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1353--B

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Introduced by Sens. CLEARE, COMRIE, HOYLMAN-SIGAL, JACKSON, MYRIE, SALAZAR, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- reported favorably from said committee and committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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-dd. Scope.

§ 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;

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

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

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

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

11 3. "Coerced debt" is debt incurred as a result of economic abuse,
12 including but not limited to, by means of fraud, duress, intimidation,
13 threat, force, coercion, manipulation, or undue influence, the non-con-
14 sensual use of the debtor's personal information.

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

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

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

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

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

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

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

52 8. "Personal information" includes, but is not limited to, a name,
53 address, telephone or mobile phone number, driver registration number or
54 non-driver identification card number, social security number, email
55 address, social media profile or screen name, place of employment,
56 employee identification number, mother's maiden name, financial services

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

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

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

28 § 604-bb. Notice of coerced debt. 1. Upon receipt of the following, a
29 creditor shall cease collection activities until completion of the
30 review under subdivision three of this section:

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

34 2. (a) If a debtor notifies a creditor, either orally or in writing,
35 that a debt is a coerced debt but does not provide the documentation
36 required in subdivision one of this section, or such documentation is
37 insufficient, such creditor shall provide written notice to such debtor
38 that includes the following text:

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

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

45 1 - A SWORN OR NOTARIZED STATEMENT BY YOU, THE ALLEGED DEBTOR, STATING
46 THAT A CERTAIN DEBT OR PORTION OF A DEBT BEING COLLECTED IS COERCED
47 DEBT.

48 2 - "ADEQUATE DOCUMENTATION OF COERCED DEBT"

49 TO PROVIDE "ADEQUATE DOCUMENTATION OF COERCED DEBT," YOU ARE REQUIRED
50 TO PROVIDE ONLY ONE OF THE FOLLOWING DOCUMENTS, BUT YOU MAY PROVIDE MORE
51 THAN ONE.

52 1 - A POLICE REPORT

53 2 - A FEDERAL TRADE COMMISSION IDENTITY THEFT REPORT

54 3 - A COURT ORDER FINDING THAT THE DEBT WAS COERCED

55 4 - A NOTARIZED STATEMENT FROM A "QUALIFIED THIRD PARTY" THAT YOU
56 REPORTED THE COERCED DEBT TO.

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

5 NO MATTER WHICH FORM OF "ADEQUATE DOCUMENTATION OF COERCED DEBT" YOU
6 PROVIDE, IT MUST IDENTIFY THE PARTICULAR DEBT, STATE THAT IT IS COERCED
7 DEBT, AND DESCRIBE THE CIRCUMSTANCES THAT CAUSED THE DEBT TO BE
8 INCURRED.

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

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

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

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

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

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

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

48 (c) Within five business days of completing the review under paragraph
49 (b) of this subdivision, a creditor who recommences collection activ-
50 ities based on such review shall notify the debtor in writing of such
51 creditor's determination and the good faith basis for such determi-
52 nation, and shall enclose all documents and information upon which such
53 creditor bases its determination therewith, provided however such
54 documentation shall not include personally identifiable information of
55 another person. Such written notice shall include a notice of the

1 debtor's right to request reconsideration of such determination to
2 recommence collection activities under subdivision four of this section.

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

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

9 (ii) contact any consumer reporting agencies to which it furnishes
10 information about the debtor and the particular debt and instruct such
11 consumer reporting agencies to delete such information; and

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

16 4. A debtor who receives written notice under paragraph (c) of subdi-
17 vision three of this section that the creditor will recommence
18 collection activities against such debtor based on such creditor's
19 determination under subdivision three of this section may make a request
20 to the creditor that the creditor reconsider such determination to
21 recommence collection activities within thirty days of the date of mail-
22 ing of such written determination. A debtor requesting reconsideration
23 of a creditor's determination to recommence collection activities shall
24 be permitted to submit additional adequate documentation of coerced
25 debt, as defined in this article. A creditor who receives a debtors
26 request for reconsideration shall complete a review of all information,
27 including additional adequate documentation submitted, within thirty
28 days of receiving such request. Submitting a request for reconsider-
29 ation of the determination to the creditor shall not be a condition to
30 bringing an action under section six 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, credi-
37 tor, debt collector, or any other person.

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 injured by a violation of this section shall have a cause
48 of action against the creditor to recover statutory damages of one thou-
49 sand dollars, actual damages, if any, and the costs and attorneys' fees
50 reasonably incurred in bringing such action.

51 § 604-cc. Coerced debt cause of action and affirmative defense. 1. A
52 person shall not cause another person to incur a coerced debt. A person
53 who causes another person to incur a coerced debt in violation of this
54 subdivision shall be civilly liable to the creditor, and/or the debtor
55 in whose name such coerced debt was incurred if such debtor has already
56 paid all or part of such coerced debt, for the amount of such debt, or

1 portion thereof, determined by the court to be a coerced debt, as well
2 as such creditor's and/or debtor's costs and attorneys' fees reasonably
3 incurred in bringing the action. An action under this subdivision shall
4 be commenced within three years of the later of: (a) the creditor's
5 determination that all or part of such debt is coerced debt; or (b) a
6 court's determination that all or part of such debt is coerced debt.

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

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

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

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

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

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

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

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

45 (b) an order enjoining or restraining the creditor from holding or
46 attempting to hold the debtor personally liable for the coerced debt or
47 attempting to obtain or enforce any judgment thereon against such debtor
48 and enjoining and restraining all future collection activities with
49 respect to such debt;

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

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

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

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

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

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

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

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

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

1 rules. Whenever the court shall determine that a violation of this
2 section has occurred, the court may impose a civil penalty for each
3 violation up to five thousand dollars.

4 § 604-dd. Scope. The provisions of this article shall apply only to a
5 creditor to whom a debt is owed, due, or asserted to be due or owed,
6 where such debt is asserted to be the result of economic abuse. The
7 provisions of this article shall not be construed to impose any duty or
8 liability not expressly provided herein.

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