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2021-2022 Regular Sessions

## IN SENATE

February 24, 2021

Introduced by Sens. THOMAS, JACKSON, PERSAUD -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law and the civil practice law and rules, in relation to protecting private education loan borrowers and cosigners

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new article 42 to read as follows:

### ARTICLE 42

#### PRIVATE EDUCATION LOAN PROTECTIONS

##### Section 1100. Definitions.

1101. Applicability.

1102. Exempt organizations.

1103. Provisions applicable to cosigners.

1104. Prohibition on acceleration of payments on private education loans.

1105. Required communications from creditors and debt collectors.

1106. Required information to be provided by creditors and debt collectors.

1107. Enforcement.

1108. Rules and regulations.

1109. Penalties.

##### § 1100. Definitions. As used in this article:

1. "Private education loan" means an extension of credit that:

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

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1 (a) is not made, insured, or guaranteed under title IV of the Higher  
2 Education Act of 1965 (20 U.S.C. 1070 et seq.);

3 (b) is extended to a consumer expressly, in whole or in part, for  
4 higher education expenses, regardless of whether the loan is provided by  
5 the educational institution that the student attends;

6 (c) does not include open-end credit or any loan that is secured by  
7 real property or a dwelling; and

8 (d) does not include an extension of credit in which the covered  
9 educational institution is the creditor if:

10 (i) the term of the extension of credit is ninety days or less; or

11 (ii) an interest rate or finance charge will not be applied to the  
12 credit balance and the term of the extension of credit is one year or  
13 less, even if the credit is payable in more than four installments.

14 2. "Private education lender", except as exempted under this article,  
15 means:

16 (a) any person or entity engaged in the business of securing, making,  
17 or extending private education loans; or

18 (b) any holder of a private education loan.

19 3. "Borrower" or "private education loan borrower" means a person who  
20 has received or agreed to pay a private education loan for his or her  
21 own educational expenses.

22 4. "Cosigner" (a) means:

23 (i) any individual who is liable for the obligation of another without  
24 compensation, regardless of how designated in the contract or instrument  
25 with respect to that obligation, including an obligation under a private  
26 education loan extended to consolidate a borrower's pre-existing private  
27 education loans; and

28 (ii) includes any person the signature of which is requested as condi-  
29 tion to grant credit or to forbear on collection;

30 (b) does not include a spouse of an individual described in subpara-  
31 graph (i) of paragraph (a) of this subdivision, the signature of whom is  
32 needed to perfect the security interest in a loan.

33 5. "Original creditor" means the private education lender identified  
34 in a promissory note, loan agreement, or loan contract entered into with  
35 a private education loan borrower or cosigner.

36 6. "Creditor" means:

37 (a) the original creditor, where ownership of a private education loan  
38 debt has not been sold, assigned, or transferred;

39 (b) the person or entity that owned the private education loan debt at  
40 the time the debt became delinquent or defaulted, even if that person or  
41 entity did not originate the private education loan, and where such a  
42 debt has not subsequently been sold, transferred or assigned; or

43 (c) a person or entity that purchased a delinquent or defaulted  
44 private education loan debt for collection purposes, whether it collects  
45 the debt itself, hires a third party for collection, or hires an attor-  
46 ney for collection litigation.

47 7. "Debt collector" means any person who regularly collects or  
48 attempts to collect, directly or indirectly, consumer debts originally  
49 owed or due or asserted to be owed or due another. The term does not  
50 include any officer or employee of a creditor who, in the name of the  
51 creditor, collects debts for such creditor, but it does include any  
52 creditor who, in the process of collecting its own debts, uses any name  
53 other than its own which would indicate that a third person is collect-  
54 ing or attempting to collect such debts.

55 8. "Higher education expense" means any expense arising from higher  
56 education, as defined in section two of the education law, regardless of

1 whether the higher education institution is accredited within New York  
2 state.

