



HOUSE BILL 561: North Carolina Coerced Debt Relief Act.

2023-2024 General Assembly

Committee:		Date:	May 3, 2023
Introduced by:	Reps. T. Brown, Howard, Bradford, Carney	Prepared by:	Debbie Griffiths Staff Attorney
Analysis of:	Third Edition		

OVERVIEW: *The 3rd edition of House Bill 561 would create a new pre-litigation procedure and a new affirmative defense for coerced debt for survivors of domestic violence, foster children, disabled adults, and the elderly by:*

- *Creating a pre-litigation and litigation procedure for a debtor to allege that a debt held in the debtor's name was coerced.*
- *Requiring collection efforts to cease and, if the debt has been reported to a credit bureau, that the reporting be changed to disputed during the investigation and, if applicable, during litigation of the claim.*
- *Requiring removal of the debt from the debtor's credit report if a debt is determined to be coerced by a claimant or the court.*

BILL ANALYSIS: HB561 would create a new pre-litigation procedure and a new affirmative defense for coerced debt for survivors of domestic violence, foster children, disabled adults, and the elderly.

Definitions. The bill would define several terms used in the act including:

- Claim-a right to payment for any debt, excluding secured debt, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, or equitable.
- Coerced Debt-a particular debt, or portion of a debt, for personal, family, or household use in the name of the debtor who is a victim of domestic violence, domestic abuse, or a current or former foster child which debt is incurred through duress, intimidation, threat of force, force, or undue influence.
- Claimant-a creditor or assignee who makes a claim against a debtor for coerced debt.
- Debtor-a person who owes or is liable for coerced debt.
- Adequate documentation-documentation which identifies a debt as coerced, describes the circumstances in which the debt was incurred, and is in the form of (i) a police report, (ii) a Federal Trade Commission identity theft report identifying the debt as coerced but not identity theft, (iii) a court order issued under Chapter 50, 50B, or 7B or under G.S. 108A-106, or (iv) a sworn, written certification from a qualified third-party professional based on information received while acting in a professional capacity for the debtor including therapists, counselors, agents of a domestic violence program.
- Secured debt-an obligation for which the payment or performance of is secured by a security interest in real or personal property. Any actions for collection to obtain a final judgment, an order

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for possession of collateral securing the debt, or to collect any deficiency balance owing after the liquidation of collateral pledged to secure the debt are included in this definition.

- Sworn written certification—a document in which the author declares under the penalty of perjury that any material fact is true and is accompanied by additional relevant documentation including:
 - A copy of the debtor's drivers license or state issued identification card.
 - Any other identification document supporting the debt was coerced.
 - An express statement that (i) the debtor did not authorize the use of their name or personal information for incurring the debt, (ii) if available, specific facts supporting that the debt was coerced, and (iii) if only a portion of the debt is alleged to be coerced, a statement identifying the coerced portion of the debt.
 - Any correspondence disputing the debt after the debtor is provided transaction information.
 - If known by the debtor, information to identify the account and the name of the person or persons in whose name the account was opened.
 - If known by the debtor, the identity and contact information of the person or persons who coerced the debtor into incurring the debt. In the alternative, the debtor can execute a sworn statement asserting that disclosing this information is likely to result in abuse to the debtor or the debtor's immediate family and identifying the name and contact information for the person or persons who coerced the debtor into incurring the debt.

Scope. The bill would not (a) apply to secured debts, (b) require the claimant to refund any money paid on a coerced debt, (c) apply to debts which have been reduced to judgment or other court order, (d) reduce or eliminate the claimant's or debtor's rights or defenses under any other laws, or (e) apply to consumer finance companies licensed and doing business under Article 15 of Chapter 53 of the General Statutes.

Civil Liability. The bill would provide that a person who causes another person to incur coerced debt would be civilly liable for the amount of the debt determined to be coerced and the claimant's attorney's fees and costs.

Procedure. The bill would establish a pre-litigation and litigation process for a debtor to request that a debt be determined to be coerced.

- Pre-litigation requirements would include:
 - If the debtor provides written notice to the claimant including adequate documentation and a sworn certification that the debt is coerced when a claimant is seeking to collect a coerced debt then the claimant must cease collection activities until the claimant completes its review of the documentation.
 - Within 10 days of receipt of the required notice, the claimant must notify any credit bureaus furnished with adverse reporting related to the debtor that the claim is disputed.
 - The claimant must notify the debtor of any deficiency in the notice.
 - The claimant must review the information provided by the debtor and in their file and, within 30 days of completing the review, provide the debtor a written decision along with the good faith basis for the decision as to whether the debt is coerced. The claimant cannot resume collection efforts unless the debt is not found to be coerced and the written notification has been provided to the debtor.

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- No inference or presumption can be made regarding the validity of the debt or the debtor's liability for the debt if the claimant decides to cease or recommence collection activities. The exercise or non-exercise of any rights under this chapter is not a waiver of any other right or defense of the debtor or claimant.
- If the claimant does not recommence collection activity, within 10 days of making the determination, it must notify any credit bureau to delete any adverse reporting related to the coerced debt from the debtor's report. If the claimant is a debt collector, it must notify the creditor of its decision to cease collection efforts within 10 days of making the decision.
- **Affirmative defense.**
 - In an action against a debtor to satisfy a debt, the debtor could raise the affirmative defense of coerced debt.
 - The affirmative defense of coerced debt must be pled with specificity and the debtor must attach the documents identified in G.S. 1H-5(a).
 - A debtor would be liable for a claimant's attorney's fees and costs in defending the lawsuit if a debtor knowingly files false motions, pleadings, or other papers with the court or engages in other tactics that are frivolous or intended to cause unnecessary delay.

Order establishing relief from coerced debt. The bill would allow or require the following:

- If a debtor prevails on the claim by a preponderance of the evidence, the debtor would be entitled to the following relief:
 - A declaratory judgment that the debtor is not obligated to the claimant for any portion of the debt determined to be coerced.
 - An injunction prohibiting the claimant from holding or attempting to hold the debtor personally liable or enforcing any judgment obtained against the debtor for the coerced debt.
 - An order dismissing any claim filed to enforce or collect a coerced debt from the debtor, or to amend a complaint or judgment to reflect the amount of the coerced debt.
- Additionally, the court must enter a judgment in favor of the claimant against the person(s) who coerced the debtor into incurring the debt if the person(s) were brought into the court's jurisdiction, were joined as a party, and the evidence supports such judgment.
- To protect the debtor and their immediate family, the court may seal court documents, redact personally identifiable information of the debtor or their immediate family, and may require depositions or hearings to be held remotely.

Miscellaneous provisions. The bill would establish the following:

- A claimant would have standing to collect the coerced debt from (i) any person(s) determined to have coerced the debtor to incurring the coerced debt and (ii) against a person, other than the debtor, who used or possessed money, goods, services, or property obtained through the coerced debt.
- The statute of limitations for a claimant to bring an action to collect a coerced debt is five years.

EFFECTIVE DATE: The bill would become effective July 1, 2023, and would apply to debts incurred or actions filed on or after that date.