STATE OF NEW YORK

5368

2023-2024 Regular Sessions

IN ASSEMBLY

March 7, 2023

Introduced by M. of A. EPSTEIN -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, the New York city civil court act, the judiciary law and the uniform city court act, in relation to redefining consumer credit transaction to consumer debt

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

Section 1. Section 105 of the civil practice law and rules is amended by adding a new subdivision (f-1) to read as follows:

(f-1) Consumer debt. The term "consumer debt" means any obligation or alleged obligation, whether contingent or absolute, of any natural person to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment, including, but not limited to, a consumer credit transaction, as defined in subdivision (f) of this section and medical debt, as referenced in section two hundred thirteen-d of this chapter. "Consumer debt" shall not include consumer debt secured by real property.

§ 2. Subdivision (a) of section 301 of the New York city civil court act, as amended by chapter 238 of the laws of 1973, is amended to read as follows:

(a) in an action arising out of a [~~consumer credit transaction~~] **consumer debt** where a purchaser, borrower, or a debtor is a defendant, if a defendant resides in the city of New York, or if such transaction took place therein, in the county in which a defendant resides at the commencement thereof or in the county in which such transaction took place, and in all other cases, in the county in which one of the parties resides at the commencement thereof; or

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

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§ 3. Subdivision (d) of section 401 of the New York city civil court act, as added by chapter 302 of the laws of 1970, is amended to read as follows:

(d) The summons served in an action arising from a [~~consumer credit transaction~~] consumer debt must be printed legibly in both Spanish and English.

§ 4. Subdivisions (b-1) and (n) of section 1911 of the New York city civil court act, as added by section 3 of part K of chapter 56 of the laws of 2010, are amended to read as follows:

(b-1) Upon filing the first paper in an action or proceeding arising out of a [~~consumer credit transaction~~] consumer debt as defined in subdivision [~~(f)~~] (f-1) of section one hundred five of the civil practice law and rules, an additional ninety-five dollars.

(n) Upon the filing of a judgment by a plaintiff on or after September first, two thousand ten in an action or proceeding arising out of a [~~consumer credit transaction~~] consumer debt as defined in subdivision [~~(f)~~] (f-1) of section one hundred five of the civil practice law and rules, ninety-five dollars, provided such action or proceeding was commenced prior to such date and no additional fee was paid therein pursuant to subdivision (b-1) of this section.

§ 5. Section 2101 of the New York city civil court act is amended by adding a new subdivision (h) to read as follows:

(h) "Consumer debt" means any obligation or alleged obligation, whether contingent or absolute, of any natural person to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment, including but not limited to, a consumer credit transaction, as defined in subdivision (g) of this section. "Consumer debt" shall not include consumer debt secured by real property.

§ 6. Section 214-i of the civil practice law and rules, as added by chapter 593 of the laws of 2021, is amended to read as follows:

§ 214-i. Certain actions arising out of [~~consumer credit transactions~~] consumer debt to be commenced within three years. An action arising out of a [~~consumer credit transaction~~] consumer debt where a purchaser, borrower or debtor is a defendant must be commenced within three years, except as provided in section two hundred thirteen-a of this article or article 2 of the uniform commercial code or article 36-B of the general business law. Notwithstanding any other provision of law, when the applicable limitations period expires, any subsequent payment toward, written or oral affirmation of or other activity on the debt does not revive or extend the limitations period.

§ 7. Subdivision (a) of rule 305 of the civil practice law and rules, as amended by chapter 39 of the laws of 1996, is amended to read as follows:

(a) Summons; supplemental summons. A summons shall specify the basis of the venue designated and if based upon the residence of the plaintiff it shall specify the plaintiff's address, and also shall bear the index number assigned and the date of filing with the clerk of the court. A third-party summons shall also specify the date of filing of the third-party summons with the clerk of the court. The summons in an action arising out of a [~~consumer credit transaction~~] consumer debt shall prominently display at the top of the summons the words [~~"consumer credit transaction"~~] "consumer debt" and, where a purchaser, borrower or debtor is a defendant, shall specify the county of residence of a defendant, if one resides within the state, and the county where the [~~consumer credit~~

~~transaction~~] transaction from which the consumer debt arose took place, if it is within the state. Where, upon order of the court or by stipulation of all parties or as of right pursuant to section 1003, a new party is joined in the action and the joinder is not made upon the new party's motion, a supplemental summons specifying the pleading which the new party must answer shall be filed with the clerk of the court and served upon such party.

§ 8. The section heading and the opening paragraph of subdivision (a) of section 306-d of the civil practice law and rules, as added by chapter 593 of the laws of 2021, are amended to read as follows:

Additional mailing of notice in [~~an action arising out of a consumer credit transaction~~] a consumer debt action.

