

STATE OF NEW YORK

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IN SENATE

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Introduced by Sens. THOMAS, BAILEY, CARLUCCI, FELDER, JACKSON, 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 -- 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.

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

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1 Additional information can be found at the New York state court system
2 website.

3 Sources of information and assistance:

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

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

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

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

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

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

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

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

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

52 (1) The name of the original creditor;

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

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

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

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

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

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

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

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

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

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

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

1 under subdivision (a) of this rule, he or she does not raise such
2 objection in the responsive pleading which, in any action to collect a
3 debt arising out of a consumer credit transaction where a consumer is a
4 defendant, includes any amended responsive pleading.

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

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

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

18 IMPORTANT NOTICE

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

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

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

25 WHEN: Date and time

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

27 HOW TO OPPOSE THE MOTION:

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

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

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

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

39 (b) Exhibits are copies of documents. Exhibits are usually attached to
40 affidavits.

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

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

46 (6) Attend your court date.

47 IF YOU NEED MORE TIME:

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

51 IF YOU NEED LEGAL HELP:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (c) Change in judgment creditor. A person other than the party recov-
44 ering a judgment who becomes entitled to enforce it, shall file in the
45 office of the clerk of the court in which the judgment was entered or,
46 in the case of a judgment of a court other than the supreme, county or a
47 family court which has been docketed by the clerk of the county in which
48 it was entered, in the office of such county clerk, a copy of the
49 instrument on which his authority is based, acknowledged in the form
50 required to entitle a deed to be recorded, or, if his authority is based
51 on a court order, a certified copy of the order. Upon such filing the
52 clerk shall make an appropriate entry on his docket of the judgment.
53 This subdivision shall not apply when there is a change to the owner of
54 a debt through a sale, assignment, or other transfer where no judgment
55 exists.

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