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**Memorandum of Support**  
**Consumer Debt Bill A.5368/S.4750**

**BILL TITLE:**           **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**

**INTRODUCED BY:**   **Assembly Member Harvey Epstein**  
                                  **Senator Kevin Thomas**

**STATEMENT OF SUPPORT:** **Access Justice Brooklyn strongly advocates for the passage of A.5368/S.4750, which would expand protections already in place for consumers in lawsuits involving consumer credit transactions to all forms of consumer debt.**

Founded in 1990, the mission of Access Justice Brooklyn is to provide high-quality, pro bono legal services and community education to our neighbors in need. Using the collective talents of our dedicated staff and volunteers, we help ensure a more accessible legal system and equitable Brooklyn. Access Justice Brooklyn serves Brooklyn residents, borough-wide, who are low-income and need help with civil legal issues in any of our practice areas, which include consumer debt litigation and advocacy and Chapter 7 bankruptcy; advanced life planning and senior legal assistance; family stabilization matters, such as custody, visitation, child and spousal support, uncontested divorce, and 17A Guardianship; homeowner assistance, including foreclosure intervention and prevention; and immigration and naturalization. We have extensive experience in handling consumer debt matters through our legal clinics in Kings County Civil Court, where we provide information, advice, and representation to consumer credit litigants several days per week. As a result, we have seen firsthand the ways in which consumers are still exploited by debt collectors despite the consumer protections already established in New York State.

New York has long recognized and sought to remedy the myriad injustices that often arise in debt collection lawsuits against consumers. These problems include lack of notice, lawsuits brought in inconvenient forums or years after evidence and memories have faded, vague pleadings, and meritless claims. For these reasons, the legislature has enacted laws, including the Consumer Credit Fairness Act (CCFA) in 2021,<sup>1</sup> to level the playing field for consumers. However, these measures only afford protections to consumers facing the narrow category of

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<sup>1</sup> NY LEGIS 593 (2021), 2021 Sess. Law News of N.Y. Ch. 593 (S. 153).

debts that arise from “consumer credit transactions.”<sup>2</sup> That means consumers facing collection of many common forms of consumer debt, including medical debt, rent arrears, and tuition debt, do not receive these basic safeguards.

The proposed bill, A.5368/S.4750, would remedy this problem by expanding existing consumer protections so they apply to all consumer debts, regardless of the type. Such protections include:

- Requirement that debt collection cases be filed in the county in which the consumer resides.
- Requirement that basic information regarding the debt be included in the complaint.
- Additional time to tell the court about improper service.
- Application of a consistent statute of limitation of three years to all consumer debts.
- Mailing of additional notices in English and Spanish when filing a lawsuit or moving for summary judgment.

***Consumer protections are essential in all collection lawsuits, not just in cases for credit card debt.*** In our experience as advocates, 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, and those consumers are just as likely to be unrepresented by counsel. Ensuring that basic, commonsense guardrails be in place to protect vulnerable consumers from known abuses and exploitation in the law is necessary to ensure that they have a fair shot at defending themselves.

To illustrate the prevalence of this issue, below are examples of just two consumers recently assisted by our organization who would benefit from passage of A.5368/S.4750.

- Access Justice Brooklyn met Mr. A after he was sued by a former landlord for rent arrears. Mr. A had vacated the premises in 2016 with his wife and two young children due to the conditions becoming unlivable: there were exposed wires in the bathroom and kitchen, leaks from the ceiling, a mouse infestation, a broken radiator, and a neighbor that would constantly harass and threaten the family. The landlord was notified multiple times about these issues but made no efforts to improve conditions in the apartment. The conditions ultimately became so unsafe that Mr. A was forced to leave with his family four months prior to the lease expiration date. He notified the landlord one month in advance, but the landlord still brought Mr. A to court on the matter in 2022. Due to the time that had elapsed since he vacated the apartment, Mr. A was not able to assert all his legal defenses or determine whether the landlord had properly mitigated damages once he vacated the premises.
- When Mr. B came to Access Justice Brooklyn for assistance, he was facing a lawsuit brought by National Collegiate Student Trust. He had no recollection of ever making any

