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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

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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§ 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 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.

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 [~~insert URL for consumer credit resources for unrep-~~
13 resented litigants published by the New York state office of court
14 administration].

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

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

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

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

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

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

46 (j) Consumer credit transactions. In an action arising out of a
47 consumer credit transaction where a purchaser, borrower or debtor is a
48 defendant, the contract or other written instrument on which the action
49 is based shall be attached to the complaint and the following informa-
50 tion shall be set forth in the complaint:

51 (1) The name of the original creditor;

52 (2) The last four digits of the account number printed on the most
53 recent monthly statement recording a purchase transaction, last payment
54 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 that the final statement of account was mailed to the
6 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 itemized
13 accounting of the debt, including: (i) the total amount of the debt due
14 as of charge-off; (ii) the total amount of interest accrued since
15 charge-off; (iii) the total amount of non-interest charges or fees
16 accrued since charge-off; and (iv) the total amount of payments and/or
17 credits made on 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

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

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

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

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

IMPORTANT NOTICE

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

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

WHERE: Name of Court, Street Address, Room Number

WHEN: Date and time

(2) You should oppose the motion IN WRITING.

HOW TO OPPOSE THE MOTION:

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

(2) State the facts that support your defenses.

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

(a) Affidavits are sworn statements of witnesses (including you) who state facts they know to be true. The affidavit should state the facts and how the witness knows them. Also, the affidavit should explain any exhibits. An affidavit of service is an affidavit that states how and when papers were served. An affidavit must be signed in front of a notary. Free forms are available on the New York State Court system website at ~~[insert URL for consumer credit resources for unrepresented litigants]~~ published by the New York State Office of Court Administration.

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

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

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

(6) Attend your court date.

IF YOU NEED MORE TIME:

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

IF YOU NEED LEGAL HELP:

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

1 ~~website at [insert URL for consumer credit resources for unrepresented~~
2 ~~litigants published by the New York State Office of Court Adminis-~~
3 ~~tration].~~

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

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

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

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

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

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

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

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

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

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

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

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

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