3 § 1101. Applicability. 1. Any person or entity that enters into a  
4 contract or subcontract with a private education lender or servicer to  
5 perform the servicing of a private education loan must fulfill the obli-  
6 gations of the private education lender under this article.

7 2. Any private education lender as described in subdivision two of  
8 section eleven hundred of this article be jointly and severally liable  
9 for the actions of the entity or person in fulfilling the obligations of  
10 the private educational lender or servicer under this article.

11 § 1102. Exempt organizations. The following shall be exempt from the  
12 provisions of this article only to the extent that state regulation is  
13 preempted by federal law:

14 1. Any banking organization, foreign banking corporation, national  
15 bank, federal savings association, federal credit union, or any bank,  
16 trust company, savings bank, savings and loan association, or credit  
17 union organized under the laws of any other state; and

18 2. Any subsidiary of such entities set forth in subdivision one of  
19 this section.

20 § 1103. Provisions applicable to cosigners. 1. (a) Prior to the origi-  
21 nation of a private education loan, the private education lender shall  
22 provide to all cosigner applicants information about the rights and  
23 responsibilities of the cosigner of the loan, including:

24 (i) information about how the private education lender will furnish  
25 information about the cosigner's private education loan obligation to  
26 credit reporting agencies;

27 (ii) information about how the cosigner will be notified if the  
28 private education loan becomes delinquent, including how the cosigner  
29 can cure the delinquency in order to avoid negative credit furnishing  
30 and loss of cosigner release eligibility; and

31 (iii) information about eligibility for release of the cosigner's  
32 obligation on the private education loan, including number of on-time  
33 payments and any other criteria required to approve the release of  
34 cosigner from the loan obligation.

35 (b) Lenders shall send borrowers and cosigners annual written notices  
36 containing information about cosigner release, including criteria the  
37 lender requires to approve the release of cosigner from the loan obli-  
38 gation and the process for applying for cosigner release.

39 (c) Once the borrower has met the applicable consecutive on-time  
40 payment requirement to be eligible for cosigner release, the lender  
41 shall send the borrower and cosigner a written notification by U.S. mail  
42 and by electronic mail, where a borrower has elected to receive elec-  
43 tronic communications from the lender, informing the borrower and cosig-  
44 ner that he or she has met the applicable consecutive, on-time payments  
45 requirement to be eligible for cosigner release. The notification shall  
46 also include information about any additional criteria to qualify for  
47 cosigner release, and the procedure to apply for cosigner release.

48 (d) Lenders shall provide written notice within fifteen days to any  
49 borrower who applies for cosigner release, but whose application is  
50 incomplete. The written notice must include a description of the infor-  
51 mation needed to consider the application complete and the date by which  
52 the applicant should furnish the missing information.

53 (e) After a borrower submits a complete application for cosigner  
54 release, within thirty days, the lender shall send the borrower and  
55 cosigner a written notice that informs the borrower and cosigner whether  
56 the cosigner release application has been approved or denied. If the

1 lender denies a request for cosigner release, the lender shall inform  
2 the borrower of his or her right to request all documents and informa-  
3 tion used in the determination, including the credit score threshold  
4 used by the lender, the borrower's consumer report, the borrower's cred-  
5 it score, and any other documents specific to the borrower. The lender  
6 must also provide any adverse action notices required under applicable  
7 federal law if the denial is based in whole or in part on any informa-  
8 tion contained in a consumer report.

9 2. (a) In response to any written or oral request for cosigner  
10 release, lenders shall send the information described in paragraph (b)  
11 of subdivision one of this section.

12 (b) Lenders shall not impose any restrictions that may permanently bar  
13 a borrower from qualifying for cosigner release, including restricting  
14 the number of times a borrower may apply for cosigner release.

