

4438

2015-2016 Regular Sessions

I N A S S E M B L Y

January 30, 2015

Introduced by M. of A. WEINSTEIN, JAFFEE, TITONE, COLTON, GALEF, ABINANTI, ZEBROWSKI, O'DONNELL, CRESPO, ROSENTHAL, SCARBOROUGH, FAHY, ROBINSON, PEOPLES-STOKES, MILLER -- Multi-Sponsored by -- M. of A. BRENNAN, COOK, CYMBROWITZ, DAVILA, GLICK, GOTTFRIED, MARKEY, OTIS, PERRY, SCHIMMEL, SOLAGES -- (at request of the Department of Law) -- read once and referred to the Committee on Judiciary

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 commer-  
9 cial code or article 36-B of the general business law;  
10 S 3. The civil practice law and rules is amended by adding a new  
11 section 214-f to read as follows:  
12 S 214-F. CERTAIN ACTIONS ARISING OUT OF CONSUMER CREDIT TRANSACTIONS  
13 TO BE COMMENCED WITHIN THREE YEARS. AN ACTION ARISING OUT OF A CONSUMER  
14 CREDIT TRANSACTION WHERE A PURCHASER, BORROWER OR DEBTOR IS A DEFENDANT  
15 MUST BE COMMENCED WITHIN THREE YEARS, EXCEPT AS PROVIDED IN SECTION TWO  
16 HUNDRED THIRTEEN-A OF THIS ARTICLE OR ARTICLE 2 OF THE UNIFORM COMMER-  
17 CIAL CODE OR ARTICLE 36-B OF THE GENERAL BUSINESS LAW. WHEN THE PERIOD  
18 WITHIN WHICH AN ACTION MAY BE COMMENCED UNDER THIS SECTION HAS EXPIRED,  
19 THE RIGHT TO COLLECT CONSUMER CREDIT DEBT IS EXTINGUISHED AS WELL AS THE  
20 REMEDY.

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

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

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

7 S 306-D. ADDITIONAL MAILING OF NOTICE IN AN ACTION ARISING OUT OF A  
8 CONSUMER CREDIT TRANSACTION. (A) AT THE TIME OF FILING WITH THE CLERK OF  
9 THE PROOF OF SERVICE OF THE SUMMONS AND COMPLAINT IN AN ACTION ARISING  
10 OUT OF A CONSUMER CREDIT TRANSACTION, THE PLAINTIFF SHALL SUBMIT TO THE  
11 CLERK A STAMPED UNSEALED ENVELOPE ADDRESSED TO THE DEFENDANT TOGETHER  
12 WITH A WRITTEN NOTICE IN CLEAR TYPE OF NO LESS THAN TWELVE-POINT IN  
13 SIZE, IN BOTH ENGLISH AND SPANISH, AND CONTAINING THE FOLLOWING  
14 LANGUAGE:

15 ADDITIONAL NOTICE OF LAWSUIT

16 (NAME OF COURT)  
17 (COUNTY)  
18 (STREET ADDRESS, ROOM NUMBER)  
19 (CITY, STATE, ZIP CODE)

20 (NAME OF DEFENDANT)  
21 (ADDRESS OF DEFENDANT)

22 PLAINTIFF: \_\_\_\_\_  
23 DEFENDANT: \_\_\_\_\_  
24 NAME OF ORIGINAL CREDITOR, UNLESS SAME: \_\_\_\_\_  
25 INDEX NUMBER: \_\_\_\_\_

26 ATTENTION: A LAWSUIT HAS BEEN FILED AGAINST YOU CLAIMING THAT YOU OWE  
27 MONEY FOR AN UNPAID CONSUMER DEBT.

28 YOU SHOULD GO TO THE COURT CLERK'S OFFICE AT THE ABOVE ADDRESS AS SOON  
29 AS POSSIBLE TO RESPOND TO THE LAWSUIT. YOU MAY WISH TO CONTACT AN ATTOR-  
30 NEY.

