

116TH CONGRESS
2D SESSION

S. 3565

To amend the Fair Debt Collection Practices Act to provide additional protections for consumers and small business owners from debt collection during a major disaster or emergency.

IN THE SENATE OF THE UNITED STATES

MARCH 22, 2020

Mr. BROWN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Fair Debt Collection Practices Act to provide additional protections for consumers and small business owners from debt collection during a major disaster or emergency.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business and
5 Consumer Debt Collection Emergency Relief Act of
6 2020”.

7 **SEC. 2. FINDINGS.**

8 Congress finds that—

1 (1) the collection of debts involves the use of
2 the mails and wires and other instrumentalities of
3 interstate commerce;

4 (2) at times of major disaster or emergency, the
5 income of consumers and small businesses is often
6 impaired and their necessary daily expenses often in-
7 crease;

8 (3) temporary forbearance on debt collection is
9 critical to fostering economic recovery and stability
10 in the wake of major disasters or emergencies;

11 (4) temporary forbearance benefits not only
12 consumer and small business debtors, but also other
13 creditors by avoiding downward collateral price spi-
14 rals triggered by an increase in foreclosure activity;

15 (5) without forbearance, many consumers and
16 small businesses are unlikely to be able to pay their
17 obligations according to their original terms and are
18 likely to default on obligations or file for bank-
19 ruptcy, resulting in reduced recoveries for creditors,
20 and in the case of bankruptcy, no recovery of
21 unaccrued interest;

22 (6) with forbearance, creditors are likely to re-
23 alize greater long-term value because consumers and
24 small businesses will be more likely to be able to

1 repay their obligations after the major disaster or
 2 emergency has subsided;

3 (7) the legislative and administrative response
 4 to major disasters and emergencies may consist of
 5 multiple components divided among different stat-
 6 utes and programs; and

7 (8) when evaluating whether property has been
 8 taken from a person without just compensation, a
 9 holistic evaluation of the burdens and benefits of all
 10 legislative and administrative responses, including
 11 indirect benefits from macroeconomic stabilization,
 12 is appropriate.

13 **SEC. 3. RESTRICTIONS ON COLLECTIONS OF DEBT DURING**
 14 **A NATIONAL DISASTER OR EMERGENCY.**

15 (a) IN GENERAL.—The Fair Debt Collection Prac-
 16 tices Act (15 U.S.C. 1692 et seq.) is amended by inserting
 17 after section 812 (15 U.S.C. 1692j) the following:

18 **“§ 812A. Restrictions on collections of debt during na-**
 19 **tional disaster or emergency**

20 “(a) DEFINITIONS.—In this section:

21 “(1) The term ‘consumer’ means any individual
 22 obligated or allegedly obligated to pay any debt;

23 “(2) The term ‘covered period’—

24 “(A) means—

1 “(i) the period beginning on the date
2 that is 1 day after the date on which a
3 major disaster is declared by the President
4 under section 401 of the Robert T. Staf-
5 ford Disaster Relief and Emergency Assist-
6 ance Act (42 U.S.C. 5170), where assist-
7 ance is authorized under section 408 of
8 that Act (42 U.S.C. 5174), and ending
9 120 days after the end of the incident pe-
10 riod for that disaster; or

11 “(ii) the period beginning on the date
12 that is 1 day after the date on which an
13 emergency involving Federal primary re-
14 sponsibility is determined to exist by the
15 President under section 501(b) of the Rob-
16 ert T. Stafford Disaster Relief and Emer-
17 gency Assistance Act (42 U.S.C. 5191(b))
18 that simultaneously covers all States for a
19 single incident, event, or emergency, and
20 ending 120 days after the end of the inci-
21 dent period for that emergency; and

22 “(B) includes the period beginning on the
23 date that is 1 day after the date of enactment
24 of this Act and ending on the date that is 120
25 days after the end of the incident period with

1 respect to the emergency involving Federal pri-
2 mary responsibility determined to exist by the
3 President under the section 501(b) of the Rob-
4 ert T. Stafford Disaster Relief and Emergency
5 Assistance Act (42 U.S.C. 5191(b)) with re-
6 spect to the coronavirus disease 2019 (COVID-
7 19).

8 “(3) The term ‘creditor’ means—

9 “(A) any person who offers or extends
10 credit creating a debt or to whom a debt is
11 owed or other obligation for payment;

12 “(B) any lessor of real or personal prop-
13 erty; or

14 “(C) any provider of utility services.

