

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 561
PROPOSED COMMITTEE SUBSTITUTE H561-PCS10408-CI-10

Short Title: North Carolina Coerced Debt Relief Act.

(Public)

Sponsors:

Referred to:

April 5, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE CIVIL RELIEF FROM COERCED DEBT.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.(a)** The General Assembly finds that survivors of domestic violence
5 and the children of domestic violence survivors undergo multiple forms of abuses, including
6 monetary abuse, and that survivors of domestic violence need multiple pathways to remedy
7 coerced debt and to repair credit reports. Therefore, it is the public policy of this State to provide
8 remedies for economic abuse against domestic violence survivors.

9 **SECTION 1.(b)** The General Statutes are amended by adding a new Chapter to read:

10 **"Chapter 1H.**

11 **"Coerced Debt Relief Act.**

12 **"§ 1H-1. Short title.**

13 This Chapter shall be known and may be cited as the North Carolina Coerced Debt Relief
14 Act.

15 **"§ 1H-2. Definitions.**

16 The following definitions apply to this Chapter:

17 (1) Abuse. – As defined in G.S. 50C-1(1).

18 (2) Adequate documentation. – Documentation that identifies a particular debt, or
19 portion thereof, as coerced debt, describes the circumstances under which the
20 coerced debt was incurred, and takes the form of any of the following:

21 a. A police report.

22 b. A Federal Trade Commission identity theft report identifying a
23 particular debt, or portion thereof, as coerced, but not as identity theft.

24 c. A court order issued under Chapter 50 or Chapter 50B of the General
25 Statutes relating to domestic violence, Chapter 7B of the General
26 Statutes relating to an abused, neglected, or dependent juvenile, or
27 G.S. 108A-106 relating to disabled adults.

28 d. A sworn written certification from a qualified third-party professional
29 based on information they received while acting in a professional
30 capacity. This documentation shall be signed by a qualified third-party
31 professional and display the letterhead, address, and telephone number
32 of the office, institution, center, or organization, as appropriate, that
33 engages or employs, whether financially compensated or not, the
34 qualified third-party professional, or, if the qualified third-party
35 professional is self-employed, the documentation shall display the



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- 1 letterhead, address, and telephone number of the qualified third-party
2 professional.
- 3 (3) Claim. – A right to payment, whether or not that right is reduced to judgment,
4 liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,
5 undisputed, legal, or equitable.
- 6 (4) Claimant. – A person or an entity who has or purports to have a claim against
7 a debtor arising from coerced debt, or that person's or entity's successor or
8 assignee. This definition includes a debt collector or a debt buyer. The term
9 does not include a person who caused the claim described in subdivision (3)
10 of this section to arise through duress, intimidation, threat of force, force,
11 fraud, or undue influence perpetrated against the debtor.
- 12 (5) Coerced debt. – A particular debt, or portion thereof, for personal, family, or
13 household use in the name of a debtor who is a victim of domestic violence as
14 defined in G.S. 50B-1, or a victim of domestic abuse as defined in
15 G.S. 14-32.3(a), or a current or former child in foster care as defined in
16 G.S. 131D-10.2, incurred as a result of duress, intimidation, threat of force,
17 force, or undue influence.
- 18 (6) Debtor. – A person who owes or is otherwise liable for coerced debt.
- 19 (7) Fraud. – An initial fraudulent act that is perpetrated against the debtor.
- 20 (8) Immediate family member. – As defined in G.S. 53-244.030(13).
- 21 (9) Person. – A natural person.
- 22 (10) Qualified third-party professional. – Any of the following who also has a
23 degree, certificate, or license from an accredited program for counseling
24 domestic violence victims:
- 25 a. Any agent of a domestic violence or sexual assault program, as defined
26 in G.S. 8-53.12.
- 27 b. A guardian ad litem or attorney appointed in accordance with
28 G.S. 1A-1, Rule 17 of the Rules of Civil Procedure, or G.S. 7B-601.
- 29 c. A board-certified psychiatrist or psychologist.
- 30 d. A licensed marriage and family therapist.
- 31 e. A licensed professional clinical counselor.
- 32 f. A licensed clinical social worker.
- 33 g. A social worker or caseworker employed by a county department of
34 social services for the purposes described in G.S. 108A-100 or
35 G.S. 7B-100.
- 36 h. A non-licensed or credentialed domestic violence professional who
37 otherwise meets the criteria of G.S. 8-53.12(a)(1).
- 38 (11) Sworn written certification. – A document in which the author declares under
39 penalty of perjury as true any material fact, and which is accompanied by the
40 following, to the extent that an item listed below is relevant to the debtor's
41 allegation that the debt is coerced debt:
- 42 a. A copy of the debtor's drivers license or identification card, as issued
43 by the State.
- 44 b. Any other identification document that supports the statement that the
45 particular debt, or portion thereof, is coerced debt.
- 46 c. An express statement that the debtor did not willingly authorize the
47 use of the debtor's name or personal information for incurring the
48 coerced debt, and specific facts supporting the claim of coerced debt,
49 if available, and, if not all of the debt was coerced, a statement
50 identifying the portion thereof that was coerced.

