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

677--A

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged and said bill committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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

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

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

S 214-F. CERTAIN ACTIONS ARISING OUT OF CONSUMER CREDIT TRANSACTIONS TO BE COMMENCED WITHIN THREE YEARS. AN ACTION ARISING OUT OF A CONSUMER CREDIT TRANSACTION WHERE A PURCHASER, BORROWER OR DEBTOR IS A DEFENDANT MUST BE COMMENCED WITHIN THREE YEARS, EXCEPT AS PROVIDED IN SECTION TWO 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 WITHIN WHICH AN ACTION MAY BE COMMENCED UNDER THIS SECTION HAS EXPIRED, THE RIGHT TO COLLECT CONSUMER CREDIT DEBT IS EXTINGUISHED AS WELL AS THE REMEDY.

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

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FOR PURPOSES OF THIS SECTION, "THE RIGHT TO COLLECT CONSUMER CREDIT DEBT" SHALL MEAN ANY ATTEMPTS BY THE CREDITOR, THIRD PARTY PURCHASER, OR OTHER AUTHORIZED THIRD PARTY TO COLLECT SUCH DEBT INCLUDING, BUT NOT LIMITED TO, CALLS, MAIL OR OTHER ATTEMPTS TO COLLECT.

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

S 306-D. ADDITIONAL MAILING OF NOTICE IN AN ACTION ARISING OUT OF A CONSUMER CREDIT TRANSACTION. 1. AT THE TIME OF FILING WITH THE CLERK OF THE PROOF OF SERVICE OF THE SUMMONS AND COMPLAINT IN AN ACTION ARISING OUT OF A CONSUMER CREDIT TRANSACTION, THE PLAINTIFF SHALL SUBMIT TO THE 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 GOOD AND CAN BE USED AGAINST YOU 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. ADDITIONAL INFORMATION CAN BE FOUND AT THE COURT SYSTEM WEBSITE AT: WWW.COURTS.STATE.NY.US

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 AN 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.

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

(e) Number, time and waiver of objections; motion to plead over. At any time before service of the responsive pleading is required, a party may move on one or more of the grounds set forth in subdivision (a) OF THIS SECTION, and no more than one such motion shall be permitted. Any objection or defense based upon a ground set forth in paragraphs one, three, four, five and six of subdivision (a) OF THIS SECTION is waived unless raised either by such motion or in the responsive pleading. A motion based upon a ground specified in paragraph two, seven or ten of subdivision (a) OF THIS SECTION may be made at any subsequent time or in a later pleading, if one is permitted; IN ANY ACTION OTHER THAN AN ACTION ARISING OUT OF A CONSUMER CREDIT TRANSACTION WHERE A PURCHASER, BORROWER OR DEBTOR IS A DEFENDANT, an objection that the summons and complaint, summons with notice, or notice of petition and petition was not properly served is waived if, having raised such an objection in a pleading, the objecting party does not move for judgment on that ground within sixty days after serving the pleading, unless the court extends the time upon the ground of undue hardship. The foregoing sentence shall not apply in any proceeding under subdivision one or two of section seven hundred eleven of the real property actions and proceedings law.

The papers in opposition to a motion based on improper service shall contain a copy of the proof of service, whether or not previously filed. An objection based upon a ground specified in paragraph eight or nine of subdivision (a) OF THIS SECTION is waived if a party moves on any of the grounds set forth in subdivision (a) OF THIS SECTION without raising such objection or if, having made no objection under subdivision (a) OF THIS SECTION, he or she does not raise such objection in the responsive pleading.

