



NEW YORK
CITY BAR

**REPORT ON LEGISLATION BY THE CIVIL COURT COMMITTEE,
COUNCIL ON JUDICIAL ADMINISTRATION, LITIGATION COMMITTEE AND
THE STATE COURTS OF SUPERIOR JURISDICTION COMMITTEE**

**A.5368
S.4750**

**M. of A. Epstein
Sen. Thomas**

The Consumer Debt Uniformity Act

AN ACT to amend several laws and rules in relation to the term consumer debt and its definition.

THIS LEGISLATION IS APPROVED

The Consumer Debt Uniformity Act (“CDUA”) will simplify consumer debt litigation, reduce burdens on court staff, and reduce uncertainty by providing consistent laws governing all types of consumer debts in New York. The definition of consumer debt is already well established and is based on federal laws, including the Fair Debt Collection Practices Act and the U.S. Bankruptcy Code, as well as New York State debt collection practices law. The bill brings both uniformity and clarity to the administration of debt collection lawsuits in New York State. This chart, described in greater detail below, demonstrates the scattershot nature of debt collection cases in New York:

Type of Debt	3-year SOL	2% Judgment Interest	Additional notices, pleading and default judgment requirements
Revolving credit (e.g., credit card)	Yes	Yes	Yes
Closed end credit (e.g., student loans and auto loans)	Yes, but cf. OCA rules ¹	Yes	Yes, but cf. OCA rules

¹ New York City Civil Court: 22 NYCRR §§ [208.14-a](#) and [208.6\(h\)](#); City Courts outside the City of New York: 22 NYCRR §§ [210.14-a](#) and [210.14-b](#); Nassau and Suffolk District Courts: 22 NYCRR §§ [212.14-a](#) and [212.14-b](#); and Supreme & County Courts: 22 NYCRR §§ [202.27-a](#) and [202.27-b](#) (All websites last accessed on Feb. 6, 2024).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

Type of Debt	3-year SOL	2% Judgment Interest	Additional notices, pleading and default judgment requirements
Consumer debt where credit is not extended (e.g., rent arrears, tuition debt)	No	Yes, but courts must search pleadings to ensure compliance	No
Medical Debt	Yes	Yes, but courts must search pleadings to ensure compliance	No

I. SUMMARY OF THE PROPOSED LEGISLATION

The proposed legislation would amend the Civil Practice Law and Rules (CPLR), the New York City Civil Court Act (NYCCA), the Judiciary Law (JL), and the Uniform City Court Act (UCCA), by adding a new defined term, “consumer debt,” which will be used in place of “consumer credit transaction” in several parts of the above laws and rules. Consumer debt will be defined as:

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 subsection (f) of this section and medical debt, as referenced in section 213-d of article 2 of this chapter. "Consumer debt" does not include consumer debt secured by real property.

Amending the CPLR, NYCCA, JL, and UCCA to include all consumer debt, will mean that the following consumer protections apply as well:

- additional notice of the lawsuit;²
- venue in the county in which the defendant resides;³
- uniform three-year statute of limitations;⁴
- attaching the contract or other written instrument establishing the debt to the complaint;⁵
- additional pleading requirements;⁶
- additional time to move for dismissal based on lack of personal jurisdiction;⁷

² CPLR 305(a); CPLR 306-d; NYCCA 401(d).

³ CPLR 503 (f); CPLR 513(a); NYCCA 301 (a).

⁴ CPLR 214-i.

⁵ CPLR 3016(j).

⁶ CPLR 3016(j).

⁷ CPLR 3211(e).

- additional notice to *pro se* defendants on motions for summary judgment;⁸ and
- clarified default judgment requirements.⁹

The proposed legislation also directs the chief administrator of the courts to amend all rules and forms using the term “consumer credit transactions” as defined in CPLR 105(f) to instead use the term “consumer debt” as defined in the CPLR 105(f-1). The amendments would 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), and 214.12(4).

