# STATE OF NEW YORK

7200

2023-2024 Regular Sessions

# IN SENATE

May 18, 2023

Introduced by Sen. HELMING -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the uniform justice court act, in relation to authorizing the exercise of jurisdiction over commercial claims in justice courts

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

Section 1. The uniform justice court act is amended by adding a new article 18-A to read as follows:

**ARTICLE 18-A**
**COMMERCIAL CLAIMS**


**Section 1820. Commercial claims defined.**
**1821. Parts for the determination of commercial claims established.**
**1822. Commencement of action upon commercial claims.**
**1823. Informal and simplified procedure on commercial claims.**
**1824. Remedies available; transfer of commercial claims.**
**1825. Trial by jury; how obtained; discretionary costs.**
**1826. Proceedings on default and review of judgments.**
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**1828. Procedures relating to corporations, associations, insurers and assignees.**
**1829. Limitation on right to resort to commercial claims procedures.**
**1830. Indexing commercial claims part judgments.**
**1831. Enforcement of commercial claims judgments.**
**1832. Duty to pay judgments.**
**1833. Designation of defendant; amendment procedure.**


**§ 1820. Commercial claims defined.**

**(a) The term "commercial claim" or "commercial claims" as used in this act shall mean and include any cause of action for money only not in**

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

LBD03995-01-3

excess of the maximum amount permitted for a small claim in the small claims part of the court, exclusive of interest and costs, provided that subject to the limitations contained in section eighteen hundred twenty-eight of this article, the claimant is a corporation, partnership or association, which has its principal office in the state of New York and provided that the defendant either resides, or has an office for the transaction of business or a regular employment, within the county in which the court is located.

(b) The term "consumer transaction" means a transaction between a claimant and a natural person, wherein the money, property or service which is the subject of the transaction is primarily for personal, family or household purposes.

§ 1821. Parts for the determination of commercial claims established.

The chief administrator shall assign the times and places for holding, and the judges who shall hold, one or more parts of the court for the hearing of commercial claims as herein defined, and the rules may regulate the practice and procedure controlling the determination of such claims and prescribe and furnish the forms for instituting the same. There shall be at least one evening session of each part every month for the hearing of commercial claims, provided however, that the chief administrator may provide for exemption from this requirement where there exists no demonstrated need for evening sessions. The chief administrator shall not combine commercial claims part actions with small claims part actions for purposes of convenience unless a preference is given to small claims and to commercial claims arising out of consumer transactions. Such practice, procedure and forms shall differ from the practice, procedure and forms used in the court for other than small claims and commercial claims, notwithstanding any provision of law to the contrary. They shall constitute a simple, informal and inexpensive procedure for the prompt determination of commercial claims in accordance with the rules and principles of substantive law. The procedure established pursuant to this article shall not be exclusive of but shall be alternative to the procedure now or hereafter established with respect to actions commenced in the court by the service of a summons. No rule to be enacted pursuant to this article shall dispense with or interfere with the taking of stenographic minutes of any hearing of any business claim hereunder.

§ 1822. Commencement of action upon commercial claims.

(a) (i) Commercial claims other than claims arising out of consumer transactions shall be commenced upon the payment by the claimant of a filing fee of twenty-five dollars and the cost of mailings as herein provided, without the service of a summons and, except by special order of the court, without the service of any pleading other than a required certification verified as to its truthfulness by the claimant on a form prescribed by the state office of court administration and filed with the clerk, that no more than five such actions or proceedings (including the instant action or proceeding) have been instituted during that calendar month, and a statement of its cause of action by the claimant or someone on the claimants behalf to the clerk, who shall reduce the same to a concise, written form and record it in a docket kept especially for such purpose. Such procedure shall provide that the commercial claims part of the court shall have no jurisdiction over, and shall dismiss, any case with respect to which the required certification is not made upon the attempted institution of the action or proceeding. Such procedure shall provide for the sending of notice of such claim by ordinary first-class mail and certified mail with return receipt

requested to the party complained against at his residence, if he resides within the county in which the court is located, and his residence is known to the claimant, or at his office or place of regular employment within such county if he does not reside therein or his residence within the county is not known to the claimant. If, after the expiration of twenty-one days, such ordinary first-class mailing has not been returned as undeliverable, the party complained against shall be presumed to have received notice of such claim. Such notice shall include a clear description of the procedure for filing a counterclaim, pursuant to subdivision (d) of this section.

(ii) Such procedure shall further provide for an early hearing upon and determination of such claim. The hearing shall be scheduled in a manner which, to the extent possible, minimizes the time the party complained against must be absent from employment.