At the time of filing with the clerk of the proof of service of the summons and complaint in an action arising out of a [~~consumer credit transaction~~] consumer debt, the plaintiff shall submit to the clerk a stamped, unsealed envelope addressed to the defendant together with a written notice in clear type of no less than twelve-point in size, in both English and Spanish, and containing the following language:

§ 9. Subdivision (f) of section 503 of the civil practice law and rules, as added by chapter 238 of the laws of 1973, is amended to read as follows:

(f) [~~Consumer credit transaction~~] Consumer debt. In an action arising out of a [~~consumer credit transaction~~] consumer debt where a purchaser, borrower or debtor is a defendant, the place of trial shall be the residence of a defendant, if one resides within the state or the county where such transaction took place, if it is within the state, or, in other cases, as set forth in subdivision (a).

§ 10. The section heading and subdivision (a) of section 513 of the civil practice law and rules, as added by chapter 238 of the laws of 1973, are amended to read as follows:

Misplacement of venue in [~~consumer credit transactions~~] consumer debt actions. (a) In an action arising out of a [~~consumer credit transaction~~] consumer debt, the clerk shall not accept a summons for filing when it appears upon its face that the proper venue is a county other than the county where such summons is offered for filing.

§ 11. Subdivision (b) of section 601 of the civil practice law and rules, as added by chapter 602 of the laws of 1996, is amended to read as follows:

(b) Two or more plaintiffs may join no more than five claims in any one action or proceeding against the same defendant arising out of separate [~~consumer credit transactions~~] consumer debts, provided that the plaintiffs are represented by the same attorney.

§ 12. Subparagraph (A) of paragraph 2 of subdivision (b) of section 2111 of the civil practice law and rules, as added by chapter 237 of the laws of 2015, is amended to read as follows:

(A) one or more classes of cases (excluding matrimonial actions as defined by the civil practice law and rules, election law proceedings, proceedings brought pursuant to article seventy or seventy-eight of this chapter, proceedings brought pursuant to the mental hygiene law, residential foreclosure actions involving a home loan as such term is defined in section thirteen hundred four of the real property actions and proceedings law and proceedings related to [~~consumer credit transactions~~] consumer debts as defined in subdivision [~~(f)~~] (f-1) of section one hundred five of this chapter, except that the chief administrator, in accordance with this paragraph, may eliminate the requirement of consent to participate in this program insofar as it applies to the

initial filing by a represented party of papers required for the commencement of residential foreclosure actions involving a home loan as such term is defined in section thirteen hundred four of the real property actions and proceedings law and the initial filing by a represented party of papers required for the commencement of proceedings related to [~~consumer credit transactions~~] consumer debts as defined in subdivision [~~(f)~~] (f-1) of section one hundred five of this chapter) in supreme court in such counties as he or she shall specify, and

§ 13. Subdivision (a) of section 3012 of the civil practice law and rules, as amended by chapter 593 of the laws of 2021, is amended to read as follows:

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

§ 14. Subdivision (j) of rule 3016 of the civil practice law and rules, as added by chapter 593 of the laws of 2021, is amended to read as follows:

(j) [~~Consumer credit transactions~~] Consumer debts. In an action arising out of a [~~consumer credit transaction~~] consumer debt where a purchaser, borrower or debtor is a defendant, the contract or other written instrument establishing the consumer debt on which the action is based shall be attached to the complaint, however, for the purposes of this section, if the account was a revolving credit account, the charge-off statement may be attached to the complaint instead of the contract or other written instrument[~~, and~~]. For all actions arising out of a consumer debt, the following information shall be set forth in the complaint:

(1) The name of the original creditor;

(2) The last four digits of the account number printed on the most recent [~~monthly~~] statement recording a purchase or service transaction, last payment or balance transfer, or other unique identifying information associated with the consumer debt where no account number exists;

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

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

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

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

(6) The account balance printed on the most recent [~~monthly~~] statement recording a purchase **or service** transaction, last payment or balance transfer;

(7) (A) Whether the plaintiff is the original creditor[~~.~~]**;**

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

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

§ 15. Subdivision (e) of rule 3211 of the civil practice law and rules, as amended by chapter 593 of the laws of 2021, is amended to read as follows:

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

§ 16. The opening paragraph, the opening paragraph of paragraph 1 and paragraph 3 of subdivision (j) of rule 3212 of the civil practice law and rules, as added by chapter 593 of the laws of 2021, are amended to read as follows:

Additional notice in any action to collect a [~~debt arising out of a consumer credit transaction~~] **consumer debt** where a consumer is a defendant.

