

4398

2009-2010 Regular Sessions

I N   S E N A T E

April 22, 2009

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Introduced by Sen. SCHNEIDERMAN -- read twice and ordered printed, and  
when printed to be committed to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to consumer credit transactions

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

1     Section 1. Short title. This act shall be known and may be cited as  
2     the "consumer credit fairness act".

3     S 2. Subdivision 2 of section 213 of the civil practice law and rules,  
4     as amended by chapter 709 of the laws of 1988, is amended to read as  
5     follows:

6     2. an action upon a contractual obligation or liability, express or  
7     implied, except as provided in section two hundred thirteen-a OR TWO  
8     HUNDRED FOURTEEN-F of this article or article 2 of the uniform commercial code or article 36-B of the general business law;

9     S 3. The civil practice law and rules is amended by adding a new  
10    section 214-f to read as follows:

11    S 214-F. CERTAIN ACTIONS ARISING OUT OF CONSUMER CREDIT TRANSACTIONS  
12    TO BE COMMENCED WITHIN TWO YEARS. AN ACTION ARISING OUT OF A CONSUMER  
13    CREDIT TRANSACTION WHERE A PURCHASER, BORROWER OR DEBTOR IS A DEFENDANT  
14    MUST BE COMMENCED WITHIN TWO YEARS, EXCEPT AS PROVIDED IN SECTION TWO  
15    HUNDRED THIRTEEN-A OF THIS ARTICLE OR ARTICLE 2 OF THE UNIFORM COMMERCIAL CODE OR ARTICLE 36-B OF THE GENERAL BUSINESS LAW. WHEN THE PERIOD  
16    WITHIN WHICH AN ACTION MAY BE COMMENCED UNDER THIS SECTION HAS EXPIRED,  
17    THE RIGHT IS EXTINGUISHED AS WELL AS THE REMEDY.

18    S 4. The civil practice law and rules is amended by adding a new  
19    section 306-c to read as follows:

20    S 306-C. ADDITIONAL MAILING OF NOTICE IN AN ACTION ARISING OUT OF A  
21    CONSUMER CREDIT TRANSACTION. 1. AT THE TIME OF FILING WITH THE CLERK OF  
22    THE PROOF OF SERVICE OF THE SUMMONS AND COMPLAINT IN AN ACTION ARISING  
23    OUT OF A CONSUMER CREDIT TRANSACTION, THE PLAINTIFF SHALL SUBMIT TO THE  
24    THE  
25    THE

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

LBD11087-01-9

CLERK A STAMPED ENVELOPE ADDRESSED TO THE DEFENDANT TOGETHER WITH A WRITTEN NOTICE IN CLEAR TYPE OF NO LESS THAN TWELVE-POINT IN SIZE, IN BOTH ENGLISH AND SPANISH, AND CONTAINING THE FOLLOWING LANGUAGE:

## NOTICE OF LAWSUIT

(DATE)

(NAME OF COURT)

(COUNTY)

(STREET ADDRESS, ROOM NUMBER)

(CITY, STATE, ZIP CODE)

(NAME OF DEFENDANT)

(ADDRESS OF DEFENDANT)

PLAINTIFF: \_\_\_\_\_

DEFENDANT: \_\_\_\_\_

NAME OF ORIGINAL CREDITOR, UNLESS SAME: \_\_\_\_\_

INDEX NUMBER: \_\_\_\_\_

ATTENTION: A LAWSUIT HAS BEEN FILED AGAINST YOU CLAIMING THAT YOU OWE MONEY FOR AN UNPAID CREDIT CARD, MEDICAL, STUDENT LOAN OR OTHER DEBT. YOU SHOULD GO TO THE COURT CLERK'S OFFICE AT THE ABOVE ADDRESS AS SOON AS POSSIBLE TO RESPOND TO THE LAWSUIT. YOU MAY WISH TO CONTACT AN ATTORNEY. IF YOU DO NOT HAVE AN ATTORNEY, HELP IS AVAILABLE AT THE COURT. IF YOU DO NOT RESPOND TO THE LAWSUIT, THE COURT MAY ENTER A JUDGMENT AGAINST YOU. ONCE ENTERED, A JUDGMENT IS VALID FOR TWENTY YEARS, AND YOUR MONEY, INCLUDING A PORTION OF YOUR PAYCHECK AND/OR BANK ACCOUNT, MAY BE TAKEN. ALSO, A JUDGMENT WILL HURT YOUR CREDIT SCORE AND CAN AFFECT YOUR ABILITY TO RENT A HOME, FIND A JOB, OR TAKE OUT A LOAN. YOU CANNOT BE ARRESTED OR SENT TO JAIL FOR OWING A DEBT. IT IS IMPORTANT THAT YOU GO TO THE COURT CLERK'S OFFICE LISTED ABOVE AND BRING THIS NOTICE WITH YOU.

