

# STATE OF NEW YORK

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2019-2020 Regular Sessions

## IN SENATE

March 26, 2019

Introduced by Sens. THOMAS, CARLUCCI, FELDER, KAPLAN, KRUEGER, MAY, PERSAUD, RAMOS, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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.

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

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

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

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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 from you. Also, a judgment may affect 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.  
Additional information can be found at the New York state court system website.

Sources of information and assistance:

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

6 For further information, or to locate a legal aid program near you, you  
7 may visit the LawHelpNY website or the New York state court system  
8 website, which has information for representing yourself and links to  
9 other resources at: \_\_\_\_\_.

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

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

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

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

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

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

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

49 (1) The name of the original creditor;

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

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

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

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

9 (B) If the account was a revolving credit account, an itemization of  
10 the amount sought, by: (i) the total amount of the debt due as of  
11 charge-off; (ii) the total amount of interest accrued since charge-off;  
12 (iii) the total amount of non-interest charges or fees accrued since  
13 charge-off; and (iv) the total amount of payments and/or credits made on  
14 the debt since charge-off;

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

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

18 (B) If the plaintiff is not the original creditor, the complaint shall  
19 also state (i) the date on which the debt was sold or assigned to the  
20 plaintiff; (ii) the name of each previous owner of the account from the  
21 original creditor to the plaintiff and the date on which the debt was  
22 assigned to that owner by the original creditor or subsequent owner; and  
23 (iii) the amount due at the time of the sale or assignment of the debt  
24 by the original creditor; and

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

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

30 (e) Number, time and waiver of objections; motion to plead over. At  
31 any time before service of the responsive pleading is required, a party  
32 may move on one or more of the grounds set forth in subdivision (a) of  
33 this rule, and no more than one such motion shall be permitted. Any  
34 objection or defense based upon a ground set forth in paragraphs one,  
35 three, four, five and six of subdivision (a) of this rule is waived  
36 unless raised either by such motion or in the responsive pleading. A  
37 motion based upon a ground specified in paragraph two, seven or ten of  
38 subdivision (a) of this rule may be made at any subsequent time or in a  
39 later pleading, if one is permitted; an objection that the summons and  
40 complaint, summons with notice, or notice of petition and petition was  
41 not properly served is waived if, having raised such an objection in a  
42 pleading, the objecting party does not move for judgment on that ground  
43 within sixty days after serving the pleading, unless the court extends  
44 the time upon the ground of undue hardship. The foregoing sentence shall  
45 not apply in any proceeding to collect a debt arising out of a consumer  
46 credit transaction where a consumer is a defendant or under subdivision  
47 one or two of section seven hundred eleven of the real property actions  
48 and proceedings law. The papers in opposition to a motion based on  
49 improper service shall contain a copy of the proof of service, whether  
50 or not previously filed. An objection based upon a ground specified in  
51 paragraph eight or nine of subdivision (a) of this rule is waived if a  
52 party moves on any of the grounds set forth in subdivision (a) of this  
53 rule without raising such objection or if, having made no objection  
54 under subdivision (a) of this rule, he or she does not raise such  
55 objection in the responsive pleading which, in any action to collect a

1 debt arising out of a consumer credit transaction where a consumer is a  
2 defendant, includes any amended responsive pleading.

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

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

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

16 IMPORTANT NOTICE

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

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

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

23 WHEN: Date and time

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

25 HOW TO OPPOSE THE MOTION:

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

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

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

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

37 (b) Exhibits are copies of documents. Exhibits are usually attached to  
38 affidavits.

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

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

44 (6) Attend your court date.

45 IF YOU NEED MORE TIME:

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

49 IF YOU NEED LEGAL HELP:

50 You may seek legal help from a private attorney or a legal aid office.  
51 Some courts have free legal assistance programs for people without  
52 lawyers. You can find resources on the New York State court system  
53 website at: \_\_\_\_\_.

54 2. The clerk promptly shall mail to the defendant the envelope  
55 containing the additional notice set forth in paragraph one of this  
56 subdivision and note the date of mailing in the case record. Summary

1 judgment shall not be entered based on defendant's failure to oppose the  
2 motion unless there has been compliance with this section and at least  
3 fourteen days have elapsed from the date of mailing by the clerk or  
4 nineteen days if the plaintiff's notice of motion demands additional  
5 time under subdivision (b) of rule 2214 of this chapter.

