

# STATE OF NEW YORK

5724--A

Cal. No. 1003

2021-2022 Regular Sessions

## IN SENATE

March 17, 2021

Introduced by Sens. THOMAS, BIAGGI, BROOKS, KRUEGER, MYRIE, RAMOS, RIVERA, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the civil practice law and rules, in relation to the rate of interest applicable to money judgments arising out of consumer debt

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

1 Section 1. Section 5004 of the civil practice law and rules, as  
2 amended by chapter 258 of the laws of 1981, is amended to read as  
3 follows:

4 § 5004. Rate of interest. (a) Interest shall be at the rate of nine  
5 per centum per annum, except where otherwise provided by statute;  
6 provided the annual rate of interest to be paid in an action arising out  
7 of a consumer debt where a natural person is a defendant shall be two  
8 per centum per annum (i) on a judgment or accrued claim for judgments  
9 entered on or after the effective date of the chapter of the laws of two  
10 thousand twenty-one which amended this section, and (ii) for interest  
11 upon a judgment pursuant to section five thousand three of this article  
12 from the date of the entry of judgment on any part of a judgment entered  
13 before the effective date of the chapter of the laws of two thousand  
14 twenty-one which amended this section that is unpaid as of such effec-  
15 tive date.

16 (b) For the purpose of this section "consumer debt" means any obli-  
17 gation or alleged obligation of any natural person to pay money  
18 arising out of a transaction in which the money, property, insurance or  
19 services which are the subject of the transaction are primarily for  
20 personal, family or household purposes, whether or not such obligation

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

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1 has been reduced to judgment, including, but not limited to, a consumer  
2 credit transaction, as defined in subdivision (f) of section one hundred  
3 five of this chapter.

4 (c) This section does not affect or create any rights or remedies  
5 related to any amounts paid prior to the effective date of this subdivi-  
6 sion, including amounts paid to satisfy judgments or to accrued interest  
7 or fees paid, or with respect to judgments satisfied prior to the effec-  
8 tive date of this subdivision. For amounts paid prior to the effective  
9 date of this subdivision and lawfully applied in satisfaction or partial  
10 satisfaction of interest or fees accrued prior to the effective date of  
11 this subdivision, this section shall not be construed to require a judg-  
12 ment creditor or sheriff to (i) return or refund such amounts to judg-  
13 ment debtors; or (ii) apply such payments to satisfy any part of a money  
14 judgment other than fees or interest upon judgment pursuant to section  
15 five thousand three of this article.

16 (d) If any word, phrase, clause, sentence, paragraph, subdivision, or  
17 part of this section or its application to any person or circumstance is  
18 held invalid by any court of competent jurisdiction after exhaustion of  
19 all further judicial review, the invalidity shall not affect, impair, or  
20 invalidate the remainder of this section or applications of this article  
21 which can be given effect without the invalid provision or application,  
22 and to this end the provisions of this section are severable.

23 § 2. Subdivisions (f) and (i) of section 3215 of the civil practice  
24 law and rules, subdivision (f) as amended by chapter 453 of the laws of  
25 2006, and subdivision (i) as amended by chapter 31 of the laws of 1967  
26 and relettered by chapter 255 of the laws of 1992, are amended to read  
27 as follows:

28 (f) Proof. On any application for judgment by default, the applicant  
29 shall file proof of service of the summons and the complaint, or a  
30 summons and notice served pursuant to subdivision (b) of rule 305 or  
31 subdivision (a) of rule 316 of this chapter, and proof of the facts  
32 constituting the claim, the default and the amount due, including, if  
33 applicable, a statement that the interest rate for consumer debt pursu-  
34 ant to section five thousand four of this chapter applies, by affidavit  
35 made by the party, or where the state of New York is the plaintiff, by  
36 affidavit made by an attorney from the office of the attorney general  
37 who has or obtains knowledge of such facts through review of state  
38 records or otherwise. Where a verified complaint has been served, it may  
39 be used as the affidavit of the facts constituting the claim and the  
40 amount due; in such case, an affidavit as to the default shall be made  
41 by the party or the party's attorney. When jurisdiction is based on an  
42 attachment of property, the affidavit must state that an order of  
43 attachment granted in the action has been levied on the property of the  
44 defendant, describe the property and state its value. Proof of mailing  
45 the notice required by subdivision (g) of this section, where applica-  
46 ble, shall also be filed.