15 “(4) The term ‘debt’—

16 “(A) means any obligation or alleged obli-
17 gation that is or during the covered period be-
18 comes past due—

19 “(i) for which the original agreement,
20 of if there is no agreement, the original ob-
21 ligation to pay was created before the cov-
22 ered period, whether or not such obligation
23 has been reduced to judgment; and

24 “(ii) that arises out of a transaction—

25 “(I) with a consumer; or

1 “(II) with a small business; and

2 “(B) does not include a federally related
3 mortgage loan.

4 “(5) The term ‘debt collector’ means a creditor,
5 and any person or entity that engages in the collec-
6 tion of debt, including the Federal Government and
7 a State government, irrespective of whether the debt
8 is allegedly owed to or assigned to that person or to
9 the entity.

10 “(6) The term ‘federally related mortgage loan’
11 has the meaning given the term in section 3 of the
12 Real Estate Settlement Procedures Act of 1974 (12
13 U.S.C. 2602).

14 “(7) The term ‘major disaster or emergency’
15 means—

16 “(A) a major disaster declared by the
17 President under section 401 of the Robert T.
18 Stafford Disaster Relief and Emergency Assist-
19 ance Act (42 U.S.C. 5170), where assistance is
20 authorized under section 408 of such Act (42
21 U.S.C. 5174); or

22 “(B) an emergency involving Federal pri-
23 mary responsibility that is determined to exist
24 by the President under section 501(b) of the
25 Robert T. Stafford Disaster Relief and Emer-

1 agency Assistance Act (42 U.S.C. 5191(b)) that
2 simultaneously covers all States for a single in-
3 cident, event, or emergency.

4 “(8) The term ‘small business’ has the meaning
5 given the term ‘small business concern’ in section 3
6 of the Small Business Act (15 U.S.C. 632).

7 “(b) PROHIBITIONS.—

8 “(1) IN GENERAL.—Notwithstanding any other
9 provision of law, no debt collector may during a cov-
10 ered period, relating to a debt owed by a consumer
11 or small business—

12 “(A) capitalize unpaid interest;

13 “(B) apply a higher interest rate triggered
14 by the nonpayment of the debt to the debt bal-
15 ance;

16 “(C) charge a fee triggered by the non-
17 payment of the debt;

18 “(D) sue or threaten to sue for non-
19 payment of a debt;

20 “(E) continue litigation to collect a debt
21 that was initiated before the date of enactment
22 of this section;

23 “(F) submit or cause to be submitted a
24 confession of judgment to any court;

1 “(G) enforce a security interest through
2 repossession, limitation of use, or foreclosure;

3 “(H) take or threaten to take any action
4 to enforce collection, or any adverse action for
5 nonpayment of a debt, or for nonappearance at
6 any hearing relating to a debt;

7 “(I) commence or continue any action to
8 cause or to seek to cause the collection of a
9 debt, including pursuant to a court order issued
10 before the covered period, from wages, Federal
11 benefits, or other amounts due to a consumer
12 or small business, by way of garnishment, de-
13 duction, offset, or other seizure;

14 “(J) cause or seek to cause the collection
15 of a debt, including pursuant to a court order
16 issued before the covered period, by levying on
17 funds from a bank account or seizing any other
18 assets of a consumer or a small business;

19 “(K) commence or continue an action to
20 evict a consumer or small business from real or
21 personal property; or

22 “(L) disconnect or terminate service from
23 utility service, including electricity, natural gas,
24 telecommunications or broadband, water, or
25 sewer.

1 “(2) RULE OF CONSTRUCTION.—Nothing in
2 this section may be construed to prohibit a consumer
3 or small business from voluntarily paying, in whole
4 or in part, a debt.

5 “(c) REPAYMENT PERIOD.—After the expiration of
6 a covered period, a debt collector shall—

7 “(1) not add to the past due balance any inter-
8 est or fee prohibited by subsection (b);

9 “(2) for any debt with a defined payment pe-
10 riod, extend the time period to repay the past-due
11 balance of the debt by 1 payment period for each
12 payment that a consumer or small business missed
13 during the covered period, with the payments due in
14 the same amounts and at the same intervals as the
15 pre-existing payment schedule;

16 “(3) for an open end credit plan, as defined in
17 section 103 of the Truth in Lending Act (15 U.S.C.
18 1602), or other credit plan without a defined term,
19 allow the consumer or small business to repay the
20 past-due balance in a manner that does not exceed
21 the amounts permitted by the methods described in
22 section 171(c) of the Truth in Lending Act (15
23 U.S.C. 1666i–1(c)) and regulations promulgated
24 under that section; or

1 “(4) shall, if the debt has no payment periods,
2 allow the consumer or small business a reasonable
3 time in which to repay the debt in affordable pay-
4 ments.