15 (c) Lenders shall not impose any negative consequences on any borrower  
16 or cosigner during the sixty days following the issuance of the notice  
17 required under paragraph (d) of subdivision one of this section, or  
18 until the lender makes a final determination about a borrower's cosigner  
19 release application. For the purpose of this paragraph, "negative conse-  
20 quences" includes, but is not limited to, the imposition of additional  
21 eligibility criteria, negative credit reporting, lost eligibility for  
22 cosigner release, late fees, interest capitalization, or other financial  
23 injury.

24 (d) Lenders shall not require greater than twelve consecutive, on-time  
25 payments as criteria to apply for cosigner release. Any borrower who has  
26 paid the equivalent of twelve months of principal and interest payments  
27 within any twelve-month period will be considered to have satisfied the  
28 consecutive, on-time payment requirement, even if the borrower has not  
29 made payments monthly during the twelve-month period.

30 (e) If a borrower or cosigner requests a change that restarts the  
31 count of consecutive, on-time payments required for cosigner release,  
32 the lender shall notify the borrower and cosigner in writing within ten  
33 days of the impact of such an arrangement and provide the borrower or  
34 cosigner the right to withdraw or reverse the request to avoid such  
35 impact.

36 (f) The borrower has the right to request an appeal of a lender's  
37 determination to deny the cosigner release application within ninety  
38 days of receiving the lender's determination, and the lender shall  
39 permit such borrower to submit additional documentation evidencing that  
40 the borrower has the ability, willingness, and stability to handle his  
41 or her payment obligations. The borrower may request review of the  
42 cosigner release determination by another employee. The lender shall  
43 inform the borrower of this right in a clear and conspicuous manner on  
44 the notice denying the cosigner release application.

45 (g) A lender must establish and maintain a comprehensive record  
46 management system reasonably designed to ensure the accuracy, integrity,  
47 and completeness of data and other information about cosigner release  
48 applications. This system shall include the number of cosigner release  
49 applications received, the approval and denial rate, and the primary  
50 reasons for any denial.

51 (h) If a cosigner has a total and permanent disability, as determined  
52 by any federal agency, state agency, or physician or doctor of osteopa-  
53 thy legally authorized to practice in the state in which the cosigner  
54 resides, the lender shall release the cosigner from the cosigner's obli-  
55 gation to repay the loan upon receiving a notification of the cosigner's  
56 total and permanent disability. The lender shall not require a new

1 cosigner to be added to the loan after the original cosigner has been  
2 released from the loan.

3 3. (a) A lender shall provide a cosigner of a private education loan  
4 with access to all documents or records related to the cosigned private  
5 education loan that are available to the borrower;

6 (b) If a lender provides electronic access to documents and records  
7 for a borrower, it shall provide equivalent electronic access to the  
8 cosigner; and

9 (c) Upon receiving notice from the borrower or cosigner, the lender  
10 shall redact the contact information of the other party.

11 § 1104. Prohibition on acceleration of payments on private education  
12 loans. 1. Except as provided in subdivision two of this section, a  
13 private education loan executed after the effective date of this article  
14 may not include a provision that permits the private educational lender  
15 to accelerate, in whole or in part, payments on the private education  
16 loan.

17 2. A private education loan may include a provision that permits  
18 acceleration of the loan in cases of payment default.

19 3. A lender shall not place any loan or account into default or accel-  
20 erate a loan for any reason, other than for failure to pay.

21 4. (a) In the event of the death of a cosigner, a lender shall not  
22 attempt to collect against the cosigner's estate, other than for failure  
23 to pay.

24 (b) Upon receiving notification of the death or bankruptcy of a cosig-  
25 ner, when the loan is not more than sixty days delinquent at the time of  
26 the notification, a lender shall not change any terms or benefits under  
27 the promissory note, repayment schedule, repayment terms, or monthly  
28 payment amount or any other provision associated with the loan.

29 (c) A lender shall not place any loan or account into default or  
30 accelerate a loan for any reason, other than for failure to pay.

