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Introduced by M. of A. WEINSTEIN, JAFFEE, COLTON, GALEF, ABINANTI, ZEBROWSKI, O'DONNELL, FAHY, PEOPLES-STOKES, L. ROSENTHAL, M. G. MILLER, DINOWITZ, SEAWRIGHT, GLICK, WEPRIN, MOSLEY, TAYLOR, BARRON, REYES, ORTIZ -- Multi-Sponsored by -- M. of A. CAHILL, COOK, CYMBROWITZ, EPSTEIN, GOTTFRIED, McDONOUGH, PERRY -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading -- again amended on third reading, ordered reprinted, retaining its place on the order of third reading -- again amended on third reading, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the civil practice law and rules and the judiciary law, 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 § 2. Section 105 of the civil practice law and rules is amended by
4 adding two new subdivisions (h-1) and (q-1) to read as follows:

5 (h-1) Finance charge. The term "finance charge" means the cost of
6 consumer credit as a dollar amount, includes any charge payable directly
7 or indirectly by the consumer and imposed directly or indirectly by the
8 creditor as an incident to or a condition of the extension of credit,
9 and does not include any charge of a type payable in a comparable cash
10 transaction.

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

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(q-1) Original creditor. The term "original creditor" means the entity that owned a consumer credit account at the date of default giving rise to a cause of action.

§ 3. 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-i of this article or article 2 of the uniform commercial code or article 36-B of the general business law;

§ 4. The civil practice law and rules is amended by adding a new section 214-i to read as follows:

§ 214-i. 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. Notwithstanding any other provision of law, when the applicable limitations period expires, any subsequent payment toward, written or oral affirmation of or other activity on the debt does not revive or extend the limitations period.

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

§ 306-d. Additional mailing of notice in an action arising out of a consumer credit transaction. (a) 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, unsealed 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:

ADDITIONAL NOTICE OF LAWSUIT

(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 consumer debt.
You may wish to contact an attorney.

You should respond to the lawsuit as soon as possible by filing an "answer" which may be done at the court clerk's office listed above.

If you do not respond to the lawsuit, the court may enter a money judgment against you. Once entered, a judgment is good and can be used against you for twenty years, and your personal property and money, including a portion of your paycheck and/or bank account, may be taken

1 from you. Also, a judgment may affect your credit score and can affect
2 your ability to rent a home, find a job, or take out a loan.
3 You CANNOT be arrested or sent to jail for owing a debt.
4 Additional information can be found at the New York state court system
5 website.

6 Sources of information and assistance:

7 The court encourages you to inform yourself about your options as a
8 defendant in this lawsuit. In addition to seeking assistance from a
9 private attorney or legal aid office, there are free legal assistance
10 computer programs that you can use online to help you represent yourself
11 in this lawsuit.

12 For further information, or to locate a legal aid program near you, you
13 may visit the LawHelpNY website or the New York state court system
14 website, which has information for representing yourself and links to
15 other resources at: _____.

16 (b) The face of the envelope shall be addressed to the defendant at
17 the address at which process was served, and shall contain the defend-
18 ant's name, address (including apartment number) and zip code. The face
19 of the envelope also shall state the appropriate clerk's office as its
20 return address.

21 (c) The clerk promptly shall mail to the defendant the envelope
22 containing the additional notice set forth in subdivision (a) of this
23 section. No default judgment based on the defendant's failure to answer
24 shall be entered unless there has been compliance with this section, and
25 at least twenty days have elapsed from the date of mailing by the clerk.
26 No default judgment based on the defendant's failure to answer shall be
27 entered if the additional notice is returned to the court as undelivera-
28 ble. Receipt of the additional notice by the defendant does not confer
29 jurisdiction on the court in the absence of proper service of process.

30 (d) The chief administrative judge shall issue a Spanish translation
31 of the notice in subdivision (a) of this section and shall maintain and
32 publish the URL address for the web page containing consumer resources
33 for unrepresented litigants.

34 § 6. Subdivision (a) of section 3012 of the civil practice law and
35 rules is amended to read as follows:

36 (a) Service of pleadings. The complaint may be served with the
37 summons, except that in an action arising out of a consumer credit tran-
38 saction, the complaint shall be served with the summons. A subsequent
39 pleading asserting new or additional claims for relief shall be served
40 upon a party who has not appeared in the manner provided for service of
41 a summons. In any other case, a pleading shall be served in the manner
42 provided for service of papers generally. Service of an answer or reply
43 shall be made within twenty days after service of the pleading to which
44 it responds.