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

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

12 § 3213. Motion for summary judgment in lieu of complaint. When an  
13 action is based upon an instrument for the payment of money only or upon  
14 any judgment, the plaintiff may serve with the summons a notice of  
15 motion for summary judgment and the supporting papers in lieu of a  
16 complaint. The summons served with such motion papers shall require the  
17 defendant to submit answering papers on the motion within the time  
18 provided in the notice of motion. The minimum time such motion shall be  
19 noticed to be heard shall be as provided by subdivision (a) of rule 320  
20 for making an appearance, depending upon the method of service. If the  
21 plaintiff sets the hearing date of the motion later than the minimum  
22 time therefor, he may require the defendant to serve a copy of his  
23 answering papers upon him within such extended period of time, not  
24 exceeding ten days, prior to such hearing date. No default judgment may  
25 be entered pursuant to subdivision (a) of section 3215 prior to the  
26 hearing date of the motion. If the motion is denied, the moving and  
27 answering papers shall be deemed the complaint and answer, respectively,  
28 unless the court orders otherwise. The additional notice required by  
29 subdivision (j) of rule 3212 shall be applicable to a motion made pursu-  
30 ant to this section in any action to collect a debt arising out of a  
31 consumer credit transaction where a consumer is a defendant.

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

35 (f) Proof. On any application for judgment by default, the applicant  
36 shall file proof of service of the summons and the complaint, or a  
37 summons and notice served pursuant to subdivision (b) of rule 305 or  
38 subdivision (a) of rule 316 of this chapter, and proof of the facts  
39 constituting the claim, the default and the amount due by affidavit made  
40 by the party, or where the state of New York is the plaintiff, by affi-  
41 davit made by an attorney from the office of the attorney general who  
42 has or obtains knowledge of such facts through review of state records  
43 or otherwise. Where a verified complaint has been served, it may be used  
44 as the affidavit of the facts constituting the claim and the amount due;  
45 in such case, an affidavit as to the default shall be made by the party  
46 or the party's attorney. In an action arising out of a consumer credit  
47 transaction, if the plaintiff is not the original creditor, the appli-  
48 cant shall include: (1) an affidavit by the original creditor of the  
49 facts constituting the debt, the default in payment, the sale or assign-  
50 ment of the debt, and the amount due at the time of sale or assignment;  
51 (2) for each subsequent assignment or sale of the debt to another enti-  
52 ty, an affidavit of sale of the debt by the debt seller, completed by  
53 the seller or assignor; and (3) an affidavit of a witness of the plain-  
54 tiff, which includes a chain of title of the debt, completed by the  
55 plaintiff or plaintiff's witness. The chief administrative judge shall  
56 issue form affidavits to satisfy the requirements of this subdivision

1 for consumer credit transactions. When jurisdiction is based on an  
2 attachment of property, the affidavit must state that an order of  
3 attachment granted in the action has been levied on the property of the  
4 defendant, describe the property and state its value. Proof of mailing  
5 the notice required by subdivision (g) of this section, where applica-  
6 ble, shall also be filed.

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

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

15 § 7516. Confirmation of an award based on a consumer credit trans-  
16 action. In any proceeding under section 7510 of this article to confirm  
17 an award based on a consumer credit transaction, the party seeking to  
18 confirm the award shall plead the actual terms and conditions of the  
19 agreement to arbitrate. The party shall attach to its petition (a) the  
20 agreement to arbitrate; (b) the demand for arbitration or notice of  
21 intention to arbitrate, with proof of service; and (c) the arbitration  
22 award, with proof of service. If the award does not contain a statement  
23 of the claims submitted for arbitration, of the claims ruled upon by the  
24 arbitrator, and of the calculation of figures used by the arbitrator in  
25 arriving at the award, then the petition shall contain such a statement.  
26 The court shall not grant confirmation of an award based on a consumer  
27 credit transaction unless the party seeking to confirm the award has  
28 complied with this section.

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

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

38 § 14. This act shall take effect immediately; provided, however, that  
39 sections two, three, five, six, seven, eight, nine, ten, eleven and  
40 twelve shall take effect on the one hundred eightieth day after it shall  
41 have become a law and shall apply to actions and proceedings commenced  
42 on or after such date; and provided, further, that section four of this  
43 act shall take effect on the one hundred fiftieth day after this act  
44 shall have become a law.