31 § 1105. Required communications from creditors and debt collectors.  
32 In addition to any other information required under applicable federal  
33 or state law, a creditor or debt collector shall provide, in writing, in  
34 the first debt collection communication with the private education loan  
35 borrower or cosigner, or within five days thereafter, and at any other  
36 time the borrower or cosigner requests such documentation:

37 1. The name of the current owner of the private education loan debt;

38 2. The original creditor's name at the time of origination and, if  
39 different, at the time of sale of the loan, if applicable;

40 3. The original creditor's account number used to identify the private  
41 education loan debt at the time of sale, if applicable;

42 4. The total outstanding amount owed at the time of default or the  
43 amount due to bring the loan current if the loan is delinquent, but not  
44 yet in default;

45 5. A schedule of all transactions credited or debited to the private  
46 education loan account;

47 6. A copy of all pages of the contract, application or other documents  
48 stating all terms and conditions applicable to the private education  
49 loan and evidencing the private education loan borrower's or cosigner's  
50 liability for the private education loan; and

51 7. A clear and conspicuous statement disclosing that the borrower or  
52 cosigner has a right to request all information possessed by the credi-  
53 tor related to the private education loan debt, including, but not  
54 limited to the information included in section eleven hundred six of  
55 this article.



1     § 1106. Required information to be provided by creditors and debt  
2 collectors. 1. A creditor or debt collector may not collect or attempt  
3 to collect a private education loan debt unless the creditor or debt  
4 collector possesses the following:

5       (a) The name of the owner of the private education loan;

6       (b) The original creditor's name at the time of sale of the loan or  
7 default, if applicable;

8       (c) The original creditor's account number used to identify the  
9 private education loan at the time of sale or default, if the original  
10 creditor used an account number to identify the private education loan  
11 at the time of sale or default;

12       (d) The amount due at the time of sale, or at default, or, if the loan  
13 is delinquent, to bring the loan current;

14       (e) A schedule of all transactions credited or debited to the private  
15 education loan account;

16       (f) An itemization of interest and fees, if any, claimed to be owed  
17 and whether those were imposed by the original creditor or any subse-  
18 quent owners of the private education loan;

19       (g) The date that the private education loan was incurred;

20       (h) A billing statement or other account record indicating the date of  
21 the first partial payment and/or the first day that a payment was  
22 missed, whichever is earlier;

23       (i) A billing statement or other account record indicating the date of  
24 the last payment made by the borrower or cosigner, if applicable;

25       (j) Any payments, settlement, or financial remuneration of any kind  
26 paid to the creditor by a guarantor, cosigner, or surety, and the amount  
27 of payment received;

28       (k) A copy of the self-certification form and any other "needs analy-  
29 sis" conducted by the original creditor prior to origination of the  
30 loan;

31       (l) A log of all collection attempts made in the previous twelve  
32 months including date and time of all calls and written communications;

33       (m) Copies of all written settlement offers sent in the last twelve  
34 months, or, in the alternative, a statement that the creditor has not  
35 attempted to settle or otherwise renegotiate the debt prior to suit;

36       (n) Copies of all collection letters sent to the borrower and cosigner  
37 since inception of the loan;

38       (o) Documentation establishing that the creditor is the owner of the  
39 specific individual private education loan at issue. If the private  
40 education loan was assigned more than once, the creditor must possess  
41 each assignment or other writing evidencing the transfer of ownership of  
42 the specific individual private education loan to establish an unbroken  
43 chain of ownership, beginning with the original creditor to the first  
44 subsequent creditor and each additional creditor. Each assignment or  
45 other writing evidencing transfer of ownership or the right to collect  
46 must contain the original creditor's account number (redacted for secu-  
47 rity purposes to show only the last four digits) of the private educa-  
48 tion loan purchased or otherwise assigned, the date of purchase and  
49 assignment, and must clearly show the borrower's, and if applicable,  
50 cosigner's correct name associated with the original account number. The  
51 assignment or other writing attached shall be that by which the creditor  
52 or other assignee acquired the private education loan, not a document  
53 prepared for litigation or collection purposes;

