

LBDC

H09:

JUDILA

(Relates to the purchase of claims by corporations or collection agencies)

Jud. purchase claims corporations

By

Amend SENATE BILL NO. 5623 as follows:

Strike out all after "AN ACT" and insert

to amend the judiciary law and the civil practice law and rules, in relation to the purchase of claims by corporations or collection agencies and to certain instruments calling for payment of a monetary obligation by a foreign state

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative intent. The intended purpose of this act is to
2 restore the champerty defense in sovereign debt lawsuits for claims
3 greater than \$500,000 with respect to suits brought by litigious holdout
4 investors. The restoration is not intended to apply to conventional and
5 generally cooperative investors who may occasionally choose to sue.
6 § 2. Subdivision 2 of section 489 of the judiciary law, as added by
7 chapter 394 of the laws of 2004, is amended to read as follows:
8 2. Except as set forth in subdivision three of this section, the
9 provisions of subdivision one of this section shall not apply to any
10 assignment, purchase or transfer hereafter made of one or more bonds,
11 promissory notes, bills of exchange, book debts, or other things in
12 action, or any claims or demands, if such assignment, purchase or trans-
13 fer included bonds, promissory notes, bills of exchange and/or book
14 debts, issued by or enforceable against the same eligible obligor
15 (whether or not also issued by or enforceable against any other eligible
16 obligors), having an aggregate purchase price of at least five hundred
17 thousand dollars, in which event the exemption provided by this subdivi-
18 sion shall apply as well to all other items, including other things in
19 action, claims and demands, included in such assignment, purchase or
20 transfer (but only if such other items are issued by or enforceable
21 against the same eligible obligor, or relate to or arise in connection
22 with such bonds, promissory notes, bills of exchange and/or book debts
23 or the issuance thereof). For the purposes of this subdivision, the
24 term "eligible obligor" means an obligor other than (i) a foreign state
25 as defined in 28 U.S.C. §1603(a) or (ii) an issuer of a bond, loan, or

1 debt instrument guaranteed by a foreign state as defined in 28 U.S.C.
2 1603(a).

3 § 3. Section 489 of the judiciary law is amended by adding a new
4 subdivision 4 to read as follows:

5 4. For purposes of subdivision one of this section, an assignee's
6 intent and purpose in taking an assignment of a claim against an obligor
7 that is not an eligible obligor may be inferred from the history of the
8 assignee's (and its affiliates') behavior in transactions involving the
9 debts of other obligors including, but not limited to, whether that
10 history indicates a pattern of either (a) participating in good faith
11 alongside other creditors in consensual resolutions of such situations
12 or (b) acquiring claims against such obligors at a significant discount
13 from face value, refusing to participate in consensual workouts and
14 instead resorting to legal enforcement of the acquired claims. A court
15 shall consider such other facts and circumstances as it may find rele-
16 vant in assessing the assignee's intent and purpose.

17 § 4. The judiciary law is amended by adding a new section 489-a to
18 read as follows:

19 § 489-a. Sovereign debt modifications. 1. Every instrument governed by
20 the law of the state of New York calling for the payment of a monetary
21 obligation by a foreign state (as defined in 28 U.S.C. § 1603(a))
22 imposes a duty on the holder to participate in good faith in a qualified
23 restructuring affecting such instrument.

24 2. For purposes of this section, a "qualified restructuring" means a
25 modification of the terms of some or all of the unsecured debt instru-
26 ments issued by a foreign state whose debt has been assessed as unus-
27 tainable by the International Monetary Fund within the prior twelve
28 months provided that the modification is accepted by the holders of not
29 less than two-thirds in amount and more than one-half in number of the
30 debt instruments affected by the modification (excluding, for purposes
31 of voting, any instruments that are owned or controlled, directly or
32 indirectly, by the foreign state or any of its agencies or instrumental-
33 ities).

34 § 5. Section 5004 of the civil practice law and rules, as amended by
35 chapter 831 of the laws of 2021, is amended to read as follows:

36 § 5004. Rate of interest. (a) Interest shall be at the rate of nine
37 per centum per annum, except where otherwise provided by statute;
38 provided the annual rate of interest to be paid in an action arising out
39 of a consumer debt where a natural person is a defendant shall be two
40 per centum per annum (i) on a judgment or accrued claim for judgments
41 entered on or after the effective date of [the] chapter 831 of the laws
42 of two thousand twenty-one [which amended this section], and (ii) for
43 interest upon a judgment pursuant to section five thousand three of this
44 article from the date of the entry of judgment on any part of a judgment
45 entered before the effective date of [the] chapter 831 of the laws of
46 two thousand twenty-one [which amended this section] that is unpaid as
47 of such effective date.

48 (b) For claims brought after May fifteenth, two thousand twenty-four,
49 the annual rate of interest to be paid in an action arising out of a
50 claim against a foreign state (as defined in 28 U.S.C. §1603(a)) as a
51 defendant shall be equal to the weekly average one-year constant maturi-
52 ty Treasury yield, as published by the Board of Governors of the Federal
53 Reserve System, for the calendar week proceeding the date of entry of
54 the judgment awarding damages (28. U.S.C. §1961(a)). For the purpose of
55 this subdivision, a "claim against a foreign state" means a payment
56 claim against a foreign state for monies borrowed or for the foreign

1 state's guarantee of, or other contingent obligation on, monies
2 borrowed; the term "monies borrowed" shall include the following, wheth-
3 er or not it represents the borrowing of money: monies owing
4 under bonds; debentures; notes, or similar instruments of original matu-
5 riety of at least one year; monies owing for the deferred purchase
6 price of property or services, other than trade accounts payable arising
7 in the ordinary course of government operations; monies owing on
8 capitalized lease obligations; monies owing on or with respect to
9 letters of credit, bankers' acceptances, or other extensions of credit
10 of original maturity of at least one year;

11 (c) For the purpose of this section "consumer debt" means any obli-
12 gation or alleged obligation of any natural person to pay money arising
13 out of a transaction in which the money, property, insurance or services
14 which are the subject of the transaction are primarily for personal,
15 family or household purposes, whether or not such obligation has been
16 reduced to judgment, including, but not limited to, a consumer credit
17 transaction, as defined in subdivision (f) of section one hundred five
18 of this chapter.

19 [(c)] (d) This section does not affect or create any rights or reme-
20 dies related to any amounts paid prior to the effective date of this
21 subdivision, including amounts paid to satisfy judgments or to accrued
22 interest or fees paid, or with respect to judgments satisfied prior to
23 the effective date of this subdivision. For amounts paid prior to the
24 effective date of this subdivision and lawfully applied in satisfaction
25 or partial satisfaction of interest or fees accrued prior to the effec-
26 tive date of this subdivision, this section shall not be construed to
27 require a judgment creditor or sheriff to (i) return or refund such
28 amounts to judgment debtors; or (ii) apply such payments to satisfy any
29 part of a money judgment other than fees or interest upon judgment
30 pursuant to section five thousand three of this article.

31 [(d)] (e) If any word, phrase, clause, sentence, paragraph, subdivi-
32 sion, or part of this section or its application to any person or
33 circumstance is held invalid by any court of competent jurisdiction
34 after exhaustion of all further judicial review, the invalidity shall
35 not affect, impair, or invalidate the remainder of this section or
36 applications of this article which can be given effect without the
37 invalid provision or application, and to this end the provisions of this
38 section are severable.

39 § 6. This act shall take effect immediately.