

# STATE OF NEW YORK

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2019-2020 Regular Sessions

## IN SENATE

March 26, 2019

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.