31 IF YOU DO NOT RESPOND TO THE LAWSUIT, THE COURT MAY ENTER A MONEY JUDG-  
32 MENT AGAINST YOU. ONCE ENTERED, A JUDGMENT IS GOOD AND CAN BE USED  
33 AGAINST YOU FOR TWENTY YEARS, AND YOUR PERSONAL PROPERTY AND MONEY,  
34 INCLUDING A PORTION OF YOUR PAYCHECK AND/OR BANK ACCOUNT, MAY BE TAKEN  
35 FROM YOU. ALSO, A JUDGMENT WILL AFFECT YOUR CREDIT SCORE AND CAN AFFECT  
36 YOUR ABILITY TO RENT A HOME, FIND A JOB, OR TAKE OUT A LOAN.

37 YOU CANNOT BE ARRESTED OR SENT TO JAIL FOR OWING A DEBT.

38 IT IS IMPORTANT THAT YOU GO TO THE COURT CLERK'S OFFICE LISTED ABOVE AS  
39 SOON AS POSSIBLE. YOU SHOULD BRING THIS NOTICE AND ANY LEGAL PAPERS YOU  
40 MAY HAVE RECEIVED. ADDITIONAL INFORMATION CAN BE FOUND AT THE COURT  
41 SYSTEM WEBSITE AT: WWW.NYCOURTS.GOV

42 (B) THE FACE OF THE ENVELOPE SHALL BE ADDRESSED TO THE DEFENDANT AT  
43 THE ADDRESS AT WHICH PROCESS WAS SERVED, AND SHALL CONTAIN THE DEFEND-  
44 ANT'S NAME, ADDRESS (INCLUDING APARTMENT NUMBER) AND ZIP CODE. THE FACE  
45 OF THE ENVELOPE ALSO SHALL STATE THE APPROPRIATE CLERK'S OFFICE AS ITS  
46 RETURN ADDRESS.

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

1 ENTERED IF THE ADDITIONAL NOTICE IS RETURNED TO THE COURT AS UNDELIVERA-  
2 BLE. RECEIPT OF THE ADDITIONAL NOTICE BY THE DEFENDANT DOES NOT CONFER  
3 JURISDICTION ON THE COURT IN THE ABSENCE OF PROPER SERVICE OF PROCESS.

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

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

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

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

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

33 6. WHETHER THE PLAINTIFF IS THE ORIGINAL CREDITOR. IF THE PLAINTIFF IS  
34 NOT THE ORIGINAL CREDITOR, THE COMPLAINT SHALL ALSO STATE (I) THE DATE  
35 ON WHICH THE DEBT WAS SOLD OR ASSIGNED TO THE PLAINTIFF; (II) THE NAME  
36 OF EACH PREVIOUS OWNER OF THE ACCOUNT AND THE DATE ON WHICH THE DEBT WAS  
37 ASSIGNED TO THAT OWNER; AND (III) THE AMOUNT DUE AT THE TIME OF THE SALE  
38 OR ASSIGNMENT OF THE DEBT BY THE ORIGINAL CREDITOR.

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

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

44 (e) Number, time and waiver of objections; motion to plead over. At  
45 any time before service of the responsive pleading is required, a party  
46 may move on one or more of the grounds set forth in subdivision (a) OF  
47 THIS RULE, and no more than one such motion shall be permitted. Any  
48 objection or defense based upon a ground set forth in paragraphs one,  
49 three, four, five and six of subdivision (a) OF THIS RULE is waived  
50 unless raised either by such motion or in the responsive pleading. A  
51 motion based upon a ground specified in paragraph two, seven or ten of  
52 subdivision (a) OF THIS RULE may be made at any subsequent time or in a  
53 later pleading, if one is permitted; IN ANY ACTION OTHER THAN AN ACTION  
54 ARISING OUT OF A CONSUMER CREDIT TRANSACTION WHERE A PURCHASER, BORROWER  
55 OR DEBTOR IS A DEFENDANT, an objection that the summons and complaint,  
56 summons with notice, or notice of petition and petition was not properly

1 served is waived if, having raised such an objection in a pleading, the  
2 objecting party does not move for judgment on that ground within sixty  
3 days after serving the pleading, unless the court extends the time upon  
4 the ground of undue hardship. The foregoing sentence shall not apply in  
5 any proceeding under subdivision one or two of section seven hundred  
6 eleven of the real property actions and proceedings law. The papers in  
7 opposition to a motion based on improper service shall contain a copy of  
8 the proof of service, whether or not previously filed. An objection  
9 based upon a ground specified in paragraph eight or nine of subdivision  
10 (a) OF THIS RULE is waived if a party moves on any of the grounds set  
11 forth in subdivision (a) OF THIS RULE without raising such objection or  
12 if, having made no objection under subdivision (a) OF THIS RULE, he or  
13 she does not raise such objection in the responsive pleading.