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<sup>2</sup> N.Y. CPLR 105(f) defines “consumer credit transaction” as “a transaction wherein credit is extended to an individual and the money, property, or service which is the subject of the transaction is primarily for personal, family or household purposes.”

payments on the loan in over 10 years; however, the company alleged they had received payments from the co-signer of the loan in 2018. The co-signer was his 95-year-old grandmother who had received harassing phone calls from National Collegiate scaring her into making payments of \$25 a month from her Social Security check. Those payments in effect prevented the case from being time-barred by the Statute of Limitations, and Mr. B and his grandmother were both sued by National Collegiate in 2022. This lawsuit forced Mr. B to travel from Pennsylvania to New York on multiple occasions to defend himself in the case. Despite these efforts, on multiple occasions National Collegiate still insisted that a default judgment be entered against Mr. B's grandmother because she could not physically appear in court due to her age and physical limitations.

***A.5368/S.4750 would create consistency for courts, pro se litigants, and industry.***

Having a consistent definition of consumer debt would reduce confusion for all interested parties and ensure the proper application of existing laws to all similar cases. For example, currently, many court rules regarding consumer debt lawsuits are tied to the CPLR definition of “consumer credit transaction.” However, in 2014, the Office of Court Administration issued rules that constrained the CPLR’s definition of “consumer credit transaction” to mean only a “revolving or open-end credit transaction” and specifically excluded “debt incurred in connection with, among others, medical services, student loans, auto loans or retail installment contracts.”<sup>3</sup> Nonetheless, the CCFA, which went into effect in 2022, applies to all consumer credit transactions.<sup>4</sup> Further, the statute of limitations under the CCFA for consumer credit transactions was reduced to three years,<sup>5</sup> consistent with the statute of limitations for medical debt, which was reduced from six years to three years in 2020.<sup>6</sup> Meanwhile, the Fair Consumer Judgment Interest Act, which also went into effect in 2022, lowered the judgment interest rate from nine percent to two percent for all “consumer debt,”<sup>7</sup> not just consumer credit transactions. Attorneys are required to prominently display “consumer credit transaction” on summonses issued in lawsuits that arise from consumer credit transactions, but there is no similar requirement for general consumer debts. Therefore, it is left to court clerks to scrutinize complaints and determine whether to apply the reduced interest rate on judgments.

As such, 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.

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<sup>3</sup> 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.

<sup>4</sup> N.Y. CPLR 105 (f).

<sup>5</sup> N.Y. CPLR 214-i.

<sup>6</sup> N.Y. CPLR 213-d.

<sup>7</sup> NY LEGIS 831 (2021), 2021 Sess. Law News of N.Y. Ch. 831 (S. 5724-A).

A.5368/S.4750 would reduce confusion by ensuring that all consumer protection provisions regarding lawsuits in New York would apply uniformly to all forms of consumer debt. The definition of consumer debt is well established under existing laws, and was adopted from federal statutes, including the Fair Debt Collection Practices Act<sup>8</sup> and the U.S. Bankruptcy Code,<sup>9</sup> as well as New York State law.<sup>10</sup> There is long-standing precedent of what constitutes a “consumer debt,” which the debt collection industry has been complying with for decades.

**New York State has laws on the books meant to help consumers have a fair shot when they are sued. A.5368/S.4750 ensures that all consumers, not just those with credit card debt, benefit from New York’s robust consumer protection laws. To promote fairer outcomes for all consumers, Access Justice Brooklyn strongly urges you to support A.5368/S.4750.**

For more information about this legislation and its benefit for New York consumers, please contact Franka Cepele, Staff Attorney at [franka@accessjusticebk.org](mailto:franka@accessjusticebk.org) or 718-473-9201.

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<sup>8</sup> 15 USCA § 1692a (5).

<sup>9</sup> 11 USCA § 101 (8).

<sup>10</sup> N.Y. General Business Law § 600 (6).