(iii) Either party may request that the hearing be scheduled during evening hours, provided that the hearing shall not be scheduled during evening hours if it would cause unreasonable hardship to either party. The court shall not unreasonably deny requests for evening hearings if such requests are made by the claimant upon commencement of the action or by the party complained against within fourteen days of receipt of the notice of claim.

(b) (i) Commercial claims in actions arising out of consumer transactions shall be commenced upon the payment by the claimant of a filing fee of twenty-five dollars and the cost of mailings as herein provided, without the service of a summons and, except by special order of the court, without the service of any pleading other than a required statement of the cause of action by the claimant or someone on the claimants behalf to the clerk, who shall reduce the same to a concise written form including the information required by subdivision (c) of this section, denominate it conspicuously as a consumer transaction, and record it in the docket marked as a consumer transaction, and by filing with the clerk a required certificate verified as to its truthfulness by the claimant on forms prescribed by the state office of court administration.

(ii) Such verified certificate shall certify (A) that the claimant has mailed by ordinary first-class mail to the party complained against a demand letter, no less than ten days and no more than one hundred eighty days prior to the commencement of the claim, and (B) that, based upon information and belief, the claimant has not instituted more than five actions or proceedings (including the instant action or proceeding) during the calendar month.

(iii) Such procedure shall further provide for an early hearing upon and determination of such claim. The hearing shall be scheduled in a manner which, to the extent possible, minimizes the time the party complained against must be absent from employment. Either party may request that the hearing be scheduled during evening hours, provided that the hearing shall not be scheduled during evening hours if it would cause unreasonable hardship to either party. The court shall not unreasonably deny requests for evening hearings if such requests are made by the claimant upon commencement of the action or by the party complained against within fourteen days of receipt of the notice of claim.

(c) The clerk shall furnish every claimant, upon commencement of the action, and every party complained against, with the notice of claim, and with information written in clear and coherent language which shall be prescribed and furnished by the state office of court administration, concerning the commercial claims part. Such information shall include,

but not be limited to, the form for certification and filing by the claimant that no more than five such actions or proceedings have been instituted during that calendar month, and an explanation of the following terms and procedures: adjournments, counterclaims, jury trial requests, evening hour requests, demand letters in cases concerning consumer transactions, default judgments, subpoenas, arbitration and collection methods, the responsibility of the judgment creditor to collect data on the judgment debtor's assets, the ability of the court prior to entering judgment to order examination of or disclosure by, the defendant and restrain him, and fees. The information shall be available in English and, if the chief administrator determines it is appropriate or necessary, in Spanish. Large signs in English and, if the chief administrator requires it, in Spanish shall be posted in conspicuous locations in each commercial claims part clerk's office, advising the public of its availability.

(d) A defendant who wishes to file a counterclaim shall do so by filing with the clerk a statement containing such counterclaim within five days of receiving the notice of claim. At the time of such filing the defendant shall pay to the clerk a filing fee of five dollars plus the cost of mailings which are required pursuant to this subdivision. The clerk shall forthwith send notice of the counterclaim by ordinary first-class mail to the claimant. If the defendant fails to file the counterclaim in accordance with the provisions of this subdivision, the defendant retains the right to file the counterclaim, however the claimant may, but shall not be required to, request and obtain adjournment of the hearing to a later date. The claimant may reply to the counterclaim but shall not be required to do so.

§ 1823. Informal and simplified procedure on commercial claims.

The court shall conduct hearings upon commercial claims in such manner as to do substantial justice between the parties according to the rules of substantive law and shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence, except statutory provisions relating to privileged communications and personal transactions or communications with a decedent or person with a mental illness. An itemized bill or invoice, receipted or marked paid, or two itemized estimates for services or repairs, are admissible in evidence and are prima facie evidence of the reasonable value and necessity of such services and repairs. Disclosure shall be unavailable in commercial claims procedure except upon order of the court on showing of proper circumstances. The provisions of this act and the rules of this court, together with the statutes and rules governing supreme court practice, shall apply to claims brought under this article so far as the same can be made applicable and are not in conflict with the provisions of this article; in case of conflict, the provisions of this article shall control.

§ 1824. Remedies available; transfer of commercial claims.

(a) Upon determination of a commercial claim, the court shall direct judgment in accordance with its findings, and, when necessary to do substantial justice between the parties, may condition the entry of judgment upon such terms as the court shall deem proper. Pursuant to section fifty-two hundred twenty-nine of the civil practice law and rules prior to entering a judgment, the court may order the examination of or disclosure by, the defendant and restrain him to the same extent as if a restraining notice had been served upon him after judgment was entered.