1 of the information provided by the debtor and other information available to the claimant in its
2 file. Within 30 days of completing the review, the claimant shall notify the debtor in writing of
3 the claimant's determination and the good-faith basis for that determination. The claimant shall
4 not recommence collection activities until the debtor has been notified in writing of the good-faith
5 determination that the information does not establish that the particular debt, or portion thereof,
6 is coerced debt.

7 (d) No inference or presumption that the debt is valid or invalid, or that the debtor is liable
8 or not liable for the particular debt, or portion thereof, shall arise if the claimant decides after the
9 review described in subsection (c) of this section to cease or recommence collection activities.
10 The exercise or nonexercise of rights under this section is not a waiver of any other right or
11 defense of the debtor or claimant.

12 (e) At least 30 days before filing an action pursuant to G.S. 1H-6 or other action against
13 a claimant in connection with an allegedly coerced debt, a debtor shall submit notice of the
14 debtor's intent to file an action against the claimant and documents that comply with subsection
15 (a) of this section in writing to the claimant. This 30-day period shall begin to run when the
16 claimant receives this written notice. This written notice shall meet all of the following
17 requirements:

18 (1) The notice shall be sent by certified mail, overnight delivery, or other method
19 that allows for confirmation of the delivery date.

20 (2) The notice shall be sent to an address made available to the debtor by the
21 claimant for receipt of the notice, or, if an address has not been identified by
22 the claimant, to the claimant's principal place of business as identified by the
23 Secretary of State. If an address is unavailable through the Secretary of State's
24 website, the debtor may use the correspondence address of the claimant, or in
25 the case of a debt collector, the address on file with the Department of
26 Insurance for licensing purposes.

27 (f) The debtor shall not commence an action described in G.S. 1H-6 or other action
28 against a claimant in connection with an allegedly coerced debt if the claimant informs the debtor
29 that it has ceased all efforts to collect on the particular debt, or portion thereof, identified in the
30 written notice pursuant to subsection (e) of this section and the debtor receives written notice of
31 this cessation before the expiration of the 30-day period.

32 (g) A claimant that ceases collection activities under this section and does not
33 recommence those collection activities shall do both of the following:

34 (1) If the claimant has furnished adverse information to a consumer credit
35 reporting agency regarding the debtor and a particular debt, or portion thereof,
36 notify the agency to delete that information no later than 10 business days after
37 making its determination.

38 (2) If the claimant is a debt collector, notify the creditor no later than 10 business
39 days after making its determination that collection activities have been
40 terminated based upon the debtor's assertion that a particular debt, or portion
41 thereof, being collected is coerced debt.

42 **"§ 1H-6. Filing complaint or counterclaim by debtor.**

43 (a) The debtor may commence an action against a claimant as provided in this subsection
44 to establish that a particular debt, or portion thereof, is coerced debt or other action against a
45 claimant in connection with an allegedly coerced debt if either of the following conditions is
46 satisfied:

47 (1) The 30-day period described in subsection (e) of G.S. 1H-5 expires and the
48 collection activities have not ceased or the debtor has not received written
49 notice that collection activities have ceased.

