, or exploitation of the debtor's personal information with respect to the debt sought to be collected, provided such documentation satisfies the requirements set forth in clause (B) of this subparagraph.

(B) No document or record described in clause (A) of this subparagraph shall satisfy the requirements of this section unless such documentation is signed by the qualified third-party professional and displays the letterhead, address and phone number of the office, agency, institution or other organization at which such professional is employed or engages, or the letterhead, address and phone number of any self-employed qualified professional, regardless of whether such professional was or is receiving financial compensation for such professional's services.

3. (a) Upon receipt of a notice of intention and the supporting materials described in subdivision two of this section, the creditor shall cease all collection activities with respect to the debt identified therein for not less than thirty days following such receipt and shall review and consider all of the information provided in such notice along with any other relevant information available to such creditor and shall make a determination thereon as provided in paragraph (b) of this subdivision.

(b) (i) If, after review of the information provided in the notice of intention and accompanying materials and any other relevant information available to the creditor, the creditor determines that the information so provided does not establish that the debt in question is a coerced debt, the creditor shall notify the alleged debtor in writing of such determination stating the basis therefore prior to resuming or commencing collection activities with respect to such debt; provided, however, that in no event shall a creditor resume collection activities with respect to any such debt before at least thirty days shall have elapsed after the receipt of any such notice of intention.

(ii) In the event that the creditor determines that the debt in question is a coerced debt, such creditor shall notify the alleged debtor in writing of such determination, and:

(A) If the creditor has furnished adverse information to a consumer credit reporting agency, notify the agency to delete that information; and

(B) Notify any other interested creditor that debt collection activities have been terminated based upon the debtor's claim of coerced debt.

(c) No action or proceeding authorized by section six hundred four-bb of this article shall be commenced or continued against any creditor pursuant to this article after such creditor has notified the alleged debtor and all necessary parties that it has terminated all collection activities in accordance with subparagraph (ii) of paragraph (b) of this subdivision.

§ 604-dd. Exceptions. 1. The provisions of this article shall not be construed so as to prevent a creditor from enforcing any claim or collecting judgment arising out of lawful debt or portion thereof from any other person or entity other than the coerced debtor.

2. The private right of action authorized by this section shall not apply to any debt secured by real property nor shall it apply to any action to enforce a lien of personal property pursuant to article nine of the lien law.

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