(b) The court shall have power to transfer any commercial claim or claims to any other part of the court upon such terms as the rules may provide, and to proceed to hear the same according to the usual practice and procedure applicable to other parts of the court.

(c) No counterclaim shall be permitted in a commercial claims action, unless the court would have had monetary jurisdiction over the counterclaim if it had been filed as a commercial claim. Any other claim sought to be maintained against the claimant may be filed in any court of competent jurisdiction.

(d) If the defendant appears to be engaged in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting or transaction of business, the court shall either advise the attorney general in relation to his authority under subdivision twelve of section sixty-three of the executive law, or shall advise the claimant to do the same, but shall retain jurisdiction over the commercial claim.

(e) If the defendant appears to be engaged in fraudulent or illegal acts or otherwise demonstrates fraud or illegality in the carrying on, conducting or transaction of a licensed or certified business, the court shall either advise the appropriate state or local licensing or certifying authority or shall advise the claimant to do the same, but shall retain jurisdiction over the commercial claim.

§ 1825. Trial by jury; how obtained; discretionary costs.

A claimant commencing an action upon a commercial claim under this article shall be deemed to have waived a trial by jury, but if said action shall be removed to a regular part of the court, the claimant shall have the same right to demand a trial by jury as if such action had originally been begun in such part. Any party to such action, other than the claimant, prior to the day upon which he is notified to appear or answer, may file with the court a demand for a trial by jury and his affidavit that there are issues of fact in the action requiring such a trial, specifying the same and stating that such trial is desired and intended in good faith. Such demand and affidavit shall be accompanied with the jury fee required by law and an undertaking in the sum of fifty dollars in such form as may be approved by the rules, payable to the other party or parties, conditioned upon the payment of any costs which may be entered against him in the said action or any appeal within thirty days after the entry thereof; or, in lieu of said undertaking, the sum of fifty dollars may be deposited with the clerk of the court and thereupon the clerk shall forthwith transmit such original papers or duly attested copies thereof as may be provided by the rules to the part of the court to which the action shall have been transferred and assigned and such part may require pleadings in such action as though it had been begun by the service of a summons. Such action may be considered a preferred cause of action. In any commercial claim which may have been transferred to another part of the court, the court may award costs up to twenty-five dollars to the claimant if the claimant prevails.

§ 1826. Proceedings on default and review of judgments.

(a) A claimant commencing an action upon a commercial claim under this article shall be deemed to have waived all right to appeal, except that either party may appeal on the sole grounds that substantial justice has not been done between the parties according to the rules and principles of substantive law.

(b) The clerk shall mail notice of the default judgment by first-class mail, both to the claimant and to the party complained against. Such notice shall inform the defaulting party, in language promulgated by the

state office of court administration, of such party's legal obligation to pay; that failure to pay may result in garnishments, repossessions, seizures and similar actions; and that if there was a reasonable excuse for the default the defaulting party may apply to have the default vacated by submitting a written request to the court.

(c) Proceedings on default under this article are to be governed by, but are not limited to, rule five thousand fifteen of the civil practice law and rules.

§ 1827. Judgment obtained to be res judicata in certain cases.

A judgment obtained under this article shall not be deemed an adjudication of any fact at issue or found therein in any other action or court except that a subsequent judgment obtained in another action or court involving the same facts, issues and parties shall be reduced by the amount of a judgment awarded under this article.

§ 1828. Procedures relating to corporations, associations, insurers and assignees.

(a) Any corporation, including a municipal corporation or public benefit corporation, partnership, or association, which has its principal office in the state of New York and an assignee of any commercial claim may institute an action or proceeding under this article.

(b) No person or co-partnership, engaged directly or indirectly in the business of collection and adjustment of claims, and no corporation or association, directly or indirectly, itself or by or through its officers, agents or employees, shall solicit, buy or take an assignment of, or be in any manner interested in buying or taking an assignment of a bond, promissory note, bill of exchange, book debt, or any other thing in action, or any claim or demand, with the intent and for the purpose of bringing an action or proceeding thereon under this article.

(c) A corporation, partnership or association, which institutes an action or proceeding under this article shall be limited to five such actions or proceedings per calendar month. Such corporation, partnership or association shall complete and file with the clerk the required certification, provided it is true and verified as to its truthfulness, as a prerequisite to the institution of an action or proceeding in this part of the court.