## AVISO DE DEMANDA

(FECHA)

(NOMBRE DE LA CORTE)

(CONDADO)

(DOMICILIO, NUMERO DE OFICINA)

(CIUDAD, ESTADO, CODIGO POSTAL)

(NOMBRE DE DEMANDADO)

(DOMICILIO DEL DEMANDADO)

DEMANDANTE: \_\_\_\_\_

DEMANDADO: \_\_\_\_\_

NOMBRE DEL ACREEDOR, SI NO ES EL MISMO: \_\_\_\_\_

NUMERO DE INDICE: \_\_\_\_\_

ATENCION: UNA DEMANDA HA SIDO PRESENTADA EN CONTRA SUYA RECLAMANDO QUE USTED DEBE DINERO PARA UNA DEUDA DE TARJETA DE CREDITO, MEDICO, PRESTAMOS ESTUDIANTILES, O OTRAS DEUDAS. USTED DEBE IR A LA OFICINA DEL SECRETARIO DE LA CORTE A LA DIRECCION INDICADA ARRIBA LO ANTES POSIBLE PARA RESPONDER A LA DEMANDA. SI USTED DESEA, PUEDE CONTACTAR UN ABOGADO. SI USTED NO TIENE UN ABOGADO, AYUDA ESTA DISPONIBLE EN LA CORTE.

SI USTED NO RESPONDE A LA DEMANDA, LA CORTE PUEDE EXPEDIR UN JUICIO EN CONTRA SUYA. UNA VEZ QUE HAYA SIDO DECLARADO, UN JUICIO ESTARA VALIDO POR VEINTE ANOS, Y SU DINERO, INCLUYENDO UNA PARTE DE SU SALARIO Y/O CUENTAS BANCARIAS PUEDEN SER EMBARGADAS. INCLUSO, UN JUICIO VA A DANAR SU HISTORIAL DE CREDITO Y PUEDE AFECTAR SU CAPACIDAD DE RENTAR UN HOGAR, BUSCAR UN TRABAJO, O SACAR UN PRESTAMO.

USED NO PUEDE SER ARRESTADO NI METIDO EN LA CARCEL POR DEBER UNA DEUDA. ES IMPORTANTE QUE USTED VAYA A LA OFICINA DEL SECRETARIO DE LA CORTE MENCIONADA ARRIBA Y LLEVE ESTA AVISO CON USTED.

2. THE FACE OF THE ENVELOPE SHALL BE ADDRESSED TO THE DEFENDANT AT THE ADDRESS AT WHICH PROCESS WAS SERVED, AND SHALL CONTAIN THE DEFENDANT'S NAME, ADDRESS (INCLUDING APARTMENT NUMBER) AND ZIP CODE. THE FACE OF THE ENVELOPE ALSO SHALL STATE THE APPROPRIATE CLERK'S OFFICE AS ITS RETURN ADDRESS.

3. THE CLERK PROMPTLY SHALL MAIL TO THE DEFENDANT THE ENVELOPE CONTAINING THE ADDITIONAL NOTICE SET FORTH IN SUBDIVISION ONE OF THIS SECTION. NO DEFAULT JUDGMENT BASED ON THE DEFENDANT'S FAILURE TO ANSWER SHALL BE ENTERED UNLESS THERE HAS BEEN COMPLIANCE WITH THIS SECTION, AND AT LEAST TWENTY DAYS HAVE ELAPSED FROM THE DATE OF MAILING BY THE CLERK.

S 5. Subdivision (a) of section 3012 of the civil practice law and rules is amended to read as follows:

(a) Service of pleadings. The complaint may be served with the summons, EXCEPT THAT IN AN ACTION ARISING OUT OF A CONSUMER CREDIT TRANSACTION, THE COMPLAINT SHALL BE SERVED WITH THE SUMMONS. A subsequent pleading asserting new or additional claims for relief shall be served upon a party who has not appeared in the manner provided for service of a summons. In any other case, a pleading shall be served in the manner provided for service of papers generally. Service of an answer or reply shall be made within twenty days after service of the pleading to which it responds.