45 § 7. Rule 3016 of the civil practice law and rules is amended by
46 adding a new subdivision (j) to read as follows:

47 (j) Consumer credit transactions. In an action arising out of a
48 consumer credit transaction where a purchaser, borrower or debtor is a
49 defendant, the contract or other written instrument on which the action
50 is based shall be attached to the complaint, however, for the purposes
51 of this section, if the account was a revolving credit account, the
52 charge-off statement may be attached to the complaint instead of the
53 contract or other written instrument, and the following information
54 shall be set forth in the complaint:

55 (1) The name of the original creditor;

1 (2) The last four digits of the account number printed on the most
2 recent monthly statement recording a purchase transaction, last payment
3 or balance transfer;

4 (3) The date and amount of the last payment or, if no payment was
5 made, a statement that the purchaser, borrower or debtor made no payment
6 on the account;

7 (4) If the complaint contains a cause of action based on an account
8 stated, the date on or about which the final statement of account was
9 provided to the defendant;

10 (5) (A) Except as provided in subparagraph (B) of this paragraph, an
11 itemization of the amount sought, by (i) principal; (ii) finance charge
12 or charges; (iii) fees imposed by the original creditor; (iv) collection
13 costs; (v) attorney's fees; (vi) interest; and (vii) any other fees and
14 charges.

15 (B) If the account was a revolving credit account, an itemization of
16 the amount sought, by: (i) the total amount of the debt due as of
17 charge-off; (ii) the total amount of interest accrued since charge-off;
18 (iii) the total amount of non-interest charges or fees accrued since
19 charge-off; and (iv) the total amount of payments and/or credits made on
20 the debt since charge-off;

21 (6) The account balance printed on the most recent monthly statement
22 recording a purchase transaction, last payment or balance transfer;

23 (7) (A) Whether the plaintiff is the original creditor.

24 (B) If the plaintiff is not the original creditor, the complaint shall
25 also state (i) the date on which the debt was sold or assigned to the
26 plaintiff; (ii) the name of each previous owner of the account from the
27 original creditor to the plaintiff and the date on which the debt was
28 assigned to that owner by the original creditor or subsequent owner; and
29 (iii) the amount due at the time of the sale or assignment of the debt
30 by the original creditor; and

31 (8) Any matters required to be stated with particularity pursuant to
32 rule 3015 of this article.

33 § 8. Subdivision (e) of rule 3211 of the civil practice law and rules,
34 as amended by chapter 616 of the laws of 2005, is amended to read as
35 follows:

36 (e) Number, time and waiver of objections; motion to plead over. At
37 any time before service of the responsive pleading is required, a party
38 may move on one or more of the grounds set forth in subdivision (a) of
39 this rule, and no more than one such motion shall be permitted. Any
40 objection or defense based upon a ground set forth in paragraphs one,
41 three, four, five and six of subdivision (a) of this rule is waived
42 unless raised either by such motion or in the responsive pleading. A
43 motion based upon a ground specified in paragraph two, seven or ten of
44 subdivision (a) of this rule may be made at any subsequent time or in a
45 later pleading, if one is permitted; an objection that the summons and
46 complaint, summons with notice, or notice of petition and petition was
47 not properly served is waived if, having raised such an objection in a
48 pleading, the objecting party does not move for judgment on that ground
49 within sixty days after serving the pleading, unless the court extends
50 the time upon the ground of undue hardship. The foregoing sentence shall
51 not apply in any proceeding to collect a debt arising out of a consumer
52 credit transaction where a consumer is a defendant or under subdivision
53 one or two of section seven hundred eleven of the real property actions
54 and proceedings law. The papers in opposition to a motion based on
55 improper service shall contain a copy of the proof of service, whether
56 or not previously filed. An objection based upon a ground specified in

1 paragraph eight or nine of subdivision (a) of this rule is waived if a
2 party moves on any of the grounds set forth in subdivision (a) of this
3 rule without raising such objection or if, having made no objection
4 under subdivision (a) of this rule, he or she does not raise such
5 objection in the responsive pleading which, in any action to collect a
6 debt arising out of a consumer credit transaction where a consumer is a
7 defendant, includes any amended responsive pleading.

8 § 9. Rule 3212 of the civil practice law and rules is amended by
9 adding a new subdivision (j) to read as follows:

10 (j) Additional notice in any action to collect a debt arising out of
11 a consumer credit transaction where a consumer is a defendant.