54       (p) A copy of all pages of the contract, application or other docu-  
55 ments evidencing the private education loan borrower's, and if applica-

1 ble, cosigner's liability for the private education loan, stating all  
2 terms and conditions applicable to the private education loan; and

3 (q) A signed affidavit or affidavits from each of the previous owners  
4 of the private education loan regarding when the previous owner acceler-  
5 ated the loan from delinquency status to default status, or if applica-  
6 ble, a statement that no such acceleration occurred.

7 2. Upon written or oral request from a borrower or cosigner for any  
8 information that a creditor or debt collector is required to possess  
9 pursuant to subdivision one of this section, a creditor or debt collec-  
10 tor shall send the requested information to the borrower or cosigner  
11 within fifteen days of receipt of the request.

12 § 1107. Enforcement. 1. All private education lenders, creditors and  
13 debt collectors shall comply with the provisions of this article.

14 2. Any borrower or cosigner who suffers damage as a result of the  
15 failure of a private education lender, creditor, or debt collector  
16 covered by the provision of this article may bring an action on their  
17 own behalf and on behalf of a similarly situated class of consumers  
18 against that person to recover or obtain any of the following:

19 (a) actual damages, but in no case shall the total award of damages be  
20 less than five hundred dollars per person, per violation of this section  
21 or of section three thousand twelve-c of the civil practice law and  
22 rules;

23 (b) punitive damages;

24 (c) correction of any inaccurate, negative reporting by the lender,  
25 creditor, or debt collector to any credit reporting agency;

26 (d) injunctive relief; and

27 (e) any other relief that the court deems proper.

28 3. If a creditor or debt collector fails to comply with subdivision  
29 (e) of section three thousand twelve-c of the civil practice law and  
30 rules, the borrower or the cosigner who sent the written notice therein  
31 may bring an action on his or her own behalf or on behalf of a similarly  
32 situated class of persons against the creditor or debt collector and may  
33 recover or obtain any of the same forms of relief as provided in subdivi-  
34 sion two of this section, as well as an order setting aside or vacat-  
35 ing any judgment entered against the borrower or cosigner. In addition  
36 to any other remedies provided by this section or otherwise provided by  
37 law, whenever it is proven by a preponderance of the evidence that a  
38 creditor, debt collector, or attorney representing a creditor or debt  
39 collector filed an affidavit required under section three thousand  
40 twelve-c of the civil practice law and rules containing false informa-  
41 tion, the court shall award treble actual damages to the borrower or  
42 cosigner, but in no case shall the award of damages be less than one  
43 thousand five hundred dollars, per person, per violation of that  
44 section.

45 4. In the case of any successful action to enforce the foregoing  
46 liability, a private education lender, creditor, or debt collector is  
47 liable for the costs of the action, together with reasonable attorneys'  
48 fees as determined by the court.

49 5. The attorney general or the district attorney of any county may  
50 bring an action in the name of the people of the state to restrain or  
51 prevent any violation of this article or any continuance of any such  
52 violation.

53 6. Nothing in this article shall limit any statutory or common law  
54 right of any person to bring any action in any court for any act, or the  
55 right of the state to punish any person for any violation of any law.

1     § 1108. Rules and regulations. 1. In addition to such powers as may  
2 otherwise be prescribed by this chapter, the superintendent of financial  
3 services is hereby authorized and empowered to promulgate such rules and  
4 regulations as may in the judgment of the superintendent be consistent  
5 with the purposes of this article, or appropriate for the effective  
6 administration of this article, including, but not limited to:

7     (a) such rules and regulations in connection with the activities of  
8 private education lenders, creditors, and debt collectors as may be  
9 necessary and appropriate for the protection of borrowers in this state;

10    (b) such rules and regulations as may be necessary and appropriate to  
11 define unfair, deceptive or abusive acts or practices in connection with  
12 the activities of private education lenders, creditors, and debt collec-  
13 tors;

14    (c) such rules and regulations as may define the terms used in this  
15 article and as may be necessary and appropriate to interpret and imple-  
16 ment the provisions of this article; and

17    (d) such rules and regulations as may be necessary for the enforcement  
18 of this article.

