STATE OF NEW YORK

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2019-2020 Regular Sessions

SENATE - ASSEMBLY

March 26, 2019

IN SENATE -- Introduced by Sen. THOMAS -- 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

IN ASSEMBLY -- 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 -- 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

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:

Section 1. Short title. This act shall be known and may be cited as the "consumer credit fairness act".

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

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

§ 214-h. 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. When the period within which an action may be commenced under this section has expired, the right to collect consumer credit debt is extinguished as well as the remedy. 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.

For purposes of this section, "the right to collect consumer credit debt" shall mean any attempts by the creditor, third party purchaser, or other authorized third party to collect such debt including, but not limited to, calls, mail or other attempts to collect.

§ 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 court system website at: www.nycourts.gov

Sources of information and assistance:

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

For further information, or to locate an entity or program near you, you may visit the New York state unified court system's "resources for unrepresented litigants" website at:

http://ww2.nycourts.gov/RULES/CCR/resources.shtml

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

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

(d) The chief administrative judge shall issue a Spanish translation of the notice in subdivision (a) of this section.

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

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

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

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

(1) The name of the original creditor;

(2) The last four digits of the account number at the date of the default giving rise to a cause of action;

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

(4) If the complaint contains a cause of action based on an account stated, the date that the final statement of account was mailed to the defendant;

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

(B) If the account was a revolving credit account, an itemization of the amount sought, by (i) the balance at the date of default; (ii) interest, fees and charges imposed after the date of default; (iii) credits or payments made by or on behalf of the purchaser, borrower or debtor after the date of default; and (iv) if applicable, the date of charge off and balance at charge off, provided that any amount sought for charges and costs after charge off are itemized as provided for in subparagraph (A) of this paragraph;

(6) (A) Whether the plaintiff is the original creditor.

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

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

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

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

party moves on any of the grounds set forth in subdivision (a) **of this 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 serve, together with the notice of motion, the following additional notice in English and Spanish to be printed in clear type no less than twelve-point in size:

Important notice to pro se defendants

(Name of court)
(Street address, room number)
(City, state, zip code)

Plaintiff:
Defendant:
Index number:

Motion return date and time:

Attention CPLR Rule 3212 motion for summary judgment

This notice is to advise you that the plaintiff in this case has filed a motion for summary judgment against you pursuant to CPLR Rule 3212, which means that summary judgment will be granted if the court finds that there is no genuine issue as to any material fact and that the plaintiff is entitled to judgment as a matter of law.

Failure to respond to this motion for summary judgment may result in a money judgment being entered against you in favor of the plaintiff.

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.

Opposing this motion for summary judgment:

If you wish to oppose the plaintiff's request for judgment, you should set forth in a written response the reasons that the plaintiff has not shown that it is entitled to judgment as a matter of law, and any facts that you believe show that you are not liable to the plaintiff or have a defense. You should submit affidavits or exhibits supporting any facts that you assert show that you are not liable or have a defense. Each affidavit should set forth relevant facts and show that the person

submitting the affidavit has personal knowledge of those facts. If you rely on exhibits, you should attach copies of them to an affidavit that explains what they are and how they show that you are not liable or have a defense. You should bring your opposition papers to court on the court date and mail a copy to the plaintiff's attorney in advance of the court date. You should also attend court on the return date.

Sources of information and assistance:

The court encourages you to inform yourself about your options as a defendant in this lawsuit. In addition to seeking assistance from a private attorney or legal aid office, there may be free legal assistance programs that you may contact for help in representing yourself in this lawsuit.

For further information, or to locate an entity or program near you, you may visit the New York state unified court system's "resources for unrepresented litigants" website at:
http://ww2.nycourts.gov/RULES/CCR/resources.shtml

2. The plaintiff seeking summary judgment shall file proof of service of the additional notice with the court, and no motion for which this additional notice is required shall be granted unless such proof of service has been filed.

3. The chief administrative judge shall issue a Spanish translation of the notice in paragraph one of this subdivision.

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

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

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

(f) Proof. On any application for judgment by default, the applicant shall file proof of service of the summons and the complaint, or a summons and notice served pursuant to subdivision (b) of rule 305 or subdivision (a) of rule 316 of this chapter, and proof of the facts constituting the claim, the default and the amount due by affidavit made by the party, or where the state of New York is the plaintiff, by affi-

davit made by an attorney from the office of the attorney general who has or obtains knowledge of such facts through review of state records or otherwise. Where a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party or the party's attorney. **In an action arising out of a consumer credit transaction, if the plaintiff is not the original creditor, the applicant shall include: (1) an affidavit by the original creditor of the facts constituting the debt, the default in payment, the sale or assignment of the debt, and the amount due at the time of sale or assignment; (2) for each subsequent assignment or sale of the debt to another entity, an affidavit of sale of the debt by the debt seller, completed by the seller or assignor; and (3) an affidavit of a witness of the plaintiff, which includes a chain of title of the debt, completed by the plaintiff or plaintiff's witness. The chief administrative judge shall issue form affidavits to satisfy the requirements of this subdivision for consumer credit transactions.** When jurisdiction is based on an attachment of property, the affidavit must state that an order of attachment granted in the action has been levied on the property of the defendant, describe the property and state its value. Proof of mailing the notice required by subdivision (g) of this section, where applicable, shall also be filed.

(j) Affidavit. A request for a default judgment entered by the clerk, must be accompanied by an affidavit by the plaintiff or plaintiff's attorney stating that after reasonable inquiry, he or she has reason to believe that the statute of limitations has not expired.

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

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

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

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

§ 14. This act shall take effect immediately; provided, however, that sections two, three, five, six, seven, eight, nine, ten, eleven and twelve shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to actions and

proceedings commenced on or after such date; and provided, further, that section four of this act shall take effect on the one hundred fiftieth day after this act shall have become a law.