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

17 (f) Proof. On any application for judgment by default, the applicant  
18 shall file proof of service of the summons and the complaint, or a  
19 summons and notice served pursuant to subdivision (b) of rule 305 or  
20 subdivision (a) of rule 316 of this chapter, and proof of the facts  
21 constituting the claim, the default and the amount due by affidavit made  
22 by the party, or where the state of New York is the plaintiff, by affi-  
23 davit made by an attorney from the office of the attorney general who  
24 has or obtains knowledge of such facts through review of state records  
25 or otherwise. Where a verified complaint has been served, it may be used  
26 as the affidavit of the facts constituting the claim and the amount due;  
27 in such case, an affidavit as to the default shall be made by the party  
28 or the party's attorney. IN AN ACTION ARISING OUT OF A CONSUMER CREDIT  
29 TRANSACTION, IF THE PLAINTIFF IS NOT THE ORIGINAL CREDITOR, THE APPLI-  
30 CANT SHALL INCLUDE: (1) AN AFFIDAVIT BY THE ORIGINAL CREDITOR OF THE  
31 FACTS CONSTITUTING THE DEBT, THE DEFAULT IN PAYMENT, THE SALE OR ASSIGN-  
32 MENT OF THE DEBT, AND THE AMOUNT DUE AT THE TIME OF SALE OR ASSIGNMENT;  
33 (2) FOR EACH SUBSEQUENT ASSIGNMENT OR SALE OF THE DEBT TO ANOTHER ENTI-  
34 TY, AN AFFIDAVIT OF SALE OF THE DEBT BY THE DEBT SELLER, COMPLETED BY  
35 THE SELLER OR ASSIGNOR; AND (3) AN AFFIDAVIT OF A WITNESS OF THE PLAIN-  
36 TIFF, WHICH INCLUDES A CHAIN OF TITLE OF THE DEBT, COMPLETED BY THE  
37 PLAINTIFF OR PLAINTIFF'S WITNESS. When jurisdiction is based on an  
38 attachment of property, the affidavit must state that an order of  
39 attachment granted in the action has been levied on the property of the  
40 defendant, describe the property and state its value. Proof of mailing  
41 the notice required by subdivision (g) of this section, where applica-  
42 ble, shall also be filed.

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

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

50 S 7515. CONFIRMATION OF AN AWARD BASED ON A CONSUMER CREDIT TRANS-  
51 ACTION. IN ANY PROCEEDING UNDER SECTION 7510 OF THIS ARTICLE TO CONFIRM  
52 AN AWARD BASED ON A CONSUMER CREDIT TRANSACTION, THE PARTY SEEKING TO  
53 CONFIRM THE AWARD SHALL PLEAD THE ACTUAL TERMS AND CONDITIONS OF THE  
54 AGREEMENT TO ARBITRATE. THE PARTY SHALL ATTACH TO ITS PETITION (A) THE  
55 AGREEMENT TO ARBITRATE; (B) THE DEMAND FOR ARBITRATION OR NOTICE OF  
56 INTENTION TO ARBITRATE, WITH PROOF OF SERVICE; AND (C) THE ARBITRATION

1 AWARD, WITH PROOF OF SERVICE. IF THE AWARD DOES NOT CONTAIN A STATEMENT  
2 OF THE CLAIMS SUBMITTED FOR ARBITRATION, OF THE CLAIMS RULED UPON BY THE  
3 ARBITRATOR, AND OF THE CALCULATION OF FIGURES USED BY THE ARBITRATOR IN  
4 ARRIVING AT THE AWARD, THEN THE PETITION SHALL CONTAIN SUCH A STATEMENT.  
5 THE COURT SHALL NOT GRANT CONFIRMATION OF AN AWARD BASED ON A CONSUMER  
6 CREDIT TRANSACTION UNLESS THE PARTY SEEKING TO CONFIRM THE AWARD HAS  
7 COMPLIED WITH THIS SECTION.

8 S 10. This act shall take effect on the first of January next succeed-  
9 ing the date on which it shall have become a law, except that section  
10 three of this act shall take effect on the one hundred fiftieth day  
11 after this act shall have become a law.