12 1. At the time of service of a notice of motion any part of which
13 requests summary judgment in whole or in part, where the moving party
14 is a plaintiff and the respondent is a consumer defendant in an action
15 to collect a debt arising out of a consumer credit transaction, and
16 where the consumer defendant against whom summary judgment is sought is
17 not represented by an attorney, the plaintiff shall submit to the clerk
18 a stamped, unsealed envelope addressed to the defendant together with
19 the following additional notice in English and Spanish to be printed in
20 clear type no less than twelve-point in size:

21 IMPORTANT NOTICE

22 The Plaintiff has asked the Court to enter judgment against you by
23 making a Motion for Summary Judgment. Keep this Notice and the envelope
24 it came in. The Motion for Summary Judgment was separately served on
25 you. To avoid entry of judgment:

26 (1) You must appear in court as directed below:

27 WHERE: Name of Court, Street Address, Room Number

28 WHEN: Date and time

29 (2) You should oppose the motion IN WRITING.

30 HOW TO OPPOSE THE MOTION:

31 (1) State the legal reasons why the court should not enter judgment
32 against you, including your defenses.

33 (2) State the facts that support your defenses.

34 (3) Attach affidavits and/or exhibits to support the facts you assert.

35 (a) Affidavits are sworn statements of witnesses (including you) who
36 state facts they know to be true. The affidavit should state the facts
37 and how the witness knows them. Also, the affidavit should explain any
38 exhibits. An affidavit of service is an affidavit that states how and
39 when papers were served. An affidavit must be signed in front of a
40 notary. Free forms are available on the New York State Court system
41 website at: _____.

42 (b) Exhibits are copies of documents. Exhibits are usually attached to
43 affidavits.

44 (4) Have someone (not you or another defendant in the lawsuit) mail a
45 copy of your opposition to the plaintiff's attorney before your court
46 date and have them prepare an affidavit of service by mail.

47 (5) Bring a copy of your opposition and the affidavit of service to
48 your court date.

49 (6) Attend your court date.

50 IF YOU NEED MORE TIME:

51 If you need more time to prepare your written response, you should
52 appear at your court date and ask the judge for more time. You can also
53 ask the judge to refer you for legal help.

54 IF YOU NEED LEGAL HELP:

55 You may seek legal help from a private attorney or a legal aid office.

56 Some courts have free legal assistance programs for people without

1 lawyers. You can find resources on the New York State court system
2 website at: _____.

3 2. The clerk promptly shall mail to the defendant the envelope
4 containing the additional notice set forth in paragraph one of this
5 subdivision and note the date of mailing in the case record. Summary
6 judgment shall not be entered based on defendant's failure to oppose the
7 motion unless there has been compliance with this section and at least
8 fourteen days have elapsed from the date of mailing by the clerk or
9 nineteen days if the plaintiff's notice of motion demands additional
10 time under subdivision (b) of rule 2214 of this chapter.

11 3. The chief administrative judge shall issue a Spanish translation of
12 the notice in paragraph one of this subdivision and shall maintain and
13 publish the URL address for the web page containing consumer credit
14 resources for unrepresented litigants.

15 § 10. Section 3213 of the civil practice law and rules, as amended by
16 chapter 210 of the laws of 1969, is amended to read as follows:

17 § 3213. Motion for summary judgment in lieu of complaint. When an
18 action is based upon an instrument for the payment of money only or upon
19 any judgment, the plaintiff may serve with the summons a notice of
20 motion for summary judgment and the supporting papers in lieu of a
21 complaint. The summons served with such motion papers shall require the
22 defendant to submit answering papers on the motion within the time
23 provided in the notice of motion. The minimum time such motion shall be
24 noticed to be heard shall be as provided by subdivision (a) of rule 320
25 for making an appearance, depending upon the method of service. If the
26 plaintiff sets the hearing date of the motion later than the minimum
27 time therefor, he may require the defendant to serve a copy of his
28 answering papers upon him within such extended period of time, not
29 exceeding ten days, prior to such hearing date. No default judgment may
30 be entered pursuant to subdivision (a) of section 3215 prior to the
31 hearing date of the motion. If the motion is denied, the moving and
32 answering papers shall be deemed the complaint and answer, respectively,
33 unless the court orders otherwise. The additional notice required by
34 subdivision (j) of rule 3212 shall be applicable to a motion made pursu-
35 ant to this section in any action to collect a debt arising out of a
36 consumer credit transaction where a consumer is a defendant.