47 (i) Default judgment for failure to comply with stipulation of settle-  
48 ment. 1. Where, after commencement of an action, a stipulation of  
49 settlement is made, providing, in the event of failure to comply with  
50 the stipulation, for entry without further notice of a judgment in a  
51 specified amount with interest, if any, from a date certain, the clerk  
52 shall enter judgment on the stipulation and an affidavit as to the fail-  
53 ure to comply with the terms thereof, together with a complaint or a  
54 concise statement of the facts on which the claim was based, and, if  
55 applicable, a statement that the interest rate for consumer debt pursu-  
56 ant to section five thousand four of this chapter applies.

2. Where, after commencement of an action, a stipulation of settlement is made, providing, in the event of failure to comply with the stipulation, for entry without further notice of a judgment dismissing the action, the clerk shall enter judgment on the stipulation and an affidavit as to the failure to comply with the terms thereof, together with the pleadings or a concise statement of the facts on which the claim and the defense were based.

§ 3. Paragraph 1 of subdivision (a) of section 3218 of the civil practice law and rules, as amended by chapter 214 of the laws of 2019, is amended to read as follows:

1. stating the sum for which judgment may be entered, authorizing the entry of judgment, ~~and~~ stating the county where the defendant resides and, if applicable, stating that the interest rate for consumer debt pursuant to section five thousand four of this chapter applies;

§ 4. Subdivisions (a) and (b) of section 5230 of the civil practice law and rules, subdivision (a) as amended by chapter 24 of the laws of 2009 and subdivision (b) as amended by chapter 59 of the laws of 1993, are amended to read as follows:

(a) Form. An execution shall specify the date that the judgment or order was entered, the court in which it was entered, the amount of the judgment or order, the applicable interest rate and the date as of which the new interest rate applies if the interest rate for consumer debt pursuant to section five thousand four of this chapter applies and the amount due thereon and it shall specify the names of the parties in whose favor and against whom the judgment or order was entered. If the applicable interest rate changes pursuant to section five thousand four of this chapter while an execution is ongoing, the judgment creditor shall issue an amended execution within sixty days of the effective date of the chapter of the laws of two thousand twenty-one which amended this subdivision, effective as of the date of the rate change. An execution shall direct that only the property in which a named judgment debtor or obligor who is not deceased has an interest, or the debts owed to the named judgment debtor or obligor, be levied upon or sold thereunder and shall specify the last known address of that judgment debtor or obligor. Except in cases when the state of New York, or any of its agencies or municipal corporations is the judgment creditor, or if the debt enforced is for child support, spousal support, maintenance or alimony, provided that in those instances the execution contains a legend at the top thereof, above the caption, in sixteen point bold type with the following language: "The judgment creditor is the state of New York, or any of its agencies or municipal corporations, AND/OR the debt enforced is for child support, spousal support, maintenance or alimony.", an execution notice shall state that, pursuant to subdivision (1) of section fifty-two hundred five of this article, two thousand five hundred dollars of an account containing direct deposit or electronic payments reasonably identifiable as statutorily exempt payments, as defined in paragraph two of subdivision (1) of section fifty-two hundred five of this article, is exempt from execution and that the garnishee cannot levy upon or restrain two thousand five hundred dollars in such an account. Except in cases when the state of New York, or any of its agencies or municipal corporations is the judgment creditor, or if the debt enforced is for child support, spousal support, maintenance or alimony, provided that in those instances the execution contains a legend at the top thereof, above the caption, in sixteen point bold type with the following language: "The judgment creditor is the state of New York, or any of its agencies or municipal corporations, AND/OR the debt enforced is for

1 child support, spousal support, maintenance or alimony.", an execution  
2 notice shall likewise state that pursuant to subdivision (i) of section  
3 fifty-two hundred twenty-two of this article, an execution shall not  
4 apply to an amount equal to or less than ninety percent of the greater  
5 of two hundred forty times the federal minimum hourly wage prescribed in  
6 the Fair Labor Standards Act of 1938 or two hundred forty times the  
7 state minimum hourly wage prescribed in section six hundred fifty-two of  
8 the labor law as in effect at the time the earnings are payable, except  
9 such part as a court determines to be unnecessary for the reasonable  
10 requirements of the judgment debtor and his or her dependents. Where the  
11 judgment or order was entered in a court other than the supreme, county  
12 or a family court, the execution shall also specify the date on which a  
13 transcript of the judgment or order was filed with the clerk of the  
14 county in which the judgment was entered. Where jurisdiction in the  
15 action was based upon a levy upon property or debt pursuant to an order  
16 of attachment, the execution shall also state that fact, describe all  
17 property and debts levied upon, and direct that only such property and  
18 debts be sold thereunder. Where the judgment or order was recovered for  
19 all or part of a mortgage debt, the execution shall also describe the  
20 mortgaged property, specify the book and page where the mortgage is  
21 recorded, and direct that no part of the mortgaged property be levied  
22 upon or sold thereunder.

