



NEW YORK STATE SENATOR

Liz Krueger

Legislators Announce Updates To Champerty Bill

LIZ KRUEGER May 20, 2024

| ISSUE: **SOVEREIGN DEBT, CHAMPERTY**



Changes To Be Made To Legislation Preventing Damaging Sovereign Debt Practices

Albany – Senator Liz Krueger and Assemblymember Jessica González-Rojas today announced their intention to introduce a revised champerty bill ([S.5623/A.5290](#)). This amended bill will incorporate feedback from various constituencies, including investors and officials in Washington.

For years, vulture hedge funds have built their wealth off struggling nations by using the same playbook - they bet on a nation's economic failure and engage in predatory practices that increase poverty and get in the way of economic recovery. These hedge funds have made billions in profits while leaving nations with insurmountable debts and a destabilized economy.

Approximately half of sovereign debt contracts are governed by New York law, meaning that by changing the law, New York can change the rules by which these hedge funds play.

The Champerty Doctrine prohibits the purchase of securities or other financial instruments for the sole purpose of litigation. Champerty is currently a feature of New York judiciary law and has been for many years. However, in 2004, the State enacted a safe harbor to allow the purchase of claims “with the intent and purpose to sue” for claims exceeding \$500,000—which was followed by a rapid increase in sovereign debt litigation in the State. The bill will remove this safe harbor for champertous investment behavior with respect to sovereign debt claims, with the aim of reducing such litigation and to support orderly sovereign debt restructurings.

The revised bill addresses an important shortcoming of Section 489 of the State’s Judiciary law: It does not provide any guidance to a court asked to determine an assignee’s “intent and purpose” in taking an assignment of a debt instrument. The bill would clarify that courts are authorized to look at the behavior of the assignee and its affiliates in other debt workout situations in determining that assignee’s intent and purpose.

The scope of the bill is carefully tailored. It would only apply to debtors like foreign states, who are vulnerable to disruptive litigation even while they are working in good faith with representatives of a majority of creditors to carry a voluntary adjustment of their debt using Collective Action Clauses. And the bill is narrowly focused on blocking litigation brought by institutions whose history implies that they buy debt instruments of financially distressed borrowers with the express intention of pursuing a preferential recovery vis-a-vis other similarly situated creditors. In the revised bill, no such implication would be drawn in the case of conventional investors even if circumstances in a particular case result in the investor pursuing its legal remedies.

In further support of good faith negotiations to resolve sovereign debt crises, the bill also incorporates a positive obligation of creditors to cooperate with sovereign debtors while they restructure their debt.

The revised bill also includes a wholly new provision to lower pre-judgment interest-on-interest

claims to match the federal statutory rate of 1-year Treasury Bill rates, with respect to sovereign debt claims only. Investors in the market expressed support for this feature during consultations held over the last year, and its inclusion in the revised bill follows [recent public remarks](#) by US Under Secretary for International Affairs, Jay Shambaugh, who stated: “...in key financial jurisdictions for sovereign debt, narrow, targeted updates that avoid market disruptions – such [as] indexing prejudgment interest rates to prevailing market rates – could help further align incentives for net private flows.”

As per the original draft introduced on March 9th, 2023, this bill will support the orderly restructuring of sovereign debt. To facilitate public comment, the draft text of the revised bill [can be viewed by clicking here](#).

With the goal of enacting this bill in this legislative session, Senator Krueger and Assemblymember González-Rojas invite formal written comments on the draft revised bill text by May 28, 2024.

Please forward written comments to lkrueger@nysenate.gov and gonzalezrojasj@nyassembly.gov.

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RELATED LEGISLATION

2023-S5623

-
- Introduced

- ○ In Committee Assembly
 - In Committee Senate
- ○ On Floor Calendar Assembly
 - On Floor Calendar Senate
- ○ Passed Assembly
 - Passed Senate
- Delivered to Governor
- Signed By Governor
-

Relates to the purchase of claims by corporations or collection agencies

March 09, 2023

In Assembly Committee

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Do you support this bill?