S 8. Subdivision (f) of section 3215 of the civil practice law and rules, as amended by chapter 453 of the laws of 2006, is amended and a new subdivision (j) is added to read as follows:

(f) Proof. On any application for judgment by default, the applicant shall file proof of service of the summons and the complaint, or a summons and notice served pursuant to subdivision (b) of rule 305 or subdivision (a) of rule 316 of this chapter, and proof of the facts constituting the claim, the default and the amount due by affidavit made by the party, or where the state of New York is the plaintiff, by affidavit made by an attorney from the office of the attorney general who has or obtains knowledge of such facts through review of state records or otherwise. Where a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party or the party's attorney. IN AN ACTION ARISING OUT OF A CONSUMER CREDIT TRANSACTION, IF THE PLAINTIFF IS NOT THE ORIGINAL CREDITOR, THE APPLICANT SHALL INCLUDE: (I) AN AFFIDAVIT BY THE ORIGINAL CREDITOR OF THE FACTS CONSTITUTING THE DEBT, THE DEFAULT IN PAYMENT, THE SALE OR ASSIGNMENT OF THE DEBT, AND THE AMOUNT DUE AT THE TIME OF SALE OR ASSIGNMENT; (II) FOR EACH SUBSEQUENT ASSIGNMENT OR SALE OF THE DEBT TO ANOTHER ENTITY, AN AFFIDAVIT OF SALE OF THE DEBT BY THE DEBT SELLER, COMPLETED BY THE SELLER OR ASSIGNOR; AND (III) AN AFFIDAVIT OF A WITNESS OF THE PLAINTIFF, WHICH INCLUDES A CHAIN OF TITLE OF THE DEBT, COMPLETED BY THE PLAINTIFF OR PLAINTIFF'S WITNESS. When jurisdiction is based on an attachment of property, the affidavit must state that an order of attachment granted in the action has been levied on the property of the defendant, describe the property and state its value. Proof of mailing the notice required by subdivision (g) of this section, where applicable, shall also be filed.

(J) A REQUEST FOR A DEFAULT JUDGMENT ENTERED BY THE CLERK, MUST BE ACCOMPANIED BY AN AFFIDAVIT BY THE DEBT COLLECTOR (WHO MAY BE THE PLAINTIFF OR PLAINTIFF'S ATTORNEY) STATING THAT AFTER REASONABLE INQUIRY, HE OR SHE HAS REASON TO BELIEVE THAT THE STATUTE OF LIMITATIONS HAS NOT EXPIRED.

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

S 7515. CONFIRMATION OF AN AWARD BASED ON A CONSUMER CREDIT TRANSACTION. IN ANY PROCEEDING UNDER SECTION 7510 OF THIS ARTICLE TO CONFIRM AN AWARD BASED ON A CONSUMER CREDIT TRANSACTION, THE PARTY SEEKING TO CONFIRM THE AWARD SHALL PLEAD THE ACTUAL TERMS AND CONDITIONS OF THE AGREEMENT TO ARBITRATE. THE PARTY SHALL ATTACH TO ITS PETITION (1) THE AGREEMENT TO ARBITRATE; (2) THE DEMAND FOR ARBITRATION OR NOTICE OF INTENTION TO ARBITRATE, WITH PROOF OF SERVICE; AND (3) THE ARBITRATION AWARD, WITH PROOF OF SERVICE. IF THE AWARD DOES NOT CONTAIN A STATEMENT OF THE CLAIMS SUBMITTED FOR ARBITRATION, OF THE CLAIMS RULED UPON BY THE ARBITRATOR, AND OF THE CALCULATION OF FIGURES USED BY THE ARBITRATOR IN ARRIVING AT THE AWARD, THEN THE PETITION SHALL CONTAIN SUCH A STATEMENT. THE COURT SHALL NOT GRANT CONFIRMATION OF AN AWARD BASED ON A CONSUMER

CREDIT TRANSACTION UNLESS THE PARTY SEEKING TO CONFIRM THE AWARD HAS COMPLIED WITH THIS SECTION.

S 10. This act shall take effect on the first of January next succeeding the date on which it shall have become a law, except that section three of this act shall take effect on the one hundred eightieth day after this act shall have become a law.