23 (b) Issuance. At any time before a judgment or order is satisfied or  
24 vacated, an execution may be issued from the supreme court, county court  
25 or a family court, in the county in which the judgment was first docket-  
26 ed, by the clerk of the court or the attorney for the judgment creditor  
27 as officer of the court, to the sheriffs of one or more counties of the  
28 state, directing each of them to satisfy the judgment or order out of  
29 the real and personal property of the judgment debtor or obligor and the  
30 debts due to him or her. Provided, however, if the applicable interest  
31 rate changes pursuant to section five thousand four of this chapter  
32 while an execution is ongoing, the clerk of the court of the supreme  
33 court, county court or a family court, in the county in which the judg-  
34 ment was first docketed, or the attorney for the judgment creditor as  
35 officer of the court, shall be authorized to issue an amended execution  
36 to the sheriffs of one or more counties of the state and shall issue an  
37 amended execution within sixty days of the effective date of the chapter  
38 of the laws of two thousand twenty-one which amended this subdivision,  
39 effective as of the date of the rate change. Where the judgment or order  
40 is for support and is payable to the support collection unit designated  
41 by the appropriate social services district, such unit shall be author-  
42 ized to issue the execution and to satisfy the judgment or order out of  
43 the real and personal property of the judgment debtor or obligor and the  
44 debts due to him or her.

45 § 5. Subdivisions (a), (d), (j) and (k) of section 5231 of the civil  
46 practice law and rules, subdivisions (a), (d) and (j) as amended by  
47 chapter 550 of the laws of 2015, subdivision (k) as amended by chapter  
48 241 of the laws of 1986 and as relettered by chapter 829 of the laws of  
49 1987, are amended to read as follows:

50 (a) Form. An income execution shall specify, in addition to the  
51 requirements of subdivision (a) of section 5230[7]: (i) the name and  
52 address of the person or entity from whom the judgment debtor is receiv-  
53 ing or will receive money; (ii) the amount of money, the frequency of  
54 its payment and the amount of the installments to be collected there-  
55 from; and (iii) shall contain a notice to the judgment debtor that he or  
56 she shall commence payment of the installments specified to the sheriff

1 forthwith and that, upon his or her default, the execution will be  
2 served upon the person or entity from whom he or she is receiving or  
3 will receive money. Provided, however, that if a judgment creditor  
4 issues an amended execution pursuant to section five thousand two  
5 hundred thirty of this article because the applicable interest rate  
6 changes pursuant to section five thousand four of this chapter, the  
7 income execution need only specify paragraphs (i) and (ii) of this  
8 subdivision.

9 (d) Service upon debtor; first service by sheriff. Within twenty days  
10 after an income execution is delivered to the sheriff, the sheriff shall  
11 serve a copy of it upon the judgment debtor, in the same manner as a  
12 summons or, in lieu thereof, by certified mail return receipt requested  
13 provided an additional copy is sent by regular mail to the debtor. If  
14 service is by mail as herein provided, the person effecting service  
15 shall retain the receipt together with a post office certificate of  
16 mailing as proof of such service. Provided, however, that if a judgment  
17 creditor issues an amended execution pursuant to section five thousand  
18 two hundred thirty of this article because the applicable interest rate  
19 changes pursuant to section five thousand four of this chapter, the  
20 sheriff shall serve a copy of the income execution within forty-five  
21 days after an income execution is delivered to the sheriff.