S 6. Rule 3016 of the civil practice law and rules is amended by adding a new subdivision (i) to read as follows:

(I) CONSUMER CREDIT TRANSACTIONS. IN AND ACTION ARISING OUT OF A CONSUMER CREDIT TRANSACTION WHERE A PURCHASER, BORROWER OR DEBTOR IS A DEFENDANT, THE CONTRACT OR OTHER WRITTEN INSTRUMENT ON WHICH THE ACTION IS BASED SHALL BE ATTACHED TO THE COMPLAINT AND THE FOLLOWING INFORMATION SHALL BE SET FORTH IN THE COMPLAINT:

1. THE NAME OF THE ORIGINAL CREDITOR;
2. THE LAST FOUR DIGITS OF THE ORIGINAL ACCOUNT NUMBER;
3. THE DATE AND AMOUNT OF THE LAST PAYMENT;
4. IF THE COMPLAINT CONTAINS A CAUSE OF ACTION BASED ON AN ACCOUNT STATED, THE DATE THAT THE FINAL STATEMENT OF ACCOUNT WAS MAILED TO THE DEFENDANT;
5. AN ITEMIZATION OF THE AMOUNT SOUGHT, BY (I) PRINCIPAL; (II) FINANCE CHARGE OR CHARGES; (III) FEES IMPOSED BY THE ORIGINAL CREDITOR; (IV) COLLECTION COSTS; (V) ATTORNEY'S FEES; (VI) INTEREST; AND (VII) ANY OTHER FEES AND CHARGES. THE TERM "FINANCE CHARGE" MEANS A FINANCE CHARGE AS DEFINED IN REGULATION Z, 12 C.F.R. S 226.4.

6. WHETHER THE PLAINTIFF IS THE ORIGINAL CREDITOR. IF THE PLAINTIFF IS NOT THE ORIGINAL CREDITOR, THE COMPLAINT SHALL STATE (I) THE DATE ON WHICH THE DEBT WAS ASSIGNED TO THE PLAINTIFF; AND (II) THE NAME OF EACH PREVIOUS OWNER OF THE ACCOUNT AND THE DATE ON WHICH THE DEBT WAS ASSIGNED TO THAT OWNER.

7. ANY MATTERS REQUIRED TO BE STATED WITH PARTICULARITY PURSUANT TO RULE 3015 OF THIS ARTICLE.

1 S 7. Subdivision (e) of rule 3211 of the civil practice law and rules,  
2 as amended by chapter 616 of the laws of 2005, is amended to read as  
3 follows:

4 (e) Number, time and waiver of objections; motion to plead over. At  
5 any time before service of the responsive pleading is required, a party  
6 may move on one or more of the grounds set forth in subdivision (a) OF  
7 THIS SECTION, and no more than one such motion shall be permitted. Any  
8 objection or defense based upon a ground set forth in paragraphs one,  
9 three, four, five and six of subdivision (a) OF THIS SECTION is waived  
10 unless raised either by such motion or in the responsive pleading. A  
11 motion based upon a ground specified in paragraph two, seven or ten of  
12 subdivision (a) OF THIS SECTION may be made at any subsequent time or in  
13 a later pleading, if one is permitted; IN ANY ACTION OTHER THAN AN  
14 ACTION ARISING OUT OF A CONSUMER CREDIT TRANSACTION WHERE A PURCHASER,  
15 BORROWER OR DEBTOR IS A DEFENDANT, an objection that the summons and  
16 complaint, summons with notice, or notice of petition and petition was  
17 not properly served is waived if, having raised such an objection in a  
18 pleading, the objecting party does not move for judgment on that ground  
19 within sixty days after serving the pleading, unless the court extends  
20 the time upon the ground of undue hardship. The foregoing sentence shall  
21 not apply in any proceeding under subdivision one or two of section  
22 seven hundred eleven of the real property actions and proceedings law.  
23 The papers in opposition to a motion based on improper service shall  
24 contain a copy of the proof of service, whether or not previously filed.  
25 An objection based upon a ground specified in paragraph eight or nine of  
26 subdivision (a) OF THIS SECTION is waived if a party moves on any of the  
27 grounds set forth in subdivision (a) OF THIS SECTION without raising  
28 such objection or if, having made no objection under subdivision (a) OF  
29 THIS SECTION, he or she does not raise such objection in the responsive  
30 pleading.

