

STATE OF NEW YORK

2278

2023-2024 Regular Sessions

IN SENATE

January 19, 2023

Introduced by Sen. CLEARE -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer 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. 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 letterhead, address, and telephone number of such qualified third party's employer or, if self-employed, of such qualified third party.

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

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

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

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

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

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

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

35 (b) unfairly use a person's personal information or personal economic
36 resources, including money, assets, and/or credit, for one's own advan-
37 tage; or

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

43 8. "Personal information" includes, but is not limited to, an address,
44 telephone or mobile phone number, driver registration number or non-dri-
45 ver identification card number, social security number, email address,
46 social media profile or screen name, place of employment, employee iden-
47 tification number, mother's maiden name, financial services account
48 number or code, savings account number or code, checking account number
49 or code, debit or credit card number or code, automated teller machine
50 number or code, electronic serial number, any personal identification
51 number or password of a debtor, and a debtor's personal documents,
52 including, but not limited to, such debtor's driver's license or non-
53 driver identification card, passport, permanent resident card, visa,
54 birth certificate, social security card, and any copies thereof or
55 information contained therein. "Personal identification number or pass-
56 word", as used in this subdivision, means any number or alphanumeric

1 code which may be used alone or in conjunction with any other informa-
2 tion to assume the identity of another person or access financial
3 resources or credit information of another person.

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

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

19 § 604-bb. Notice of coerced debt. 1. Upon receipt of the following, a
20 creditor shall cease collection activities until completion of the
21 review under subdivision three of this section:

22 (a) adequate documentation of coerced debt; and

23 (b) the debtor's sworn or notarized statement that a particular debt
24 being collected, or portion thereof, is coerced debt.

25 2. If a debtor notifies a creditor orally that a particular debt being
26 collected, or portion thereof, is coerced debt, such creditor shall
27 notify such debtor, orally or in writing, that such debtor's notifica-
28 tion shall be in writing. If a debtor notifies a creditor in writing
29 that a particular debt being collected, or portion thereof, is coerced
30 debt, but omits information under subdivision one of this section, and
31 if such creditor does not cease such collection activities, such credi-
32 tor shall provide written notice to such debtor of the additional infor-
33 mation that is required.

34 3. (a) Within ten business days of receiving the information under
35 subdivision one of this section, the creditor shall, if such creditor
36 furnishes adverse information about the debtor to a consumer reporting
37 agency, notify such consumer reporting agency that the account is
38 disputed.

39 (b) Within thirty business days of receiving the information under
40 subdivision one of this section, the creditor shall complete a review
41 considering all information provided by the debtor and other information
42 available to such creditor in such creditor's file. In connection with
43 such review and communication of the outcome of such review, the credi-
44 tor shall:

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

47 (ii) use only the contact information the debtor provides with the
48 information under subdivision one of this section when attempting to
49 contact such debtor and shall not use any other contact information,
50 even if associated with the account under review, when attempting to
51 contact such debtor; and

52 (iii) not disclose the contact information the debtor provides with
53 the information under subdivision one of this section to any other
54 person, including, but not limited to, joint account holders, without
55 such debtor's express written authorization.

1 (c) Within five business days of completing the review under paragraph
2 (b) of this subdivision, a creditor who recommences collection activ-
3 ities based on such review shall notify the debtor in writing of such
4 creditor's determination and the good faith basis for such determi-
5 nation, and shall enclose all documents and information upon which such
6 creditor bases its determination therewith. Such written notice shall
7 include a notice of the debtor's right to appeal under subdivision four
8 of this section.

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

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

15 (ii) contact any consumer reporting agencies to which it furnishes
16 information about the debtor and the particular debt and instruct such
17 consumer reporting agencies to delete such information; and

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

22 4. A debtor who receives written notice under paragraph (c) of subdivi-
23 vision three of this section that the creditor will recommence
24 collection activities based on such creditor's determination under
25 subdivision three of this section shall have a right to appeal such
26 determination within thirty days of the date of mailing of such written
27 determination. Such appeals process shall be governed by the procedures
28 under subdivisions one through three of this section. Submitting an
29 appeal shall not be a condition to bringing an action under section six
30 hundred four-cc of this article.

31 5. No inference or presumption that the debt is valid or invalid, or
32 that the debtor is liable or not liable for such debt, shall arise if
33 the creditor decides after completing the review under subdivision three
34 of this section to cease or recommence the debt collection activities.
35 The exercise or non-exercise of rights under this section shall not
36 constitute a waiver of any other right or defense of the debtor or debt
37 collector.

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

40 7. If at any time any individual or entity, including, but not limited
41 to the creditor, such creditor's assignor, or any assignee, recommences
42 collection activities on the debt after ceasing collection activities on
43 such debt based on such creditor's review of such debtor's notice of
44 coerced debt, such debtor may submit a subsequent notice of coerced
45 debt. A subsequent notice of coerced debt submitted under this subdivi-
46 sion shall be governed by subdivisions one through six of this section.

47 8. A debtor shall have a cause of action pursuant to section six
48 hundred four-cc of this article against a creditor for any violation of
49 this section. Such debtor shall be entitled to statutory damages of one
50 thousand dollars, actual damages, if any, and the costs and attorneys'
51 fees reasonably incurred in bringing such action. Where a creditor's
52 noncompliance with this section is deemed willful, a debtor shall be
53 entitled to punitive damages.

54 § 604-cc. Coerced debt cause of action and affirmative defense. 1. A
55 person shall not cause another person to incur a coerced debt. A person
56 who causes another person to incur a coerced debt in violation of this

subdivision shall be civilly liable to the creditor, and/or the debtor in whose name such coerced debt was incurred if such debtor has already paid all or part of such coerced debt, for the amount of such debt, or portion thereof, determined by the court to be a coerced debt, as well as such creditor's and/or debtor's costs and attorneys' fees reasonably incurred in bringing the action.

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 certified mail, overnight delivery, or other method that allows for confirmation of the delivery date, 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 an appeal 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.

1 5. In any action by a creditor against a debtor to collect a debt, it
2 shall be an affirmative defense to such action that all or a portion of
3 the debt is coerced debt. Providing notice to the creditor under
4 section six hundred four-bb of this article shall not be a prerequisite
5 to asserting such defense; provided, however, the documents described in
6 subdivision one of section six hundred four-bb of this article shall be
7 annexed to the debtor's answer. A debtor who prevails on an affirmative
8 defense of coerced debt shall be entitled to the costs and attorneys'
9 fees reasonably incurred in defending against the action. Notwithstand-
10 ing section one thousand one of the civil practice law and rules, any
11 individual alleged to have caused such coerced debt to be incurred shall
12 not be or become a necessary party to such action.

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

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

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

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

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