19    2. The superintendent is hereby authorized and empowered to make such  
20 specific rulings, demands and findings as the superintendent may deem  
21 necessary for the proper conduct of the private education loan industry.

22    § 1109. Penalties. In addition to such penalties as may otherwise be  
23 applicable by law, including but not limited to the penalties available  
24 under section forty-four of the banking law, the superintendent of  
25 financial services may, after notice and a hearing, or upon a finding of  
26 a violation of this article in a civil action brought by the attorney  
27 general, require any person found violating the provisions of this arti-  
28 cle or the rules or regulations promulgated hereunder to pay to the  
29 people of this state a penalty for each violation of the article or any  
30 regulation or policy promulgated hereunder a sum not to exceed the  
31 greater of (i) ten thousand dollars for each offense; (ii) a multiple of  
32 two times the aggregate damages attributable to the violation; or (iii)  
33 a multiple of two times the aggregate economic gain attributable to the  
34 violation.

35    § 2. Subdivision (q-1) of section 105 of the civil practice law and  
36 rules, as added by chapter 593 of the laws of 2021, is amended to read  
37 as follows:

38    (q-1) Original creditor. The term "original creditor" means the entity  
39 that owned a consumer credit account at the date of default giving rise  
40 to a cause of action, except that if the consumer credit account is a  
41 private education loan, as defined in subdivision one of section eleven  
42 hundred of the general business law, "original creditor" means the  
43 private education lender identified in a promissory note, loan agree-  
44 ment, or loan contract entered into with a private education loan  
45 borrower or cosigner.

46    § 3. The civil practice law and rules is amended by adding a new  
47 section 3012-c to read as follows:

48    § 3012-c. Pleading requirements in private education loan actions. In  
49 addition to any other papers and documents required by this chapter, in  
50 an action arising out of a private education loan:

51    (a) Accompanying the complaint, one or more sworn affidavits by a  
52 representative of the plaintiff or plaintiff's attorney shall be  
53 attached to the complaint attesting:

54    (1) that the plaintiff has in its possession the information required  
55 in subdivision one of section eleven hundred six of the general business  
56 law;



1 (2) that the communication required in section eleven hundred five of  
2 the general business law has been complied with;

3 (3) as to whether the debt is eligible for an income-based repayment  
4 plan free of charge to the borrower or cosigner, equivalent to the  
5 repayment arrangement established for federal student loans under Arti-  
6 cle IV of the Higher Education Act (20 USC 1078 et. seq.);

7 (4) whether, after reasonable inquiry, the plaintiff or the  
8 plaintiff's attorney has reason to believe that the debt is a qualified  
9 education loan as defined in 26 U.S.C. § 221; and

10 (5) that the information set forth in paragraph one of this subdivi-  
11 sion, the allegations set forth in the complaint and any supporting  
12 affidavits or affirmations, as well as the notarizations contained in  
13 the supporting documents filed therewith, are accurate.

14 (b) Copies of the documentation identified in paragraphs (o) and (q)  
15 of subdivision one of section eleven hundred six of the general business  
16 law shall be attached to the complaint. The requirements of this subdivi-  
17 sion shall satisfy those required for an action arising out of a  
18 consumer credit transaction, pursuant to subdivision (f) of section 3215  
19 of this chapter, where the plaintiff is not the original creditor, as  
20 defined in section 105 of this chapter.

21 (c) An affidavit by the plaintiff or plaintiff's attorney shall accom-  
22 pany the complaint, stating that after reasonable inquiry, he or she has  
23 reason to believe that the statute of limitations has not expired.

