

STATE OF NEW YORK

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IN ASSEMBLY

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Introduced by M. of A. WEINSTEIN, GALEF, ZEBROWSKI, O'DONNELL, FAHY, PEOPLES-STOKES, L. ROSENTHAL, DINOWITZ, SEAWRIGHT, GLICK, WEPRIN, TAYLOR -- Multi-Sponsored by -- M. of A. CAHILL, CYMBROWITZ, GOTTFRIED, McDONOUGH -- read once and referred to the Committee on Judiciary

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:

17 2. an action upon a contractual obligation or liability, express or
18 implied, except as provided in section two hundred thirteen-a or two
19 hundred fourteen-i of this article or article 2 of the uniform commer-
20 cial code or article 36-B of the general business law;

21 § 4. The civil practice law and rules is amended by adding a new
22 section 214-i to read as follows:

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

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1 For further information, or to locate a legal aid program near you, you
2 may visit the LawHelpNY website or the New York state court system
3 website, which has information for representing yourself and links to
4 other resources at:

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

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

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

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

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

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

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

44 (1) The name of the original creditor;

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

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

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

54 (5) (A) Except as provided in subparagraph (B) of this paragraph, an
55 itemization of the amount sought, by (i) principal; (ii) finance charge
56 or charges; (iii) fees imposed by the original creditor; (iv) collection

1 costs; (v) attorney's fees; (vi) interest; and (vii) any other fees and
2 charges.

3 (B) If the account was a revolving credit account, an itemization of
4 the amount sought, by: (i) the total amount of the debt due as of
5 charge-off; (ii) the total amount of interest accrued since charge-off;
6 (iii) the total amount of non-interest charges or fees accrued since
7 charge-off; and (iv) the total amount of payments and/or credits made on
8 the debt since charge-off;

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

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

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

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

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

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

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

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

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

10 IMPORTANT NOTICE

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

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

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

17 WHEN: Date and time

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

19 HOW TO OPPOSE THE MOTION:

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

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

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

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

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

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

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

38 (6) Attend your court date.

39 IF YOU NEED MORE TIME:

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

43 IF YOU NEED LEGAL HELP:

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

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

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

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

7 § 3213. Motion for summary judgment in lieu of complaint. When an
8 action is based upon an instrument for the payment of money only or upon
9 any judgment, the plaintiff may serve with the summons a notice of
10 motion for summary judgment and the supporting papers in lieu of a
11 complaint. The summons served with such motion papers shall require the
12 defendant to submit answering papers on the motion within the time
13 provided in the notice of motion. The minimum time such motion shall be
14 noticed to be heard shall be as provided by subdivision (a) of rule 320
15 for making an appearance, depending upon the method of service. If the
16 plaintiff sets the hearing date of the motion later than the minimum
17 time therefor, he may require the defendant to serve a copy of his
18 answering papers upon him within such extended period of time, not
19 exceeding ten days, prior to such hearing date. No default judgment may
20 be entered pursuant to subdivision (a) of section 3215 prior to the
21 hearing date of the motion. If the motion is denied, the moving and
22 answering papers shall be deemed the complaint and answer, respectively,
23 unless the court orders otherwise. The additional notice required by
24 subdivision (j) of rule 3212 shall be applicable to a motion made pursu-
25 ant to this section in any action to collect a debt arising out of a
26 consumer credit transaction where a consumer is a defendant.

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

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

1 the notice required by subdivision (g) of this section, where applica-
2 ble, shall also be filed.

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

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

11 § 7516. Confirmation of an award based on a consumer credit trans-
12 action. In any proceeding under section 7510 of this article to confirm
13 an award based on a consumer credit transaction, the party seeking to
14 confirm the award shall plead the actual terms and conditions of the
15 agreement to arbitrate. The party shall attach to its petition (a) the
16 agreement to arbitrate; (b) the demand for arbitration or notice of
17 intention to arbitrate, with proof of service; and (c) the arbitration
18 award, with proof of service. If the award does not contain a statement
19 of the claims submitted for arbitration, of the claims ruled upon by the
20 arbitrator, and of the calculation of figures used by the arbitrator in
21 arriving at the award, then the petition shall contain such a statement.
22 The court shall not grant confirmation of an award based on a consumer
23 credit transaction unless the party seeking to confirm the award has
24 complied with this section.

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

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

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

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

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