

# STATE OF NEW YORK

2278--A

2023-2024 Regular Sessions

## IN SENATE

January 19, 2023

Introduced by Sens. CLEARE, COMRIE, HOYLMAN-SIGAL, SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- 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

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

LBD05065-05-4

1 (d) a written verification, from a qualified third party to whom the  
2 debtor reported the coerced debt, which shall be satisfied by any sworn  
3 or notarized statement including the required information as well as the  
4 name, mailing address, and email address or telephone number, as appli-  
5 cable, of such qualified third party's employer or, if self-employed, of  
6 such qualified third party.

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

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

21 5. "Debt" means any obligation or alleged obligation of a consumer to  
22 pay money arising out of a transaction in which the money, property,  
23 insurance, rental arrears owed for use and occupancy of a dwelling, or  
24 services which are the subject of such transaction are primarily for  
25 personal, family, or household purposes, whether or not such obligation  
26 has been reduced to a judgment.

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

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

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

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

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

49 8. "Personal information" includes, but is not limited to, a name,  
50 address, telephone or mobile phone number, driver registration number or  
51 non-driver identification card number, social security number, email  
52 address, social media profile or screen name, place of employment,  
53 employee identification number, mother's maiden name, financial services  
54 account number or code, savings account number or code, checking account  
55 number or code, debit or credit card number or code, automated teller  
56 machine number or code, electronic serial number, any personal identifi-

1 cation number or password of a debtor, and a debtor's personal docu-  
2 ments, including, but not limited to, such debtor's driver's license or  
3 non-driver identification card, passport, permanent resident card, visa,  
4 birth certificate, social security card, and any copies thereof or  
5 information contained therein. "Personal identification number or pass-  
6 word", as used in this subdivision, means any number or alphanumeric  
7 code which may be used alone or in conjunction with any other informa-  
8 tion to assume the identity of another person or access financial  
9 resources or credit information of another person.

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

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

25 § 604-bb. Notice of coerced debt. 1. Upon receipt of the following, a  
26 creditor shall cease collection activities until completion of the  
27 review under subdivision three of this section:

28 (a) adequate documentation of coerced debt; and  
29 (b) the debtor's statement that a particular debt being collected, or  
30 portion thereof, is coerced debt.

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

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

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

40 1 - A SWORN OR NOTARIZED STATEMENT BY YOU, THE ALLEGED DEBTOR, STATING  
41 THAT A CERTAIN DEBT OR PORTION OF A DEBT BEING COLLECTED IS COERCED  
42 DEBT.

43 2 - "ADEQUATE DOCUMENTATION OF COERCED DEBT"  
44 TO PROVIDE "ADEQUATE DOCUMENTATION OF COERCED DEBT," YOU ARE REQUIRED  
45 TO PROVIDE ONLY ONE OF THE FOLLOWING DOCUMENTS, BUT YOU MAY PROVIDE MORE  
46 THAN ONE.

47 1 - A POLICE REPORT  
48 2 - A FEDERAL TRADE COMMISSION IDENTITY THEFT REPORT  
49 3 - A COURT ORDER FINDING THAT THE DEBT WAS COERCED  
50 4 - A NOTARIZED STATEMENT FROM A "QUALIFIED THIRD PARTY" THAT YOU  
51 REPORTED THE COERCED DEBT TO.

52 EXAMPLES OF "QUALIFIED THIRD PARTIES" INCLUDE SOCIAL WORKERS AND  
53 ATTORNEYS; DOCTORS, NURSES, AND THERAPISTS; EMPLOYEES FROM GOVERNMENT OR  
54 NON-PROFIT AGENCIES THAT WORK WITH SURVIVORS OF VIOLENCE; MEMBERS OF THE  
55 CLERGY; ELECTED OFFICIALS; AND LAW ENFORCEMENT OFFICERS.

1 NO MATTER WHICH FORM OF "ADEQUATE DOCUMENTATION OF COERCED DEBT" YOU  
2 PROVIDE, IT MUST IDENTIFY THE PARTICULAR DEBT, STATE THAT IT IS COERCED  
3 DEBT, AND DESCRIBE THE CIRCUMSTANCES THAT CAUSED THE DEBT TO BE  
4 INCURRED.

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

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

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

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

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

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

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

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

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

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

3 (ii) contact any consumer reporting agencies to which it furnishes  
4 information about the debtor and the particular debt and instruct such  
5 consumer reporting agencies to delete such information; and

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

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

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

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

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

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

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



2. (a) A debtor shall have a cause of action against a creditor in any court having jurisdiction to issue a declaratory judgment establishing that a debt or portion of a debt asserted to be owed to such creditor is a coerced debt. Notwithstanding section one thousand one of the civil practice law and rules, any individual alleged to have caused such coerced debt to be incurred shall not be a necessary party to such action. Such action shall not be commenced and maintained unless the following conditions are satisfied:

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

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

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

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

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

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

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

(b) an order enjoining or restraining the creditor from holding or attempting to hold the debtor personally liable for the coerced debt or attempting to obtain or enforce any judgment thereon against such 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 creditor to enforce or collect the coerced debt from the debtor;

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

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

5. In any action by a creditor against a debtor to collect a debt, it shall be an affirmative defense to such action that all or a portion of the debt is coerced debt. Providing notice to the creditor under section six hundred four-bb of this article shall not be a prerequisite to asserting such defense; provided, however, the documents described in

1 subdivision one of section six hundred four-bb of this article shall be  
2 annexed to the debtor's answer. A debtor who prevails on an affirmative  
3 defense of coerced debt shall be entitled to the costs and attorneys'  
4 fees reasonably incurred in defending against the action. Notwithstand-  
5 ing section one thousand one of the civil practice law and rules, any  
6 individual alleged to have caused such coerced debt to be incurred shall  
7 not be or become a necessary party to such action.

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

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

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

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

35 10. Whenever there shall be a violation of this section, an applica-  
36 tion may be made by the attorney general in the name of the people of  
37 the state of New York to a court or justice having jurisdiction to issue  
38 an injunction, and upon notice to the defendant of not less than five  
39 days, to enjoin and restrain the continuance of such violations. If it  
40 shall appear to the satisfaction of the court or justice that the  
41 defendant has, in fact, violated this section, an injunction may be  
42 issued by such court or justice, enjoining or restraining any violation,  
43 without requiring proof that any person has, in fact, been injured or  
44 damaged thereby. In any such proceeding the court may make allowances to  
45 the attorney general as provided in section eighty-three hundred three  
46 of the civil practice law and rules, and may make direct restitution. In  
47 connection with any such proposed application, the attorney general is  
48 authorized to take proof and make a determination of the relevant facts  
49 and to issue subpoenas in accordance with the civil practice law and  
50 rules. Whenever the court shall determine that a violation of this  
51 section has occurred, the court may impose a civil penalty for each  
52 violation up to five thousand dollars.

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