

**Business Litigation Alert****COVID-19 Impact on Post  
Judgment Collections****Explanation and Ramifications of  
Executive Order 2020-25**

**In an effort to provide** the state of Illinois with the strongest possible resources to combat the spread and effect of COVID-19, Governor J.B. Pritzker proclaimed that the state of Illinois is in a state of emergency and declared the “Gubernatorial Disaster Proclamation,” which is currently in effect through April 30, 2020. Through this proclamation and various executive orders, the Governor has restricted certain public behavior, ordered Illinoisans to shelter in place, and restrained non-essential business operations.

**Executive Order No. 2020-25**

The Governor expressly recognized the significant economic impact that COVID-19 has had on residents of Illinois, including loss of income and wages, which threatens to undermine their financial security and stability. The Governor also recognized the need for certain Illinoisans to be able to use the stimulus funds for shelter, food and transportation. To address these concerns, the Governor issued Executive Order 2020-25 on April 14, 2020, immediately suspending service of certain post-judgment actions relating to the collection of a consumer debt. The suspension will remain in place until April 30, 2020, or until such time as ordered by the Governor.

Executive Order 2020-25 contains four main provisions:

1. During the duration of the Gubernatorial Disaster Proclamations (which are currently in effect through April 30, 2020), the sections of

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the Illinois Code of Civil Procedure related to the service of garnishment summons (735 ILCS 5/12-705), wage deduction summons (735 ILCS 5/12-805), and a citation to discover assets (735 ILCS 5/2-1402), on a consumer debtor or consumer garnishee are suspended effectively immediately.

2. Executive Order 2020-25 does not apply to domestic support obligations, such as child support or spousal maintenance.
3. Executive Order 2020-25 does not relieve a debtor of any liability.
4. If any provision of Executive Order 2020-25 or its application is held invalid by any court, this invalidity is ineffective as to any other provision or application of Executive Order 2020-25, which can be given effect without the invalid provision or application.

It should be noted that Executive Order 2020-25 appears to be silent as to existing post-judgment collection proceedings that have already been served. Therefore, pending garnishments and citations to discover assets appear to be unaffected. Further, Executive Order 2020-25 does not specifically prohibit the issuance of a citation or summons, but effectively it can. Typically, a garnishment summons and wage deduction summons must be served between 21 days and 40 days from issuance. Theoretically, one can issue a citation or garnishment summons and just wait to serve it but the summons could potentially become stale by the time you are able to serve it. The best practice in this environment is not to file or serve any new citations or garnishments with regard to consumer debts.

## What Is a Consumer Debtor or Consumer Garnishee Under Executive Order 2020-25?

Executive Order 2020-25 focuses solely on the suspension of service of a post-judgment action on a consumer debtor or consumer garnishee. However, Executive Order 2020-25 does not define the terms consumer debtor or consumer garnishee. In order to determine the meaning of these terms, we must look to other laws, orders or statutes for guidance:

- Under the Fair Debt Collection Practices Act (15 U.S.C. 1692), a “consumer” is defined as any natural person obligated or allegedly obligated to pay any debt.
- The Consumer Financial and Protection Bureau (“CFPB”), which enforces and implements federal consumer financial laws, defines “consumer credit” as credit that is primarily for personal, family or household purposes (12 CFR Part 1026). Common examples are: residential mortgage loans, medical bills and credit card obligations as it relates to consumer purchases. All other debts are non-consumer debts.
- Section 101(8) of the Bankruptcy Code, 11.U.S.C. §101(8), defines a “consumer debt” as a debt that is incurred by an individual for primarily personal, family or household purposes.

In general, what differentiates a consumer debt from a non-consumer debt is the motivation of the debtor or the purpose of the debt when the debt was incurred. For instance, when determining

whether credit card debt is a consumer debt, if the credit card purchases were for personal or household purchasers, such debt would likely be a consumer debt. If, on the other hand, a credit card was used to purchase equipment or inventory for a business, then those purchases may qualify as non-consumer debts. With respect to a debt secured by a mortgage, if the mortgage encumbers a debtor's home or primary residence, but the purpose of the loan was for a commercial purpose, the credit may be considered a non-consumer debt. In addition, if the mortgage encumbers a business property or investment property, it is generally considered a non-consumer debt.

Whether a debt is consumer in nature must be determined on a case-by-case basis. If the conclusion is that a debt is a consumer debt, Executive Order 2020-25 prohibits a debt collector from serving a post-judgment action against a consumer debtor until at least April 30, 2020.

*If you have any questions about this Alert, or if you would like further information on how to comply with Executive Order 2020-25, please contact the authors listed below or the [Aronberg Goldgehn attorney](#) with whom you work.*

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