5 “(d) COMMUNICATIONS IN CONNECTION WITH THE
6 COLLECTION OF A DEBT.—

7 “(1) IN GENERAL.—Without prior consent of
8 the consumer or small business given directly to the
9 debt collector during a covered period, or the express
10 permission of a court of competent jurisdiction, a
11 debt collector shall only communicate in writing in
12 connection with the collection of any debt.

13 “(2) REQUIRED DISCLOSURES.—

14 “(A) IN GENERAL.—All written commu-
15 nications under paragraph (1) shall inform the
16 consumer or small business that the commu-
17 nication is for informational purposes and is
18 not an attempt to collect a debt.

19 “(B) REQUIREMENTS.—The disclosure re-
20 quired under subparagraph (A) shall be made—

21 “(i) in type or lettering not smaller
22 than 14-point bold type;

23 “(ii) separate from any other disclo-
24 sure; and

1 “(iii) in a manner designed to ensure
2 that the recipient sees the disclosure clear-
3 ly.

4 “(e) VIOLATION.—Any person who violates this sec-
5 tion shall—

6 “(1) except as provided in paragraph (2), be
7 subject to civil liability in accordance with section
8 813 as if the person is a debt collector for purposes
9 of that section; and

10 “(2) be liable in an amount not greater than 10
11 times the amounts described in section 813.

12 “(f) TOLLING.—Except as provided in section (g)(5),
13 any applicable time limitations, including statutes of limi-
14 tations, related to a debt under Federal or state law shall
15 be tolled during the covered period.

16 “(g) CLAIMS OF AFFECTED CREDITORS AND DEBT
17 COLLECTORS.—

18 “(1) CLAIM.—A creditor or debtor may bring
19 an action in an appropriate bankruptcy court of the
20 United States—

21 “(A) asserting a taking under the Fifth
22 Amendment to the Constitution of the United
23 States as a result of this section; or

24 “(B) seeking a declaratory judgment re-
25 garding the constitutionality of this section.

1 “(2) EXCLUSIVE JURISDICTION.—The bank-
2 ruptcy courts of the United States shall have exclu-
3 sive jurisdiction over an action brought under this
4 subsection.

5 “(3) FINAL JUDGMENT.—The bankruptcy court
6 may—

7 “(A) enter a final judgment upon consent
8 of the parties; or

9 “(B) may issue a report and recommenda-
10 tion, which shall be subject to de novo review in
11 the appropriate district court of the United
12 States.

13 “(4) VALUATION OF PROPERTY.—In an action
14 described in under this subsection, the value of the
15 property alleged to have been taken without just
16 compensation shall be evaluated—

17 “(A) with consideration of the likelihood of
18 full and timely payment of the obligation with-
19 out the actions taken pursuant to this section;
20 and

21 “(B) without consideration of any assist-
22 ance provided directly or indirectly to the con-
23 sumer or small business from under any legisla-
24 tion enacted in response to a major disaster or
25 emergency.

1 “(5) SCOPE OF JUST COMPENSATION.—In an
2 action under this subsection, any assistance or ben-
3 efit provided directly or indirectly to the any creditor
4 or debt collector under any legislation enacted in re-
5 sponse to a major disaster or emergency shall be
6 deemed to be compensation for the property taken,
7 even if such assistance or benefit is not specifically
8 provided as compensation for property taken by this
9 section.

10 “(6) APPEALS.—Any appeal from an action
11 under this subsection shall be treated under section
12 158 of title 28, United States Code, as if it were an
13 appeal in a case under title 11, United States Code.

14 “(7) REPOSE.—Any action asserting a taking
15 under the Fifth Amendment to the Constitution of
16 the United States as a result of this subsection shall
17 be brought within not later than 180 days after the
18 end of the covered period.

19 “(h) PREDISPUTE ARBITRATION AGREEMENTS.—
20 Notwithstanding any other provision of law, no predispute
21 arbitration agreement or predispute joint-action waiver
22 shall be valid or enforceable with respect to a dispute
23 brought under this section, including a dispute as to the
24 applicability of this section, which shall be determined
25 under Federal law.”.

1 (b) SEVERABILITY.—If any provision of this Act or
2 the application of such provision to any person or cir-
3 cumstance is held to be invalid or unconstitutional, the
4 remainder of this Act and the application of the provisions
5 of this Act to any person or circumstance shall not be af-
6 fected thereby.

7 (c) TECHNICAL AND CONFORMING AMENDMENT.—
8 The table of contents for the Fair Debt Collection Prac-
9 tices Act is amended by inserting after the item relating
10 to section 812 the following:

“812A. Restrictions on collections of debt during national disaster or emer-
gency.”.

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