(d) A corporation may appear as a party in any action brought pursuant to this article by an attorney as well as by any authorized officer, director or employee of the corporation provided that the appearance by a non-lawyer on behalf of a corporation shall be deemed to constitute the requisite authority to bind the corporation in a settlement or trial. The court or arbitrator may make reasonable inquiry to determine the authority of any person who appears for the corporation in a commercial claims part case.

§ 1829. Limitation on right to resort to commercial claims procedures.

If the clerk shall find that the procedures of the commercial claims part are sought to be utilized by a claimant for purposes of oppression or harassment, as where a claimant has previously resorted to such procedures on the same claim and has been unsuccessful after the hearing thereon, the clerk may in his discretion compel the claimant to make application to the court for leave to prosecute the claim in the commercial claims part. The court upon such application may inquire into the circumstances and, if it shall find that the claim has already been adjudicated, or that the claim is sought to be brought on solely for purposes of oppression or harassment and not under color of right, it may make an order denying the claimant the use of the commercial claims part to prosecute the claim.

§ 1830. Indexing commercial claims part judgments.

All wholly or partially unsatisfied commercial claims part judgments shall be indexed alphabetically and chronologically under the name of the judgment debtor. Upon satisfying the judgment, the judgment debtor shall present appropriate proof to the court and the court shall indicate such in the records.

§ 1831. Enforcement of commercial claims judgments.

Where a judgment has been entered in a commercial claims part and remains unsatisfied, the commercial claims clerk shall, upon request, issue information subpoenas, at nominal cost, for the judgment creditor and provide the creditor with assistance on their preparation and use.

§ 1832. Duty to pay judgments.

(a) Any person, partnership, firm or corporation which is sued in a commercial claims part for any cause of action arising out of its business activities, shall pay any judgment rendered against it in its true name or in any name in which it conducts business. "True name" includes the legal name of a natural person and the name under which a partnership, firm or corporation is licensed, registered, incorporated or otherwise authorized to do business. "Conducting business" as used in this article shall include, but not be limited to, maintaining signs at business premises or on business vehicles; advertising; entering into contracts; and printing or using sales slips, checks, invoices or receipts. Whenever a judgment has been rendered against a person, partnership, firm or corporation in other than its true name and the judgment has remained unpaid for thirty-five days after receipt by the judgment debtor of notice of its entry, the aggrieved judgment creditor shall be entitled to commence an action in a commercial claims part against such judgment debtor, notwithstanding the jurisdictional limit of the court, for the sum of the original judgment, costs, reasonable attorney's fees, and one hundred dollars.

(b) Whenever a judgment which relates to activities for which a license is required has been rendered against a business which is licensed by a state or local licensing authority and which remains unpaid for thirty-five days after receipt by the judgment debtor of notice of its entry and the judgment has not been stayed or appealed, the state or local licensing authority shall consider such failure to pay, if deliberate or part of a pattern of similar conduct indicating recklessness, as a basis for the revocation, suspension, conditioning or refusal to grant or renew such license. Nothing herein shall be construed to preempt an authority's existing policy if it is more restrictive.

(c) The clerk shall attach to the notice of suit required under this article a notice of the duty imposed by this section.

§ 1833. Designation of defendant; amendment procedure.

(a) A party who is ignorant, in whole or in part, of the true name of a person, partnership, firm or corporation which may properly be made a party defendant, may proceed against such defendant in any name used by the person, partnership, firm or corporation in conducting business, as defined in subdivision (a) of section eighteen hundred twenty-two of this article.

(b) If the true name of the defendant becomes known at any time prior to the hearing on the merits, such information shall be brought to the attention of the clerk, who shall immediately amend all prior proceedings and papers. The clerk shall send an amended notice to the defendant, without payment of additional fees by the plaintiff, and all subsequent proceedings and papers shall be amended accordingly.

**(c) In every action in the commercial claims part, at the hearing on the merits, the judge or arbitrator shall determine the defendant's true name. The clerk shall amend all prior proceedings and papers to conform to such determination, and all subsequent proceedings and papers shall be amended accordingly.**

**(d) A party against whom a judgment has been entered pursuant to this article, in any proceeding under rule five thousand fifteen of the civil practice law and rules for relief from such judgment, shall disclose its true name; any and all names in which it is conducting business; and any and all names in which it was conducting business at the time of the transaction or occurrence on which such judgment is based. All subsequent proceedings and papers shall be amended to conform to such disclosure.**

§ 2. This act shall take effect on the first of September next succeeding the date on which it shall have become a law.