24 Compliance with this subdivision shall satisfy the provisions of  
25 subdivision (j) of section 3215 of this chapter for an attorney repres-  
26 enting a creditor seeking a judgment by default entered by the clerk in  
27 an action arising from a private education loan debt.

28 (d) A judge or clerk shall not grant or enter a judgment pursuant to  
29 rule 3212 or sections 3213, 3215 or 3218 of this chapter in an action  
30 arising from a private education loan debt that does not comply with the  
31 requirements described in subdivisions (a), (b), and (c) of this  
32 section.

33 (e) Upon receipt of written notice provided by a borrower or cosigner,  
34 or upon notice from the attorney general or superintendent of financial  
35 services on behalf of a group of borrowers, to a creditor or debt  
36 collector stating that the creditor or debt collector has failed to  
37 comply with this section, the creditor or debt collector shall:

38 (i) Provide proof of compliance with the provisions of this section;  
39 or

40 (ii) Take the following actions:

41 1. move to vacate the judgment;

42 2. refund all monies paid by the borrower or cosigner after the judg-  
43 ment was entered; and

44 3. correct any inaccurate, negative credit information furnished by  
45 the creditor or debt collector.

46 (f) The definitions of terms set forth in section eleven hundred of  
47 the general business law shall apply to the provisions of this section.

48 § 4. Section 3213 of the civil practice law and rules, as amended by  
49 chapter 593 of the laws of 2021, is amended to read as follows:

50 § 3213. Motion for summary judgment in lieu of complaint. When an  
51 action is based upon an instrument for the payment of money only or upon  
52 any judgment, the plaintiff may serve with the summons a notice of  
53 motion for summary judgment and the supporting papers in lieu of a  
54 complaint. The summons served with such motion papers shall require the  
55 defendant to submit answering papers on the motion within the time  
56 provided in the notice of motion. The minimum time such motion shall be

1 noticed to be heard shall be as provided by subdivision (a) of rule 320  
2 for making an appearance, depending upon the method of service. If the  
3 plaintiff sets the hearing date of the motion later than the minimum  
4 time therefor, he may require the defendant to serve a copy of his  
5 answering papers upon him within such extended period of time, not  
6 exceeding ten days, prior to such hearing date. No default judgment may  
7 be entered pursuant to subdivision (a) of section 3215 prior to the  
8 hearing date of the motion. If the motion is denied, the moving and  
9 answering papers shall be deemed the complaint and answer, respectively,  
10 unless the court orders otherwise. The additional notice required by  
11 subdivision (j) of rule 3212 shall be applicable to a motion made pursu-  
12 ant to this section in any action to collect a debt arising out of a  
13 consumer credit transaction where a consumer is a defendant. The addi-  
14 tional pleading required by section 3012-c shall be applicable to a  
15 motion made pursuant to this section in any action to collect a debt  
16 arising out of a private education loan, as defined in section eleven  
17 hundred of the general business law.

18 § 5. Severability. If any clause, sentence, paragraph, subdivision,  
19 section or part of this act shall be adjudged by any court of competent  
20 jurisdiction to be invalid, such judgment shall not affect, impair, or  
21 invalidate the remainder thereof, but shall be confined in its operation  
22 to the clause, sentence, paragraph, subdivision, section or part thereof  
23 directly involved in the controversy in which such judgment shall have  
24 been rendered. It is hereby declared to be the intent of the legislature  
25 that this act would have been enacted even if such invalid provisions  
26 had not been included herein.

27 § 6. This act shall take effect on the sixtieth day after it shall  
28 have become a law; provided that if chapter 593 of the laws of 2021  
29 shall not have taken effect on or before such date then sections two and  
30 four of this act shall take effect on the same date and in the same  
31 manner as such chapter 593 of the laws of 2021 takes effect.