DREHER TOMKIES LLP ALERT

FOR CLIENTS AND FRIENDS OF DREHER TOMKIES LLP

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CA-DFPI INVITES COMMENTS ON DEBT COLLECTION REQUIREMENTS

The California Department of Financial Protection ("DFPI") and Innovation has released a draft text of new rulemaking regarding the scope, reporting and record retention requirements of the Debt Collection Licensing Act ("DCLA"). The proposed rulemaking would exempt from licensure: (i) original creditors who meet certain criteria; (ii) servicers of current debts on behalf of original creditors; (iii) certain healthcare providers, healthcare facilities and hospitals; (iv) student loan servicers; (v) employees of DCLA-licensed debt collectors; (vi) government entities; and (vii) certain public utilities.

The most notable change is the proposed exemption for "original creditors." Under the proposed rulemaking, a creditor seeking, in its own name, repayment of consumer debt arising from credit, which the creditor extended, is not engaged in the business of debt collection unless:

(1) 5% or more of the creditors' annual profits over the last 12 months constitute collection fees, late fees or other charges;

(2) An average of 10% or more of the creditor's inventory was repossessed at least once within the last 12 months, either directly or through a third party; or

(3) A monthly average over the last 12 months of 25% or more of the gross amount of its accounts receivables are 90 days or more past due.

The rulemaking would also change what obligations qualify as consumer debt that potentially triggers licensing under the DCLA. While the rulemaking specifically exempts (i) residential rental debt, (ii) debts owed pursuant to a homeowners' association agreement and (iii) failed personal checks from being consumer debt, the rulemaking presumes that the deferral of payment for healthcare or medical services qualifies as consumer debt. The rulemaking also prescribes certain requirements for annual reporting and recordkeeping by licensees.

Comments are due by August 29, 2022. We will continue to monitor and report developments on the DCLA. If you have any questions regarding the DCLA or would like any help with submitting a comment, please let us know. ❑

✧ *Mike Tomkies and Benjamin Hurford*

SOUTH CAROLINA ANTI-SPOOFING STATUTE HELD UNCONSTITUTIONAL

The Federal District Court for the District of South Carolina held that provisions of the South Carolina Telephone Privacy Protection Act prohibiting caller ID spoofing ("Anti-Spoofing Statute") are unconstitutional as (i) pre-empted by the federal Truth in Caller ID Act ("TCIA") and (ii) unconstitutional under the Commerce Clause for regulating commerce entirely outside of South Carolina.

The plaintiff, a Colorado debt collector, uses a trunk line with South Carolina area codes to make calls from Colorado to individuals with South Carolina area code phone numbers. Prior to the litigation giving rise to this case, a putative class action was filed against the collector in South Carolina state court alleging violations of the Anti-Spoofing Statute. In response, the collector sued in federal court claiming the Anti-Spoofing Statute was unconstitutional.

The court held that the Anti-Spoofing Statute was pre-empted by the TCIA, which restricts caller ID spoofing with the intent to defraud, harm or wrongfully obtain value while permitting non-harmful uses. Because the Anti-Spoofing Statute prohibits caller ID spoofing with the (undefined) "intent to harass," while the TCIA does not, the court found the Anti-Spoofing Statute conflicts with the TCIA's purpose to protect non-harmful spoofing. Additionally, the Anti-Spoofing Statute hampers the TCIA's national standard on spoofing by regulates calls from outside South Carolina. Notably, the TCIA does not contain a savings clause that allows state regulation to go beyond federal protections.

The court also held that the Anti-Spoofing Statute violated the Commerce Clause by regulating commerce occurring entirely outside South Carolina. The court observed that cell phone users commonly retain their area code even when moving between states. Thus, a call to a South Carolina area code phone located outside of South Carolina could receive a spoofed call also from outside of South Carolina and such a call could violate South Carolina law. Thus, the court held the Anti-Spoofing Statute impermissibly regulated commerce wholly outside of South Carolina.

We routinely monitor developments in and affecting multistate debt collection to help clients maintain compliance for their business. Ask us about our multistate law digests today! ❑

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