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Gov. Hochul's New Consumer Credit Fairness Act Goes Into Effect Soon – What Are The Implications?

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On April 6 and May 6, respectively, the new Consumer Credit Fairness Act (S.153/A.2382) goes into effect in New York. The Consumer Credit Fairness Act (CCFA), which was signed by Gov. Kathy Hochul on November 8, 2021, strengthens consumer protections in debt collection proceedings. The CCFA is expected to have a substantial impact on debt collection lawsuits filed by creditors or debt collectors in New York. It not only reduces the statute of limitations for filing a debt collection action but imposes new filing and notice requirements upon parties commencing these types of suits.

First, the CCFA reduces the statute of limitations for most debt collection lawsuits arising out of consumer credit transactions, from six years to three years. Additionally, consumer payments toward the debt, or a consumer's written or oral affirmation of ownership of the debt will no longer reinstate or extend the limitations period. This new three-year statute of limitations will go into effect on April 6, 2022.

Next, the CCFA also incorporates new requirements regarding the filing of debt collection actions. Creditors or debt collectors filing such actions must include additional information about the debt, including, but not limited to, a copy of the contract or written instrument the action is based upon, or, for a revolving credit account, the charge-off statement.

Additionally, the CCFA also imposes new notice requirements on creditors or debt collectors filing an action to pursue the collection of a consumer debt. The additional notice must include the names of the creditor or debt collector, the consumer, the original creditor, the case index number, and the consumer's rights and responsibilities regarding the judgment, among other things.

Lastly, the CCFA also enacts an additional potentially onerous affidavit requirement when a third-party debt collector seeks a default judgment collecting upon a consumer debt. The application for default judgment must now include affidavits from 1) the original creditor; 2) any subsequent assignors or sellers of the debt; and 3) a witness who can verify the chain of title of the debt. Additionally, all parties requesting the default judgment must also attach an affidavit stating the statute of limitations on collecting the debt has not expired. These additional requirements will go into effect May 6, 2022.

These new restrictions are far more burdensome than the federal consumer protection laws and creditors should be careful to comply with them from their inception. Issues relating to consumer protection laws and pursuing consumer debt continue to arise as new laws are enacted. We will continue to monitor new developments in this area and report accordingly.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions regarding this new law, or any other aspect of debt collection, please contact Jocelyn E. Lupetin at 516.296.9109.

Practices

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