

Governor Cooper and Dept of Insurance Issue COVID-19 Orders Affecting Debt Collection Agencies, Others

By: Caren Enloe and Zachary Dunn

In response to the rapidly developing COVID-19 pandemic, North Carolina Governor Roy Cooper issued an order on March 27, 2020 requiring all people in the state to stay in their homes “except as permitted in” the order. In a related move, the Department of Insurance invoked statutory powers which require collection agencies and others licensed and regulated by the Department of Insurance to offer their customers the option to defer debt payments. Both orders are effective statewide and have the potential to affect business operations for the time being. The basics of each order are discussed in more detail below.

Stay at Home Order

The Stay at Home Order, available [here](#), applies statewide and requires all persons present in North Carolina to stay in their homes except for certain specified essential purposes. The Order additionally only allows certain specified essential businesses to remain physically open. The Order takes effect at 5:00pm Monday, March 30, 2020.

As far as financial institutions and debt collectors are concerned, there are two definitions of “Essential Businesses” which may apply and therefore allow employees to physically report to work:

Businesses that Meet Social Distancing Requirements: The Stay at Home Order exempts businesses that “conduct operations while maintaining Social Distancing Requirements” between and among its employees and customers. Social Distancing Requirements, in turn, is defined in the Stay at Home Order as

- Maintaining at least six (6) feet distancing from other individuals;
- Washing hands using soap and water for at least twenty (20) seconds as frequently as possible or the use of hand sanitizer;
- Regularly cleaning high-touch surfaces; and
- Facilitating online or remote access by customers if possible.

Financial and Insurance Institutions: The Stay at Home Order also exempts a large array of financial and insurance institutions, including “bank, currency exchanges, consumer lenders” and “affiliates of financial institutions.” While debt collectors and creditors are not specifically included on the enumerated list, this section of the order is broadly worded and arguably may include those businesses. However, whether this section applies would likely be fact specific.

Please note that the Order allows for local orders which are more restrictive and those entities with physical operations in North Carolina should verify whether or not a local order is in place which contains additional restrictions. Please be aware that violation of the Stay at Home Order is a Class 2 misdemeanor.

Department of Insurance Order

The Department of Insurance, which regulates debt collectors, debt buyers, and insurance companies in North Carolina, also issued a state-wide order last Friday, available [here](#). The DOI Order notes the emergency conditions in the state and invokes the provisions of [N.C. Gen. Stat. § 58-2-46 \(1\)-\(3\)](#). The order currently expires May 26, 2020.

N.C. Gen. Stat. § 58-2-46(2) requires collection agencies and debt buyers to give their customers the option of deferring premium or debt payments[.]” The DOI Order designates the entire state as the affected geographic area, so consumers located anywhere in the state must be given the option to defer payments. Further, Chapter 58 of the General Statutes broadly defines “consumers” to include businesses, so the mandate applies equally to traditional consumer debt (that incurred for personal, family or household debt) and commercial debt.

The option to defer payments must be given for payments that are due through and including the time period covered by the DOI Order. Subsection 2 goes on to state that the deferral period “shall be 30 days from the last day the premium or debt payment may be made under the terms of the policy or contract.” While this statutory section is open to (at least) a few possible interpretations, we believe the best reading is that the option to defer must be given until at least May 26, 2020, when the DOI Order is currently set to expire. If a consumer elects to defer a payment, the deferral must be granted and the new payment date should be set 30 days after the original payment date. However, if that new payment date is still within the time period during which the DOI Order is in effect – i.e. is before May 26, 2020 – the new payment date should be extended to May 26, 2020.

Key Takeaways

The Stay at Home Order and DOI Order are focused on different very subjects, but both have the potential to affect business operations. While working from home is likely the best option if feasible, businesses may be able to stay open if they can fit within one of the exceptions in the Stay at Home Order. However, interpretation and enforcement of the order is still very much up in the air, and violation risks a Class 2 misdemeanor penalty. If you have any doubts, we recommend contacting your attorney to discuss.

The DOI Order requires debt collectors give debtors, both commercial and individuals, the option to defer debt payments until (at least) May 26, 2020. While neither the DOI Order nor N.C. Gen. Stat. § 58-2-46(2) explicitly require notification of the option to defer to consumers, notification of the option to defer is likely the safest course of action and should be built into all current scripts and correspondence.