

S T A T E O F N E W Y O R K

1759--A

2009-2010 Regular Sessions

I N S E N A T E

February 5, 2009

Introduced by Sen. SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the New York city civil court act, in relation to commencement of a small claims action

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The opening paragraph of subdivision (a) of section 1803-A
2 of the New York city civil court act, as amended by section 35 of part J
3 of chapter 62 of the laws of 2003, is amended to read as follows:
4 Commercial claims other than claims arising out of consumer trans-
5 actions shall be commenced upon the payment by the claimant of a filing
6 fee of twenty-five dollars and the cost of mailings as herein provided,
7 without the service of a summons and, except by special order of the
8 court, without the service of any pleading other than a required certif-
9 ication verified as to its truthfulness by the claimant on a form
10 prescribed by the state office of court administration and filed with
11 the clerk, that no more than five such actions or proceedings (including
12 the instant action or proceeding) have been instituted during that
13 calendar month, and a required statement of its cause of action by the
14 claimant or someone in its behalf to the clerk, who shall reduce the
15 same to a concise, written form and record it in a docket kept especial-
16 ly for such purpose. Such procedure shall provide that the commercial
17 claims part of the court shall have no jurisdiction over, and shall
18 dismiss, any case with respect to which the required certification is
19 not made upon the attempted institution of the action or proceeding.
20 Such procedure shall provide for the sending of notice of such claim by
21 [ordinary first class mail and] certified mail with return receipt
22 requested to the party complained against at his residence, if he

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

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1 resides within the city of New York, and his residence is known to the
2 claimant, or at his office or place of regular employment within the
3 city of New York if he does not reside therein or his residence within
4 the city of New York is not known to the claimant. [If, after the expi-
5 ration of twenty-one days, such ordinary first class mailing has not
6 been returned as undeliverable, the party complained against shall be
7 presumed to have received notice of such claim.] Such notice shall
8 include a clear description of the procedure for filing a counterclaim,
9 pursuant to subdivision (d) of this section.

10 S 2. Subdivision (b) of section 1803-A of the New York city civil
11 court act, as amended by section 35 of part J of chapter 62 of the laws
12 of 2003, is amended to read as follows:

13 (b) (1) Commercial claims in actions arising out of consumer trans-
14 actions shall be commenced upon the payment by the claimant of a filing
15 fee of twenty-five dollars and the cost of mailings as herein provided,
16 without the service of a summons and, except by special order of the
17 court, without the service of any pleading other than a required state-
18 ment of the cause of action by the claimant or someone on its behalf of
19 the clerk, who shall reduce the same to a concise written form including
20 the information required by subdivision (c) of this section, denominate
21 it conspicuously as a consumer transaction, and record it in the docket
22 marked as a consumer transaction, and by filing with the clerk a
23 required certificate verified as to its truthfulness by the claimant on
24 forms prescribed by the state office of court administration.

25 (2) Such verified certificate shall certify (i) that the claimant has
26 mailed by ordinary first class mail to the party complained against a
27 demand letter, no less than ten days and no more than one hundred eighty
28 days prior to the commencement of the claim, and (ii) that, based upon
29 information and belief, the claimant has not instituted more than five
30 actions or proceedings (including the instant action or proceeding)
31 during the calendar month.

32 (3) A form for the demand letter shall be prescribed and furnished by
33 the state office of court administration and shall require the following
34 information: the date of the consumer transaction; the amount that
35 remains unpaid; a copy of the original debt instrument or other document
36 underlying the debt and an accounting of all payments, and, if the
37 claimant was not a party to the original transaction, the names and
38 addresses of the parties to the original transaction; and a statement
39 that the claimant intends to use this part of the court to obtain a
40 judgment, that further notice of a hearing date will be sent, unless
41 payment is received by a specified date, and that the party complained
42 against will be entitled to appear at said hearing and present any
43 defenses to the claim.

44 (4) In the event that the verified certificate is not properly
45 completed by the claimant, the court shall not allow the action to
46 proceed until the verified certificate is corrected. Notice of such
47 claim shall be sent by the clerk by [both ordinary first class mail and]
48 certified mail with return receipt requested to the party complained
49 against at his residence, if he resides within the city of New York, and
50 his residence is known to the claimant, or at his office or place of
51 regular employment within the city of New York if he does not reside
52 therein or his residence within the city of New York is not known to the
53 claimant. [If, after the expiration of thirty days, such ordinary first
54 class mailing has not been returned as undeliverable, the party
55 complained against shall be presumed to have received notice of such
56 claim.]

1 (5) Such procedure shall further provide for an early hearing upon and
2 determination of such claim. The hearing shall be scheduled in a manner
3 which, to the extent possible, minimizes the time the party complained
4 against must be absent from employment. Either party may request that
5 the hearing be scheduled during evening hours, provided that the hearing
6 shall not be scheduled during evening hours if it would cause unreason-
7 able hardship to either party. The court shall not unreasonably deny
8 requests for evening hearings if such requests are made by the claimant
9 upon commencement of the action or by the party complained against with-
10 in fourteen days of receipt of the notice of claim.
11 S 3. This act shall take effect immediately and shall apply to actions
12 commenced on and after such date.