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

40 (f) Proof. On any application for judgment by default, the applicant
41 shall file proof of service of the summons and the complaint, or a
42 summons and notice served pursuant to subdivision (b) of rule 305 or
43 subdivision (a) of rule 316 of this chapter, and proof of the facts
44 constituting the claim, the default and the amount due by affidavit made
45 by the party, or where the state of New York is the plaintiff, by affi-
46 davit made by an attorney from the office of the attorney general who
47 has or obtains knowledge of such facts through review of state records
48 or otherwise. Where a verified complaint has been served, it may be used
49 as the affidavit of the facts constituting the claim and the amount due;
50 in such case, an affidavit as to the default shall be made by the party
51 or the party's attorney. In an action arising out of a consumer credit
52 transaction, if the plaintiff is not the original creditor, the appli-
53 cant shall include: (1) an affidavit by the original creditor of the
54 facts constituting the debt, the default in payment, the sale or assign-
55 ment of the debt, and the amount due at the time of sale or assignment;
56 (2) for each subsequent assignment or sale of the debt to another enti-

1 ty, an affidavit of sale of the debt by the debt seller, completed by
2 the seller or assignor; and (3) an affidavit of a witness of the plain-
3 tiff, which includes a chain of title of the debt, completed by the
4 plaintiff or plaintiff's witness. The chief administrative judge shall
5 issue form affidavits to satisfy the requirements of this subdivision
6 for consumer credit transactions. When jurisdiction is based on an
7 attachment of property, the affidavit must state that an order of
8 attachment granted in the action has been levied on the property of the
9 defendant, describe the property and state its value. Proof of mailing
10 the notice required by subdivision (g) of this section, where applica-
11 ble, shall also be filed.

12 (j) Affidavit. A request for a default judgment entered by the clerk,
13 must be accompanied by an affidavit by the plaintiff or plaintiff's
14 attorney stating that after reasonable inquiry, he or she has reason to
15 believe that the statute of limitations has not expired. The chief
16 administrative judge shall issue form affidavits to satisfy the require-
17 ments of this subdivision for consumer credit transactions.

18 § 12. The civil practice law and rules is amended by adding a new
19 section 7516 to read as follows:

20 § 7516. Confirmation of an award based on a consumer credit trans-
21 action. In any proceeding under section 7510 of this article to confirm
22 an award based on a consumer credit transaction, the party seeking to
23 confirm the award shall plead the actual terms and conditions of the
24 agreement to arbitrate. The party shall attach to its petition (a) the
25 agreement to arbitrate; (b) the demand for arbitration or notice of
26 intention to arbitrate, with proof of service; and (c) the arbitration
27 award, with proof of service. If the award does not contain a statement
28 of the claims submitted for arbitration, of the claims ruled upon by the
29 arbitrator, and of the calculation of figures used by the arbitrator in
30 arriving at the award, then the petition shall contain such a statement.
31 The court shall not grant confirmation of an award based on a consumer
32 credit transaction unless the party seeking to confirm the award has
33 complied with this section.

34 § 13. Subdivision 2 of section 212 of the judiciary law is amended by
35 adding a new paragraph (aa) to read as follows:

36 (aa) Not later than January first, two thousand twenty-one, make
37 available Spanish translations of the additional notices in consumer
38 credit transaction actions and proceedings required by section 306-d and
39 subdivision (j) of rule 3212 of the civil practice law and rules, and
40 make available form affidavits required for a motion for default judg-
41 ment in a consumer credit transaction action or proceeding required by
42 subdivision (f) of section 3215 of the civil practice law and rules.

43 § 14. Subdivision (c) of section 5019 of the civil practice law and
44 rules is amended to read as follows:

45 (c) Change in judgment creditor. A person other than the party recover-
46 ing a judgment who becomes entitled to enforce it, shall file in the
47 office of the clerk of the court in which the judgment was entered or,
48 in the case of a judgment of a court other than the supreme, county or a
49 family court which has been docketed by the clerk of the county in which
50 it was entered, in the office of such county clerk, a copy of the
51 instrument on which his authority is based, acknowledged in the form
52 required to entitle a deed to be recorded, or, if his authority is based
53 on a court order, a certified copy of the order. Upon such filing the
54 clerk shall make an appropriate entry on his docket of the judgment.
55 This subdivision shall not apply when there is a change to the owner of

1 a debt through a sale, assignment, or other transfer where no judgment
2 exists.

3 § 15. This act shall take effect immediately; provided, however, that
4 sections two, three, five, six, seven, eight, nine, ten, eleven and
5 twelve shall take effect on the one hundred eightieth day after it shall
6 have become a law and shall apply to actions and proceedings commenced
7 on or after such date; and provided, further, that section four of this
8 act shall take effect on the one hundred fiftieth day after this act
9 shall have become a law.