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PENDING COVID-19 LEGISLATION RELATING TO LENDING AND COLLECTIONS IN THE OHIO GENERAL ASSEMBLY

As of today, four bills related to the COVID-19 pandemic and lending and collections are pending in the Ohio General Assembly. The bills relate to collections activities, foreclosure and student lending. As discussed in our prior Alert, the Ohio General Assembly recently enacted House Bill No. 197 to provide relief to Ohioans during the COVID-19 pandemic. The bill requires, among other things, that the criminal statutes of limitations, the civil statutes of limitations, the administrative statutes of limitations and other court time limitations and deadlines set to expire between March 9, 2020 and July 30, 2020, be tolled. House Bill No. 197 was enacted as an emergency measure and took effect immediately. At this point, the four bills discussed below have only been introduced and have not been assigned to a committee or considered by either the House or the Senate. It is unclear when the Ohio General Assembly will next be holding committee hearings.

Ohio House Bill No. 596 was introduced on March 31, 2020. The purpose of Ohio House Bill No. 596 is to "halt the collection of debts." The bill appears to be based on the federal "Small Business and Consumer Debt Collection Emergency Relief Act of 2020" introduced in Congress (see below) The bill is a sweeping ban on collections, providing that no debt collector may, during the covered period, relating to a debt owned by a consumer or a small business residing in Ohio, do any of the following: (i) capitalize unpaid interest; (ii) apply a higher interest rate triggered by the nonpayment of the debt to the debt balance; (iii) charge a fee triggered by the nonpayment of the debt, (iv) sue or threaten to sue for nonpayment of a debt, (v) continue litigation to collect a debt initiated prior to the effective date of the legislation, (vi) enforce a security interest through repossession, limitation of use or foreclosure, (vii) commence or continue any action to cause collection of a debt, including pursuant to a previously issued court order, from wages, state benefits, or other amounts due a consumer or small business, by way of garnishment, deduction offset or other seizure; (viii) cause the collection of a debt by levying funds from a bank account or seizing other assets of a consumer or small business; (ix) commence or continue an action to evict a consumer or small business from real

or personal property; (x) disconnect or terminate service from utility service, including electricity, natural gas, telecommunications or broadband, water or sewer. "Debt collector" is broadly defined to include creditors, lessors and providers of utility services.

Ohio Senate Bill No. 297 was introduced on March 25, 2020. The purpose of the bill is to prohibit foreclosure activity and the eviction of residential and commercial tenants during the COVID-19 emergency. The bill as written states that after a declared end to the state of emergency, any forcible entry and detainer or foreclosure proceedings initiated due to default on a mortgage or non-payment of rent for a residential property during the state of emergency and 60 days thereafter shall be stayed and referred to mediation. A similar bill, Ohio House Bill No. 562, was introduced on March 23, 2020, with the purpose of prohibiting eviction and foreclosure of residential and commercial tenants during COVID-19.

Ohio House Bill No. 603 was introduced on April 6, 2020. The purpose of Ohio House Bill No. 603 is to require the Chancellor of Higher Education to waive interest rates and suspend payments on state student loan programs for up to 60 days and to require the Chancellor to conduct a study to determine ways to assist institutions of higher education and students during the COVID-19 outbreak.

We will continue to monitor Ohio government actions related to the COVID-19 pandemic. Other states have put forth various proposed legislation in response to COVID-19 that affect debt collection and lending including moratoriums on foreclosures and repossessions, mandatory deferment programs and prohibitions on collections lawsuits and garnishment actions. In addition, state governors and attorney generals are issuing orders regarding collections and lending. In this quickly changing environment, we can help clients assess needed alterations to collection strategies and materials in light of the state laws and orders in response to the COVID-19 pandemic.

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OHIO SENATOR SHERROD BROWN INTRODUCES A BILL TO AMEND THE FDCA DURING MAJOR DISASTERS

On March 22, 2020, Ohio Senator Sherrod Brown introduced Senate Bill 3565, the "Small Business and Consumer Debt Collection

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Emergency Relief Act of 2020,” with the stated purpose of amending the Fair Debt Collections Practices Act (“FDCPA”) to provide additional protections for consumers and small business owners from debt collections during a major disaster or emergency.

The bill adds an additional section to the FDCPA titled “Restrictions on collections of debt during national disaster or emergency.

For purposes of the new section on protections, the bill defines debt collector broadly to include a creditor, and any person or entity that engages in the collection of debt, including the Federal Government and a State government, irrespective of whether the debt is allegedly owed to or assigned to that person or the entity. The bill restricts the following during an emergency:

- Capitalize unpaid interest;
- Apply a higher interest rate triggered by the nonpayment of the debt to the debt balance;
- Charge a fee triggered by the non-payment of the debt;
- Sue or threaten to sue for nonpayment of debt;
- Continue litigation to collect a debt that was initiated before the date of enactment of the proposed section;
- Submit or cause to be submitted a confession of judgment to any court;
- Enforce a security interest through repossession, limitation of use, or foreclosure;
- Take or threaten to take any action to enforce collection, or any adverse action for nonpayment of a debt, or for nonappearance any hearing relating to a debt;
- Commence or continue any action to cause or to seek to cause the collection of a debt, including pursuant to a court order issued before the covered period, from wages, Federal benefits, or other amounts due to a consumer or small business, by way of garnishment, deduction, offset or other seizure;
- Cause or seek to cause the collection of a debt, including pursuant to a court order issued before the covered period, by levying on funds from a bank account or seizing any other assets of a consumer or a small business;
- Commence or continue an action to evict a consumer or small business from real or personal property; or
- Disconnect or terminate service from utility service, including electricity, natural gas, telecommunications or broadband, water or sewer.

The bill also provides that, unless given prior consent from the consumer or small business during the covered period of emergency or permission of a court, a debt collector can only communicate in writing in connection with the collection of any debt, and the communication must state that it is for informational purposes and not to collect a debt.

The bill was referred to the Committee on Banking, Housing and Urban Affairs. We will continue to monitor the bill's progress and provide updates as available.

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