II. BACKGROUND

New York Courts, like courts throughout the country, have been increasingly overwhelmed by high numbers of debt collection lawsuits and the unique challenges that these cases pose. In 2019, 101,643 consumer credit lawsuits were filed in New York City Civil Courts alone.¹⁰ The defendants in these cases are overwhelmingly low-income, unrepresented by an attorney, intimidated by court procedures, and uninformed of their substantive rights or how to assert them.¹¹ Many defendants are also seniors, people with disabilities, and are not primary English speakers.¹² This reflects a national trend in which it is estimated that more than two-thirds of civil cases filed in state courts annually involve lawsuits by creditors seeking payment on consumer debts.¹³ Furthermore, research suggests that debt collection lawsuits disproportionately affect Black and Latinx communities.¹⁴

Courts are not well designed to address the unique realities of consumer debt cases.¹⁵ One major hurdle to achieving justice in consumer cases is that plaintiffs are almost always represented by attorneys, while defendants are not.¹⁶ In New York City Civil Court, approximately 96% of defendants are unrepresented in consumer credit transaction cases.¹⁷ This can often lead to defendants unknowingly waiving critical defenses such as lack of personal jurisdiction, plaintiff’s lack of standing, or the expiration of the statute of limitations. Because consumers are so often unrepresented, debt collection plaintiffs and their attorneys take advantage of complicated rules of civil procedure and lax pleading requirements to obtain judgments on meritless claims.

⁸ CPLR 3212(j).

⁹ CPLR 3215 (f) and (j).

¹⁰ FOIL Officer, Office of Court Administration, 2019 New York City Civil Court Consumer Credit Filings.

¹¹ Paula Hannaford-Agor, J.D. & Brittany Kaufman, J.D., National Center for State Courts, PREVENTING WHACK-A-MOLE MANAGEMENT OF CONSUMER DEBT CASES: A PROPOSAL FOR A COHERENT AND COMPREHENSIVE APPROACH FOR STATE COURTS, 2 (2020)

¹² *Id.*

¹³ *Id.*

¹⁴ The Pew Charitable Trusts, HOW DEBT COLLECTORS ARE TRANSFORMING THE BUSINESS OF STATE COURTS, 17 (2020).

¹⁵ *Id.* at 13.

¹⁶ *Id.*

¹⁷ FOIL Officer, Office of Court Administration, 2018 New York City Civil Court Consumer Credit Filings (April 5, 2019). See also, NYS Permanent Commission on Access to Justice, Report to the Chief Judge of the State of New York (November 2018), http://ww2.nycourts.gov/sites/default/files/document/files/2018-12/18_ATJ-Comission_Report.pdf. Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers (May 2010), <http://mobilizationforjustice.org/wp-content/uploads/reports/DEBT-DECEPTION.pdf>.

Another consistent problem in consumer debt cases is that consumer defendants often do not receive notice that they are being sued.¹⁸ In 2009, the New York State Attorney General brought civil and criminal charges against a process server that allegedly failed to serve New Yorkers in over 100,000 debt collection cases.¹⁹ The New York City Department of Consumer and Worker Protection (DCWP) (formerly the Department of Consumer Affairs) promulgated rules in 2011 to improve the practices of process servers licensed in the City.²⁰ However, default judgments were entered in approximately 39% of the consumer credit cases filed in 2019.²¹ Based on the experiences of our members, the Committee believes that problems with service of process remain common in debt collection cases.

Recognizing these challenges inherent to debt collection, New York has taken steps to, as former New York State Chief Judge Jonathan Lippman stated, “prevent inequitable debt collection practices in the courts and ensure a fair legal process for all litigants.”²² In 2014, the Office of Court Administration (OCA) promulgated rules addressing default judgment applications in consumer credit transaction cases, requiring specific affidavits that would meet legal evidentiary standards.²³ However, the rules were limited to a narrower definition of “consumer credit transaction,” thereby limiting their applicability almost exclusively to cases arising from credit card debt.²⁴ In 2021, New York passed the Consumer Credit Fairness Act (CCFA)²⁵ with the support of both consumer advocates and the collection industry.²⁶ The law expanded the OCA rules to all consumer credit transactions, and adopted a uniform three-year statute of limitations, enhanced pleading requirements, and created additional protections for *pro se* defendants in consumer credit transaction cases. In 2022, New York also passed the Fair Consumer Judgment Interest

¹⁸ See, e.g., MFY Legal Services, JUSTICE DISSERVED (June 2008), http://mobilizationforjustice.org/wp-content/uploads/reports/Justice_Disserved.pdf; see also *Sykes v. Mel Harris & Assoc.*, 757 F. Supp. 2d 413 (S.D.N.Y. 2010), *aff'd*, 780 F.3d 70 (2d Cir. 2015); *Coble v. Cohen & Slamowitz, L.L.P.*, 824 F. Supp. 2d 568 (S.D.N.Y. 2011).