22 (j) Priority; delivery to another sheriff. Two or more income  
23 executions issued against the same judgment debtor, specifying the same  
24 person or entity from whom the money is received and delivered to the  
25 same or different enforcement officers shall be satisfied out of that  
26 money in the order in which the executions are delivered to an officer  
27 authorized to levy in the county, town or city in which the debtor  
28 resides or, in any county in which the person or entity from whom the  
29 judgment debtor is receiving or will receive money has an office or  
30 place of business, or where the judgment debtor is a non-resident, the  
31 county, town or city in which he or she is employed. If the applicable  
32 interest rate changes pursuant to section five thousand four of this  
33 chapter while an execution is ongoing, the issuance of the amended  
34 execution pursuant to section five thousand two hundred thirty of this  
35 article shall retain the priority of the ongoing execution. If an income  
36 execution delivered to a sheriff is returned unsatisfied in whole or in  
37 part because the sheriff to whom it was delivered is unable to find  
38 within the county the person or entity from whom the judgment debtor is  
39 receiving or will receive money, the execution may be delivered to the  
40 sheriff of any county in which such person or entity has an office or  
41 place of business. The priority of an income execution delivered to a  
42 sheriff within twenty days after its return by each previous sheriff  
43 shall be determined by the time of delivery to the first sheriff.

44 (k) Accounting by sheriff. It shall be the duty of the sheriff to whom  
45 such income execution shall be delivered, from time to time and at least  
46 once every ninety days from the time a levy shall be made thereunder, to  
47 account for and pay over to the person entitled thereto all monies  
48 collected thereon, less his lawful fees and expenses for collecting the  
49 same. Provided, however, that if a judgment creditor issues an amended  
50 execution pursuant to section five thousand two hundred thirty of this  
51 article because the applicable interest rate changes pursuant to section  
52 five thousand four of this chapter, any money collected in excess of the  
53 judgment amount shall be promptly returned to the debtor.

54 § 6. Subdivisions (a) and (c) of section 5222 of the civil practice  
55 law and rules, subdivision (a) as amended by chapter 409 of the laws of



1 2000 and subdivision (c) as amended by chapter 575 of the laws of 2008,  
2 are amended to read as follows:

3 (a) Issuance; on whom served; form; service. A restraining notice may  
4 be issued by the clerk of the court or the attorney for the judgment  
5 creditor as officer of the court, or by the support collection unit  
6 designated by the appropriate social services district. It may be served  
7 upon any person, except the employer of a judgment debtor or obligor  
8 where the property sought to be restrained consists of wages or salary  
9 due or to become due to the judgment debtor or obligor. It shall be  
10 served personally in the same manner as a summons or by registered or  
11 certified mail, return receipt requested or if issued by the support  
12 collection unit, by regular mail, or by electronic means as set forth in  
13 subdivision (g) of this section. It shall specify all of the parties to  
14 the action, the date that the judgment or order was entered, the court  
15 in which it was entered, the amount of the judgment or order and the  
16 amount then due thereon, the names of all parties in whose favor and  
17 against whom the judgment or order was entered, it shall set forth  
18 subdivision (b) and shall state that disobedience is punishable as a  
19 contempt of court, and it shall contain an original signature or copy of  
20 the original signature of the clerk of the court or attorney or the name  
21 of the support collection unit which issued it. If the applicable inter-  
22 est rate changes pursuant to section five thousand four of this chapter  
23 while a restraint is in effect, the judgment creditor shall issue an  
24 amended restraining notice, and include the date as of which the new  
25 interest rate applies, without leave of court as required under subdivi-  
26 sion (c) of this section. Service of a restraining notice upon a depart-  
27 ment or agency of the state or upon an institution under its direction  
28 shall be made by serving a copy upon the head of the department, or the  
29 person designated by him or her and upon the state department of audit  
30 and control at its office in Albany; a restraining notice served upon a  
31 state board, commission, body or agency which is not within any depart-  
32 ment of the state shall be made by serving the restraining notice upon  
33 the state department of audit and control at its office in Albany.  
34 Service at the office of a department of the state in Albany may be made  
35 by the sheriff of any county by registered or certified mail, return  
36 receipt requested, or if issued by the support collection unit, by regu-  
37 lar mail.

38 (c) Subsequent notice. Leave of court is required to serve more than  
39 one restraining notice upon the same person with respect to the same  
40 judgment or order. A judgment creditor shall not serve more than two  
41 restraining notices per year upon a natural person's banking institution  
42 account. If the applicable interest rate changes pursuant to section  
43 five thousand four of this chapter while a restraint is in effect, the  
44 judgment creditor shall issue an amended restraining notice without  
45 leave of court.

46 § 7. This act shall take effect on the one hundred twentieth day after  
47 it shall have become a law.