At the time of service of a notice of motion any part of which requests summary judgment in whole or in part, where the moving party is a plaintiff and the respondent is a consumer defendant in [~~an~~] **a consumer debt** action [~~to collect a debt arising out of a consumer credit tran-~~

~~saction~~], and where the consumer defendant against whom summary judgment is sought is not represented by an attorney, the plaintiff shall submit to the clerk a stamped, unsealed envelope addressed to the defendant together with the following additional notice in English and Spanish to be printed in clear type no less than twelve-point in size:

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

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

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

§ 18. Subdivisions (f) and (j) of section 3215 of the civil practice law and rules, subdivision (f) as separately amended by chapters 593 and 831 of the laws of 2021 and subdivision (j) as added by chapter 593 of the laws of 2021, are amended to read as follows:

(f) Proof. On any application for judgment by default, the applicant shall file proof of service of the summons and the complaint, or a summons and notice served pursuant to subdivision (b) of rule 305 or subdivision (a) of rule 316 of this chapter, and proof of the facts constituting the claim, the default and the amount due, including, if applicable, a statement that the interest rate for consumer debt pursuant to section five thousand four of this chapter applies, by affidavit made by the party, or where the state of New York is the plaintiff, by affidavit made by an attorney from the office of the attorney general who has or obtains knowledge of such facts through review of state records or otherwise. Where a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party or the party's attorney. In an action arising out of a [~~consumer credit transaction~~] **consumer debt**, if the plaintiff is not the original creditor, the applicant shall include: (1) an affidavit by the original creditor of the facts constituting the debt, the default in payment, the sale or assignment of the debt, and the amount due at the time of sale or assignment; (2) for each subsequent assignment or sale of the debt to another entity, an affidavit of sale of the debt by the

debt seller, completed by the seller or assignor; and (3) an affidavit of a witness of the plaintiff, which includes a chain of title of the debt, completed by the plaintiff or plaintiff's witness. The chief administrative judge shall issue form affidavits to satisfy the requirements of this subdivision for [~~consumer credit transactions~~] **consumer debts**. When jurisdiction is based on an attachment of property, the affidavit must state that an order of attachment granted in the action has been levied on the property of the defendant, describe the property and state its value. Proof of mailing the notice required by subdivision (g) of this section, where applicable, shall also be filed.

(j) Affidavit. A request for a default judgment entered by the clerk, must be accompanied by an affidavit by the plaintiff or plaintiff's attorney stating that after reasonable inquiry, he or she has reason to believe that the statute of limitations has not expired. The chief administrative judge shall issue form affidavits to satisfy the requirements of this subdivision for [~~consumer credit transactions~~] **consumer debts**.

§ 19. Subdivision (b) of section 5004 of the civil practice law and rules, as amended by chapter 831 of the laws of 2021, is amended to read as follows:

(b) For the purpose of this section "consumer debt" means any obligation or alleged obligation of any natural person to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment[~~, including, but not limited to, a consumer credit transaction, as defined in subdivision (f) of section one hundred five of this chapter~~].

§ 20. Section 7516 of the civil practice law and rules, as added by chapter 593 of the laws of 2021, is amended to read as follows:

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

§ 21. Paragraph (aa) of subdivision 2 of section 212 of the judiciary law, as added by chapter 593 of the laws of 2021, is amended to read as follows:

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

§ 22. Paragraphs 1-a and 12 of subdivision (a) of section 1911 of the uniform city court act, as added by section 2 of part K of chapter 56 of the laws of 2010, are amended to read as follows:

(1-a) Upon filing the first paper in an action or proceeding arising out of a [~~consumer credit transaction~~] **consumer debt** as defined in subdivision [~~(f)~~] **(f-1)** of section one hundred five of the civil practice law and rules, an [~~addition~~] **additional** ninety-five dollars.

(12) Upon the filing of a judgment by a plaintiff on or after September first, two thousand ten in an action or proceeding arising out of a [~~consumer credit transaction~~] **consumer debt** as defined in subdivision [~~(f)~~] **(f-1)** of section one hundred five of the civil practice law and rules, ninety-five dollars, provided such action or proceeding was commenced prior to such date and no additional fee was paid therein pursuant to paragraph (one-a) of this subdivision.

§ 23. Subdivision (b) of section 5004 of the civil practice law and rules, as amended by chapter 831 of the laws of 2021, is amended to read as follows:

(b) For the purpose of this section "consumer debt" means any obligation or alleged obligation**, whether contingent or absolute,** of any natural person to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment, including, but not limited to, a consumer credit transaction, as defined in subdivision (f) of section one hundred five of this chapter **and medical debt as referenced in section two hundred thirteen-d of this chapter**.

§ 24. Within six months of the effective date of this act, all court rules and forms relating to actions arising from consumer credit transactions, as defined in subdivision (f) of section 105 of the civil practice law and rules, in New York state shall be revised to amend the term "consumer credit transaction" to "consumer debt", as that term is now defined in subdivision (f-1) of section 105 of the civil practice law and rules. The chief administrator of the courts shall oversee this process, which shall include, but not be limited to, amendments to New York Court Rules sections 202.5 (e)(4), 202.5-bb(a)(2)(vi), 202.27-a(1), 202.27-a(b), 202.27-a(e), 202.27-b, 208.4(b)(4), 208.6(d), 208.14-a(1), 208.14-a(b), 208.14-a(e), 210.14-b, 210.4(b)(4), 212.14-a(1), 212.14-(a)(b), 212.14-a(e), 212.14-b, 212.4(b)(4), 214.12(4).

§ 25. This act shall take effect on the ninetieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.