¹⁹ Press Release, Office of the Attorney General of New York, Attorney General Cuomo Sues To Throw Out Over 100,000 Faulty Judgments Entered Against New York Consumers In Next Stage Of Debt Collection Investigation (July 23, 2009), <https://ag.ny.gov/press-release/2009/attorney-general-cuomo-sues-throw-out-over-100000-faulty-judgments-entered>; Press Release, Office of the Attorney General of New York, Cuomo Announces Guilty Plea Of Process Server Company Owner Who Denied Thousands Of New Yorkers Their Day In Court (Jan. 15, 2010), <https://ag.ny.gov/press-release/2010/new-york-state-attorney-general-andrew-m-cuomo-announces-guilty-plea-process>.

²⁰ See The City Record, Volume CXXXVIII Number 147, 1789, <https://a856-cityrecord.nyc.gov/>.

²¹ FOIL Officer, Office of Court Administration, 2019 New York City Civil Court Consumer Credit Filings.

²² Press Release, N.Y.S. Unified Court System, Chief Judge Announces Comprehensive Reforms to Promote Equal Justice for New York Consumers in Debt Cases (April 30, 2014), http://courts.state.ny.us/PRESS/PDFs/PR14_03.pdf.

²³ Proposed reforms relating to consumer credit collection cases, N.Y.S. Unified Court System, April 30, 2014, at <https://www.nycourts.gov/LegacyPDFS/RULES/comments/PDF/ConsumeCreditPC-Package.pdf>. These rules were adopted on September 15, 2014, with an effective date of October 1, 2014, <https://www.nycourts.gov/LegacyPDFS/RULES/comments/orders/AO-185-14.pdf>. See also Comments on Proposed Reforms Relating to Consumer Credit Cases, New York City Bar Association, April 27, 2014, <https://www.nycbar.org/reports/comments-on-proposed-reforms-relating-to-consumer-credit-cases/?back=1>.

²⁴ *Id.*

²⁵ NY LEGIS 593 (2021), 2021 Sess. Law News of N.Y. Ch. 593 (S. 153). The City Bar supported the enactment of the CCFA, see <https://www.nycbar.org/reports/report-on-the-consumer-credit-fairness-act/?back=1>.

²⁶ See Press Release, Governor Hochul Signs Consumer Credit Fairness Act Into Law (Nov. 9, 2021), <https://www.nysenate.gov/newsroom/press-releases/2021/kevin-thomas/governor-hochul-signs-consumer-credit-fairness-act-law>; see also, RMAI International, RMAI Update August 2021, <https://rmainl.org/rmai-update/rmai-update-august-2021/>.

Rate Act, which reduced the interest rate for all judgments in cases arising from a “consumer debt” to two percent.²⁷

III. JUSTIFICATION

A. The CDUA would create consistency for courts, *pro se* litigants, and the collection industry.

New York has already taken remedial steps to level the playing field for consumers sued in debt collection litigation. However, there are inconsistencies in the types of debts to which these laws apply. Establishing a clear and inclusive definition of consumer debt would address this problem by ensuring that existing laws are applied uniformly to all similar cases, making it easier for all parties involved to understand and comply with the rules.

For instance, currently, most court rules related to consumer debt lawsuits are linked to the CPLR’s definition of “consumer credit transaction.” However, OCA’s 2014 rules for default judgments in debt collection cases only applied to a subcategory of debts arising from consumer credit transactions. These rules define “consumer credit transaction” in a more limited way than the CPLR and exclude certain types of debt, such as medical expenses, student loans, auto loans, or retail installment contracts.²⁸ But the CCFA, which took effect in 2022 and amended CPLR provisions relating to default judgments by adding protections for consumers, applies to all consumer credit transactions, as defined in the CPLR.²⁹

Additionally, the CCFA reduced the statute of limitations for consumer credit transactions to three years,³⁰ which is consistent with the statute of limitations for medical debt, which, in 2020, was also reduced to three years.³¹ However, the statute of limitations for other types of consumer debts is six years, unless the time limit of another state is shorter and New York’s borrowing statute applies.³²

Moreover, the Fair Consumer Judgment Interest Act, which went into effect in 2022, lowered the judgment interest rate on all types of “consumer debt,” not just consumer credit transactions, from nine percent to two percent.³³ While attorneys must prominently display “consumer credit transaction” on summonses for lawsuits that arise from consumer credit transactions, there is no similar obligation for general consumer debts.³⁴ Consequently, court clerks must scrutinize complaints and determine whether to apply the reduced interest rate on judgments, which has led to inconsistent and incomplete application of the law.