31 S 8. Subdivisions (a) and (f) of section 3215 of the civil practice  
32 law and rules, subdivision (a) as amended by chapter 749 of the laws of  
33 1965 and subdivision (f) as amended by chapter 453 of the laws of 2006,  
34 are amended to read as follows:

35 (a) Default and entry. When a defendant has failed to appear, plead or  
36 proceed to trial of an action reached and called for trial, or when the  
37 court orders a dismissal for any other neglect to proceed, the plaintiff  
38 may seek a default judgment against him. If the plaintiff's claim is for  
39 a sum certain or for a sum which can by computation be made certain,  
40 application may be made to the clerk within one year after the default.  
41 The clerk, upon submission of the requisite proof, shall enter judgment  
42 for the amount demanded in the complaint or stated in the notice served  
43 pursuant to subdivision (b) of rule 305 OF THIS CHAPTER, plus costs and  
44 interest. Upon entering a judgment against less than all defendants, the  
45 clerk shall also enter an order severing the action as to them. When a  
46 plaintiff has failed to proceed to trial of an action reached and called  
47 for trial, or when the court orders a dismissal for any other neglect to  
48 proceed, the defendant may make application to the clerk within one year  
49 after the default and the clerk, upon submission of the requisite proof,  
50 shall enter judgment for costs. Where the case is not one in which the  
51 clerk can enter judgment, the plaintiff shall apply to the court for  
52 judgment. IN AN ACTION ARISING OUT OF A CONSUMER CREDIT TRANSACTION  
53 WHERE A PURCHASER, BORROWER OR DEBTOR IS A DEFENDANT, JUDGMENT MAY BE  
54 ENTERED ONLY PURSUANT TO SUBDIVISION (B) OF THIS SECTION.

55 (f) Proof. On any application for judgment by default, the applicant  
56 shall file proof of service of the summons and the complaint, or a

1 summons and notice served pursuant to subdivision (b) of rule 305 or  
2 subdivision (a) of rule 316 of this chapter, and proof of the facts  
3 constituting the claim, the default and the amount due by affidavit made  
4 by the party, or where the state of New York is the plaintiff, by affi-  
5 davit made by an attorney from the office of the attorney general who  
6 has or obtains knowledge of such facts through review of state records  
7 or otherwise. Where a verified complaint has been served, it may be used  
8 as the affidavit of the facts constituting the claim and the amount due;  
9 in such case, an affidavit as to the default shall be made by the party  
10 or the party's attorney. IN AN ACTION ARISING OUT OF A CONSUMER CREDIT  
11 TRANSACTION, IF THE PLAINTIFF IS NOT THE ORIGINAL CREDITOR, THE APPLI-  
12 CANT SHALL INCLUDE AN AFFIDAVIT FROM THE ORIGINAL CREDITOR OF THE FACTS  
13 CONSTITUTING THE DEBT CLAIMED, TOGETHER WITH THE PROOF OF ANY SUBSEQUENT  
14 ASSIGNMENT OR ASSIGNMENTS. When jurisdiction is based on an attachment  
15 of property, the affidavit must state that an order of attachment grant-  
16 ed in the action has been levied on the property of the defendant,  
17 describe the property and state its value. Proof of mailing the notice  
18 required by subdivision (g) of this section, where applicable, shall  
19 also be filed.

20 S 9. The civil practice law and rules is amended by adding a new  
21 section 7515 to read as follows:

22 S 7515. CONFIRMATION OF AN AWARD BASED ON A CONSUMER CREDIT TRANS-  
23 ACTION. IN ANY PROCEEDING UNDER SECTION 7510 OF THIS ARTICLE TO CONFIRM  
24 AN AWARD BASED ON A CONSUMER CREDIT TRANSACTION, THE PARTY SEEKING TO  
25 CONFIRM THE AWARD SHALL PLEAD THE ACTUAL TERMS AND CONDITIONS OF THE  
26 AGREEMENT TO ARBITRATE. THE PARTY SHALL ATTACH TO ITS PETITION (1) THE  
27 AGREEMENT TO ARBITRATE; (2) THE DEMAND FOR ARBITRATION OR NOTICE OF  
28 INTENTION TO ARBITRATE, WITH PROOF OF SERVICE; AND (3) THE ARBITRATION  
29 AWARD, WITH PROOF OF SERVICE. IF THE AWARD DOES NOT CONTAIN A STATEMENT  
30 OF THE CLAIMS SUBMITTED FOR ARBITRATION, OF THE CLAIMS RULED UPON BY THE  
31 ARBITRATOR, AND OF THE CALCULATION OF FIGURES USED BY THE ARBITRATOR IN  
32 ARRIVING AT THE AWARD, THEN THE PETITION SHALL CONTAIN SUCH A STATEMENT.  
33 THE COURT SHALL NOT GRANT CONFIRMATION OF AN AWARD BASED ON A CONSUMER  
34 CREDIT TRANSACTION UNLESS THE PARTY SEEKING TO CONFIRM THE AWARD HAS  
35 COMPLIED WITH THIS SECTION.

36 S 10. This act shall take effect on the first of January next succeed-  
37 ing the date on which it shall have become a law.