1 (2) The debtor receives written notice pursuant to subsection (c) of G.S. 1H-5 of
2 the claimant's good-faith determination that the information does not establish
3 that the particular debt, or portion thereof, is coerced debt.

4 (b) In an action brought by a claimant to recover a particular debt against the debtor, the
5 debtor may file a counterclaim to establish that the particular debt, or portion thereof, is coerced
6 debt. The notice described in G.S. 1H-5(c) shall not be required as a prerequisite to filing a
7 counterclaim.

8 (c) A debtor shall plead the allegations of coerced debt with particularity and shall do
9 either of the following:

10 (1) Attach the documents provided to the claimant pursuant to G.S. 1H-5(a) to
11 any complaint.

12 (2) Attach the documents identified in G.S. 1H-5(a) to any counterclaim.

13 (d) A debtor who files knowingly false motions, pleadings, or other papers or engages in
14 other tactics that are frivolous or intended to cause unnecessary delay against a claimant shall be
15 liable for the claimant's attorney's fees and costs in defending the lawsuit.

16 **"§ 1H-7. Order establishing relief from coerced debt.**

17 (a) If the debtor establishes by a preponderance of the evidence that the particular debt,
18 or portion thereof, is coerced debt, the debtor shall be entitled to the following relief:

19 (1) A declaratory judgment that the debtor is not obligated to the claimant on the
20 particular debt, or portion thereof, that is coerced debt.

21 (2) An injunction prohibiting the claimant from holding or attempting to hold the
22 debtor personally liable on the particular debt, or portion thereof, that is
23 coerced debt, and prohibiting the claimant from enforcing a judgment related
24 to the particular debt, or portion thereof, that is coerced debt against the debtor.

25 (3) An order dismissing any cause of action brought by the claimant to enforce or
26 collect on the particular debt from the debtor or, if only a portion of the debt
27 is established as coerced debt, an order directing that the complaint and
28 judgment, if any, in the action be amended to reflect only the portion of the
29 particular debt that is not coerced debt.

30 (b) If the debtor establishes by a preponderance of the evidence that the particular debt,
31 or portion thereof, is coerced debt, the court shall issue a judgment in favor of the claimant against
32 the person or persons who coerced the debtor into incurring the debt in the amount of the debt,
33 or portion thereof, that is coerced debt, provided that the person or persons who coerced the
34 debtor into incurring the debt or debts has been brought within the jurisdiction of the court and
35 joined as a party to the action and the evidence supports such a judgment. The court presiding
36 over the action shall take the appropriate steps necessary to prevent abuse of the debtor or an
37 immediate family member of the debtor, including sealing court records, redacting personally
38 identifiable information about the debtor and any immediate family member of the debtor, and
39 directing that any deposition or evidentiary hearing be conducted remotely.

40 (c) The claimant may move the court to make written findings regarding evidence related
41 to the person who caused the coerced debt to be incurred.

42 **"§ 1H-8. Miscellaneous provisions.**

43 (a) Where some or all of a claim is established as having arisen from coerced debt, a
44 claimant shall have standing, and may use all rights and remedies, to collect by any lawful means
45 that claim, or portion thereof, from the person or persons determined to have coerced the debt,
46 or against a person, other than the debtor, who used or possessed money, goods, services, or
47 property obtained through coerced debt.

48 (b) The statute of limitations for a claimant to bring an action to collect coerced debt from
49 any person determined to have coerced the debt shall run from the date of the court's
50 determination that the person caused the duress, intimidation, threat of force, force, fraud, or

1 undue influence giving rise to the coerced debt at issue and shall be brought within five years of
2 that determination."

3 **SECTION 2.** If any provision of this act or its application is held invalid, such
4 invalidity shall not affect other provisions or applications of this act that can be given effect
5 without the invalid provision or application and, to this end, the provisions of this act are
6 severable.

7 **SECTION 3.** This act becomes effective July 1, 2023, and applies to debts incurred
8 or actions filed on or after that date.