DREHER TOMKIES LLP

ALERT

FOR CLIENTS AND FRIENDS OF DREHER TOMKIES LLP

July 20, 2021

MAINE AMENDS CONSUMER CREDIT CODE; ANTI-EVASION PROVISION ADDED

On June 21, 2021, the Maine governor signed L.D. 522 into law, a bill that significantly amends the scope of the Maine Consumer Credit Code ("MCCC"). The legislation amends the MCCC to add a new Part 7 titled "Fraudulent Practices."

One troublesome provision that should draw attention from a variety of lenders, servicers and investors is a section that provides that a person is deemed a "lender" subject to the requirements of the MCCC notwithstanding the fact that the person *purports to act* as an agent or service provider *or in another capacity* for another entity that is exempt from the MCCC, if, among other things: (i) the person holds, acquires or maintains, directly or indirectly, the "predominant economic interest" [undefined] in the loan; (ii) the person markets, brokers, arranges or facilitates the loan and holds the right, requirement or first right of refusal to purchase the loan or a receivable or interest in the loan; or (iii) the totality of the circumstances indicate that the person is the lender and the transaction is structured to evade the requirements of the MCCC.

Under this new provision, an agent or service provider of a bank could be deemed a lender subject to licensing if any of the factors are triggered. If the bank's agent or service provider is deemed a lender, the supervised lender provisions of the MCCC can apply, including the rate limitations [*e.g.,* 18% max], fee limitations and disclosure and agreement requirements of the MCCC.

L.D. 255 also adds a new penalty provision that provides that if a "lender" has violated the provisions of the MCCC applying to making supervised loans, the lender: (i) may not furnish information concerning a debt associated with that violation to a consumer reporting agency and (ii) may not refer a debt associated with the violation to a debt collector.

On June 16, 2021, the Maine governor signed a companion bill, H.P. 1082, that amends the MCCC supervised lender license requirement to require that unless a person is a supervised financial organization or licensed as a supervised lender, the person may not engage in the business of taking assignments of and undertaking direct collection of payments from or enforcements rights against debtors arising from supervised loans. Before this amendment, the supervised lender license requirement applied only to a person taking assignments of and undertaking direct collection of payments from or enforcement rights *from an office in Maine* against debtors arising from supervised loans.

These Maine laws become effective 90 days after the end of the first special legislation session. The first special legislation session ended on Jul 19, 2021.

As we previously reported, Wyoming recently amended its consumer credit code to expand the licensing requirements for persons making "consumer loans" or "taking assignments of non-servicing rights relating to consumer loans that are not in default". See our prior Alert dated March 25, 2021. Illinois and North Dakota both passed legislation enacting a 36% interest rate cap on all consumer (and in North Dakota, commercial) loans. See our prior Alerts dated March 25, 2021 and April 28, 2021.

Maine's broad "anti-evasion" provisions loom larger after similar provisions were adopted in the Illinois Predatory Loan Prevention Act and the Office of the Comptroller of the Currency's "true lender" rule was recently overturned by Congress. *See* our ALERT of January 20, 2021 (on the IL-ILPA).

More states are likely to follow and introduce "consumer protection" legislation with similar licensing provisions, anti-evasion provisions and interest rate caps. As such legislation is introduced, consumer lenders should be vigilant in challenging the (over) breadth of such provisions and complying with each state's requirement. While "predatory" internet payday lending may be the principal target (or so advocates claim), the lack of clearly limiting principles is troublesome.

If you have any questions or need assistance in complying with the MCCC amendment, please let us know. ❑

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