

GOVERNOR TOMBLIN SIGNS INTO LAW SIGNIFICANT AMENDMENTS TO WEST VIRGINIA CONSUMER CREDIT PROTECTION ACT

Date: 12 May 2015

Financial Institutions and Services Litigation Alert

By: Sean R. Higgins, Eric W. Lee, Samantha A. Miko

On March 31, 2015, West Virginia Governor Earl Ray Tomblin signed SB 542 into law. This new law amends frequently litigated sections of the West Virginia Consumer Credit Protection Act ("WVCCPA"), W. Va. Code section 46A, in several important ways. The new law, among other things, clarifies prohibited debt collection phone calls, revises statutory penalties, and introduces a new section regarding the proper venue for WVCCPA claims.

CLARIFIES SCOPE OF PROHIBITED DEBT COLLECTION PHONE CALLS

The new law removes and replaces language from the previous version of the WVCCPA that prohibited a debt collector's "placement of telephone calls without disclosure of the caller's identity" and "[c]ausing a telephone to ring ... repeatedly or continuously...." The new law specifies that "[e]ngaging any person in telephone conversation without disclosure of the caller's identity" and "calling any person more than thirty times per week or engaging any person in telephone conversation more than ten times per week" violates section 46A-2-125. Following the federal Fair Debt Collections Practices Act ("FDCPA"), the new law also identifies 8 a.m. through 9 p.m. (in the consumer's time zone) as convenient times for communicating with a consumer.

Section 46A-2-126 of the WVCCPA prohibits a debt collector from unreasonably publishing information relating to a consumer's indebtedness. The new law revises this section to clarify that a "debt collector does not unreasonably publicize information ... by identifying themselves to the debtor by name, identifying the debt collector's employer by name, if expressly requested by the debtor, or providing a telephone number or other contact information to the debtor." The revised section 46A-2-126 also allows creditors or debt collectors to communicate with a person other than the consumer to acquire or confirm the consumer's current location or contact information, provided they do so in a manner consistent with the applicable provision of the FDCPA.

The previous version of section 46A-2-128(e) prohibited communication with a consumer "whenever it appears the consumer is represented by an attorney and the attorney's name and address are known, or could be easily ascertained...." The new law amends this provision to require that notice of attorney representation be made in a writing that includes the attorney's name, address, and telephone number. The writing must be "sent to the debt collector's registered agent ... or, if not registered with the West Virginia Secretary of State, then to the debt collector's principal place of business."

The revised section 46A-2-128(e) also provides creditors or debt collectors with a 72 hour safe harbor provision.. The new law also amends section 46A-2-128(b) to allow a debt collector to seek affirmation of an obligation from a consumer who has been declared bankrupt, if such affirmation is obtained pursuant to applicable bankruptcy law.

REVISED STATUTORY PENALTIES

Under the previous version of the WVCCPA, certain violations had a limitations period of one year after the date of the last scheduled payment of the agreement. The newly enacted version states that for all actions filed on or after September 1, 2015, the statute of limitations period for WVCCPA violations is four years from the date the violation occurred. The new law caps the statutory penalty for a single violation at \$1,000, with an overall cap at the greater of \$175,000 or the total outstanding indebtedness. In a class action, no individual class member may recover in excess of \$1,000 per violation or the greater of \$175,000 or the total outstanding indebtedness. Section 46A-5-106 allows the court to adjust statutory penalties to account for inflation. The previous version calculated inflation from September 1, 1974, but the newly enacted version "resets the clock" by calculating inflation from September 1, 2015.

ADDED PROVISION ON VENUE

The law adds a new section 46A-5-107 which provides that proper venue for a WVCCPA claim is in the circuit court of the county where the borrower resides or the county where the borrower last resided in West Virginia.

CONCLUSION

The amendments to the WVCCPA are significant. A full copy of the new legislation is available [here](#). K&L Gates will continue to monitor WVCCPA activity and provide further updates. Please contact Sean R. Higgins with questions or for further information.

KEY CONTACTS



SEAN R. HIGGINS
PARTNER

BOSTON
+1.617.261.3128
SEAN.HIGGINS@KLGATES.COM



ERIC W. LEE
PARTNER

BOSTON
+1.617.951.9240
ERIC.LEE@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.