²⁷ NY LEGIS 831 (2021), 2021 Sess. Law News of N.Y. Ch. 831 (S. 5724-A).

²⁸ See New York City Civil Court: 22 NYCRR §§ 208.14-a and 208.6(h); City Courts outside the City of New York: 22 NYCRR §§ 210.14-a and 210.14-b; Nassau and Suffolk District Courts: 22 NYCRR §§ 212.14-a and 212.14-b; Supreme & County Courts: 22 NYCRR §§ 202.27-a and 202.27.

²⁹ N.Y. CPLR 105 (f).

³⁰ CPLR 214-i.

³¹ CPLR 213-d.

³² CPLR 202.

³³ NY LEGIS 831 (2021), 2021 Sess. Law News of N.Y. Ch. 831 (S. 5724-A).

³⁴ CPLR 305(a).

As a result, rules regarding pleading and default judgments apply to consumer credit transactions, but not consumer debt; the three-year statute of limitations applies to consumer credit transactions and medical debt, but not other types of consumer debt; and the consumer judgment interest rate applies to all forms of consumer debt. For ease of reference, we reproduce this demonstrative chart here:

Type of Debt	3-year SOL	2% Judgment Interest	Additional notices, pleading and default judgment requirements
Revolving credit (e.g., credit card)	Yes	Yes	Yes
Closed end credit (e.g., student loans and auto loans)	Yes, but cf. OCA rules ³⁵	Yes	Yes, but cf. OCA rules
Consumer debt where credit is not extended (e.g., rent arrears, tuition debt)	No	Yes, but courts must search pleadings to ensure compliance	No
Medical Debt	Yes	Yes, but courts must search pleadings to ensure compliance	No

CDUA will simplify consumer debt litigation and reduce uncertainty by enforcing consistent consumer protections for all types of consumer debts in New York. The definition of consumer debt is already well established and is based on federal laws, including the Fair Debt Collection Practices Act³⁶ and the U.S. Bankruptcy Code,³⁷ as well as New York State debt collection practices law.³⁸ There is long-standing precedent of what constitutes a “consumer debt,” which the debt collection industry has been complying with for decades. Thus, the bill brings both uniformity and clarity to the administration of debt collection lawsuits in New York State.

In addition, the bill would allow more unrepresented defendants to receive free legal services, furthering the New York Unified Court System’s goal of ensuring equal access to justice and reducing the burden on judges and court personnel. Currently, in New York City Civil Court, cases arising from consumer credit transactions are heard in courtrooms in which a Volunteer Lawyer for the Day (VLFD) program is available to *pro se* defendants. However, whether cases arising from other types of consumer debts are heard in the same courtroom varies depending on the county and whether the case is marked for a trial, conference, or motion. This makes it difficult or impossible for VLFD programs to oversee them, which deprives litigants sued for certain types of consumer debt from receiving free legal services and further stresses the court’s limited resources.

³⁵ New York City Civil Court: 22 NYCRR §§ [208.14-a](#) and [208.6\(h\)](#); City Courts outside the City of New York: 22 NYCRR §§ [210.14-a](#) and [210.14-b](#); Nassau and Suffolk District Courts: 22 NYCRR §§ [212.14-a](#) and [212.14-b](#); and Supreme & County Courts: 22 NYCRR §§ [202.27-a](#) and [202.27-b](#).

³⁶ 15 USCA § 1692a (5).

³⁷ 11 USCA § 101 (8).

³⁸ Gen. Bus. Law § 600 (5).

B. Consumer protections are essential in all consumer debt collection lawsuits.

Our collective experience as legal advocates, students, and judges who operate within the New York Civil courts system reveals that consumers sued by hospitals, nursing homes, landlords, colleges, and other creditors face the same challenges and obstacles that exist in cases seeking to collect credit card debt. Those consumers are just as likely to be unrepresented by counsel, to default due to lack of notice, and to be low-income, non-English speaking, or otherwise vulnerable.

