

Debt Buyer Developments in Colorado, Maine, and Oregon

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A growing number of states have passed amendments seeking to regulate the practices of companies purchasing debts, regardless of whether they actually engage in collection activity.

The U.S. Supreme Court recently held that a purchaser of defaulted debt does not fall within the definition of “debt collector” under the Fair Debt Collection Practices Act (FDCPA). *Henson v. Santander Consumer USA, Inc.*, No. 16-349, 2017 WL 2507342 (June 12, 2017), [as addressed in our prior alert](#).

While the scope of the federal FDCPA may have narrowed, the same cannot be said with respect to its state counterparts. Historically, states that enacted debt collection laws, whether licensing or substantive in nature, generally tracked the scope and structure of the FDCPA, at times even expressly incorporating the FDCPA into the state law. Of course, there were states that bucked convention and forged their own path. Over time, more states continued to stray from the general FDCPA approach to one degree or another. The trend the last decade or so has been to expressly bring debt buyers within the scope of these laws.

Individual states continue to expand the scope of their laws beyond the FDCPA, taking specific aim at debt buyers. This alert analyzes amendments in Colorado, Maine, and Oregon to illustrate the potential impact of recent legislation on debt buyers. These amendments broaden state debt collection laws to encompass or separately regulate debt buyers through both licensing and substantive requirements. Thus, while a debt buyer may be excluded from the FDCPA, it may nonetheless be subject to significant state regulation.

Colorado

Colorado enacted Senate Bill 17-216 (SB 17-216) on June 1, 2017, to regulate the practices of debt buyers. SB 17-216 defines a “debt buyer” as a person who engages in the business of purchasing delinquent or defaulted debt for collection purposes, whether that entity collects the debt itself, hires a third party to handle collection activity, or hires an attorney for litigation in order to collect the debt. SB 17-216 makes clear that a debt buyer is included in the term “collection agency” for purposes of the requirements for Colorado Fair Debt Collection Practices Act (CFDCPA), including licensure.

As a result of the recent amendment, the CFDCPA would likely require a passive debt buyer, who does nothing more than purchase delinquent or defaulted debt and hire a licensed collection agency, to obtain a license. However, SB 17-216 does clarify that a debt buyer that does not engage in third-party debt collection is not required to comply with the bond requirement otherwise imposed on CFDCPA licensees. SB 17-216 also imposes certain substantive requirements on collection agencies and debt collectors that seek to collect a debt owned by a debt buyer. For example, the debt collector or collection agency must attach a copy of the contract, account

holder agreement, or other writing from the original creditor or the consumer evidencing the consumer's agreement to the original debt. The debt collector or collection agency must also provide a copy of the assignment or other writing establishing that the debt buyer is the owner of the debt, and if there are multiple assignments, the debt collector or collection agency must demonstrate an unbroken chain of ownership. Further, certain requirements related to evidentiary filings apply in connection with the seeking of a default judgment in a legal action on a debt owned by a debt buyer. The portions of SB 17-216 creating the debt buyer licensing requirement, definitions, and substantive requirements take effect January 1, 2018.

Maine

Effective January 1, 2018, Maine revised its version of the FDCPA. The amendment defines a debt buyer as a person that is regularly engaged in the business of purchasing charged-off consumer debt for collection purposes, whether the person collects the debt or hires a third party, which may include an attorney at law, to collect the debt. A debt buyer is considered a debt collector for all purposes and must comply with all other requirements in the Maine FDCPA, including licensure. New substantive requirements were also imposed. For example, a debt buyer may not collect or attempt to collect a debt, or sell or otherwise transfer ownership of a debt, unless the debt buyer possesses certain identifying information of the owner of the debt and the original creditor and certain information pertaining to the debt.

Further, a debt buyer is prohibited from selling or transferring ownership of a resolved debt, an interest in a resolved debt, or any financial information relating to a resolved debt. A "resolved debt" is a debt that has been paid, settled, or discharged in bankruptcy. A debt buyer must also include specific allegations, attachments, and certain information in its debt collection complaint. Specifically, in a collection action initiated by a debt buyer, the debt buyer must attach to the complaint the following materials: (1) a copy of the document evidencing the consumer's agreement to the debt; (2) a copy of the bill of sale or other writing establishing that the debt buyer is the owner of the debt.

Finally, regardless of whether the consumer appears in the action, the court may not enter a judgment in favor of a debt buyer in a collection action against a consumer, including an action brought in small claims court, unless the debt buyer files the requisite documents with the court.

Oregon

Oregon also enacted a Debt Buyers Bill, effective January 1, 2018, that imposes both licensing and substantive requirements on entities subject to the bill's provisions. See 2017 Oregon House Bill 2356. This bill requires any person engaging in debt buying in Oregon to obtain a new debt buyer license from the Oregon Director of the Department of Consumer and Business Services, unless exempt. We anticipate that the new debt buyer license will be available via the NMLS licensing system on or around November 1, 2017.

Oregon House Bill 2356 provides that a debt buyer license is required for a person engaging in "debt buying," which is defined as conducting business as a debt buyer under the Oregon Unlawful Trade Practices Act. Under the revised Oregon Unlawful Trade Practices Act, a "debt buyer" will be defined as a person that regularly engages in the business of purchasing charged-off debt for the purpose of collecting the charged-off debt or hiring another person to collect or bring legal action to collect the charged-off debt. However, the definition of

debt buyer specifically excludes a person that acquires charged-off debt as an incidental part of acquiring a portfolio of debt that is predominantly not charged-off debt.

In addition to the licensing requirements, the bill also imposes new pleading requirements on a debt buyer that brings legal action against a consumer to collect a purchased debt. It also amends and provides additional substantive conduct restrictions found in the Oregon Unlawful Trade Practices Act, applicable to debt collectors. For example, it will be an unlawful collection practice if a debt collector or debt buyer files legal action to collect a debt if the debt buyer or debt collector knows, or after exercising reasonable diligence would know, that an applicable statute of limitations bars the collection or the collection attempt. The bill imposes further notice and conduct requirements on debt buyers and debt collectors.

Please reach out to one of the authors of this alert or another member of the firm's Consumer Financial Services Group with any questions regarding this alert.

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Robert W. Savoie