

1968

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 12, 2011

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Introduced by M. of A. JEFFRIES, KAVANAGH -- read once and referred to  
the Committee on Judiciary

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 ASSEM-  
BLY, 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  
23 resides within the city of New York, and his residence is known to the  
24 claimant, or at his office or place of regular employment within the  
25 city of New York if he does not reside therein or his residence within

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

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1 the city of New York is not known to the claimant. [If, after the expi-  
2 ration of twenty-one days, such ordinary first class mailing has not  
3 been returned as undeliverable, the party complained against shall be  
4 presumed to have received notice of such claim.] Such notice shall  
5 include a clear description of the procedure for filing a counterclaim,  
6 pursuant to subdivision (d) of this section.

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

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

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

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

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

54 (5) Such procedure shall further provide for an early hearing upon and  
55 determination of such claim. The hearing shall be scheduled in a manner  
56 which, to the extent possible, minimizes the time the party complained

1 against must be absent from employment. Either party may request that  
2 the hearing be scheduled during evening hours, provided that the hearing  
3 shall not be scheduled during evening hours if it would cause unreason-  
4 able hardship to either party. The court shall not unreasonably deny  
5 requests for evening hearings if such requests are made by the claimant  
6 upon commencement of the action or by the party complained against with-  
7 in fourteen days of receipt of the notice of claim.

8 S 3. This act shall take effect immediately and shall apply to actions  
9 commenced on and after such date.