Similar to consumers being sued for credit card debt, consumers facing suits involving other kinds of consumer debt are unaware of the procedural and legal defenses available to them. Furthermore, the claims and defenses in these cases can be more fact intensive than in typical consumer credit transaction cases, which makes the six-year statute of limitations³⁹ applicable in these cases particularly burdensome to consumers. For example, in order to prove their affirmative defenses in cases concerning medical debts, consumers will likely need to maintain records of payments made for services rendered by a provider and any payments made by a third party like an insurance company on behalf of the defendant, as well as any communications with the insurance company.⁴⁰ Consumers sued for tuition debt or private student loan debt face similar challenges. In many instances, borrowers have defenses related to the conduct of the school they attended, which are difficult to prove years after they have left.⁴¹ Rent arrears cases, too, are heavily fact specific, and consumers must often seek out documentation to litigate defenses related to payment by the consumer or a third party, poor living conditions, renovations, the circumstances surrounding a voluntary surrender, the landlord's re-letting of the apartment, and the underlying housing court case.⁴² Reducing the statute of limitations to three years for all consumer debt would help ensure that consumers have a realistic opportunity to assert substantive defenses.

Our experience also demonstrates that there appear to be as many service defects and default judgments in actions arising from rent arrears, tuition debt, and medical debt, as in consumer credit transaction cases.⁴³ The plaintiffs in consumer debt cases are typically represented by major collections

³⁹ CPLR 213.

⁴⁰ See, e.g., *Picker v. Castro*, 776 N.Y.S.2d 433 (N.Y. App. Term 2003) (holding that provider's refusal to fill out insurance paperwork violated duty of good faith and fair dealing); *New York City Health & Hosps. Corp. v Logvinsky*, 130 Misc. 2d 767 (Civ. Ct. N.Y. Cty. 1986) (finding that plaintiff hospital did not refute defendant's allegation that although she accepted plaintiff's offer to file a Medicaid application for her, no application was made); *New York City Health and Hosps. Corp. Goldwater Mem. Hosp. v Gorman*, 113 Misc 2d 33 (Sup. Ct. N.Y. Cty. 1982) (holding that hospital had a duty to apply on defendant's behalf for reconsideration of his eligibility for Medicaid); *Mount Sinai Hosp. v Kornegay*, 75 Misc. 2d. 302, 347 (Civ. Ct. N.Y. Cty. 1973) (holding that when hospital failed to submit Medicaid application it was barred from seeking payment from the patient).

⁴¹ Many private student loans include an FTC Holder Notice, which provides that the lender (or its assignee) is subject to the borrower's claims and defenses against the seller (*i.e.*, the school). See 16 C.F.R. pt. 433—Preservation of Consumers' Claims and Defenses.

⁴² See, e.g., *Berger v. UEI 642 Tenth, LLC*, 62 Misc. 3d 148(A) (N.Y. App. Term. 2019) (holding that tenant is only liable for use and occupancy for the five days beyond expiration of the lease that he remained in possession); *1342 Bergen LLC v. Hayes*, No. 504119/19, 2021 WL 852888 (N.Y. Sup. Ct. Feb. 26, 2021) (holding that defendant can assert warranty of habitability counterclaim despite counterclaim waiver provision in lease); *34 W. 75th St. LLC v Hynes*, 64 Misc 3d 1225(A) (Civ. Ct. N.Y. Cty. 2019) (deciding the issue of whether landlord accepted surrender of apartment from former tenant); *Jean Charles v. Noel*, 62 Misc. 3d 1216(A) (Civ. Ct. Kings Cty. 2018) (holding that landlord waived its rights to pursue rent arrears when it discontinued prior L&T case without reserving the right to pursue plenary claim).

⁴³ See, e.g., NYC Bar Assoc. Civil Court Committee, LETTER TO JUDGE SILVER: PROPOSED RECOMMENDATION FOR RENTAL ARREARS ACTION (Jan. 4, 2019), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-to-judge-silver-proposed-recommendation-for-rental-arrears-action>; NYC Bar Assoc. Council on

firms that use the same process service agencies. Notice-related protections, such as the additional mailing of the summons in English and Spanish as required by CPLR 306-d, should apply to defendants in all debt collection cases.

IV. CONCLUSION

For the reasons above, the New York City Bar Association, by and through the below-named committees, supports the proposed legislation.

Civil Court Committee
Charlie Giudice, Co-Chair
Tedmund Wan, Co-Chair

Council on Judicial Administration
Fran Hoffinger, Chair

Litigation Committee
Seth Allen, Chair

State Courts of Superior Jurisdiction Committee
Amy Carlin, Chair

February 2024

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Judicial Administration, Housing Court Committee, and Civil Court Committee, LETTER TO JUSTICE FERN FISHER REGARDING CIVIL COURT ACTIONS SEEKING RENT ARREARS AFTER LANDLORD TENANT CASE (May 16, 2017), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-to-justice-fern-fisher-regarding-civil-court-actions-seeking-rent-arrears-after-landlord-tenant-case>.