

S.3565 - Small Business and Consumer Debt Collection Emergency Relief Act of 2020

116th Congress (2019-2020) | [Get alerts](#)

Sponsor: [Sen. Brown, Sherrod \[D-OH\]](#) (Introduced 03/22/2020)

Committees: Senate - Banking, Housing, and Urban Affairs

Latest Action: Senate - 03/22/2020 Read twice and referred to the Committee on Banking, Housing, and Urban Affairs. ([All Actions](#))

Tracker: **Introduced** Passed Senate Passed House To President Became Law

Summary(0) **Text(1)** Actions(1) Titles(2) Amendments(0) Cosponsors(3) Committees(1) Related Bills(1)

There is one version of the bill.

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Introduced in Senate (03/22/2020)

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS.

Congress finds that—

- (1) the collection of debts involves the use of the mails and wires and other instrumentalities of interstate commerce;
- (2) at times of major disaster or emergency, the income of consumers and small businesses is often impaired and their necessary daily expenses often increase;
- (3) temporary forbearance on debt collection is critical to fostering economic recovery and stability in the wake of major disasters or emergencies;
- (4) temporary forbearance benefits not only consumer and small business debtors, but also other creditors by avoiding downward collateral price spirals triggered by an increase in foreclosure activity;
- (5) without forbearance, many consumers and small businesses are unlikely to be able to pay their obligations according to their original terms and are likely to default on obligations or file for bankruptcy, resulting in reduced recoveries for creditors, and in the case of bankruptcy, no recovery of unaccrued interest;
- (6) with forbearance, creditors are likely to realize greater long-term value because consumers and small businesses will be more likely to be able to repay their obligations after the major disaster or emergency has subsided;
- (7) the legislative and administrative response to major disasters and emergencies may consist of multiple components divided among different statutes and programs; and
- (8) when evaluating whether property has been taken from a person without just compensation, a holistic evaluation of the burdens and benefits of all legislative and administrative responses, including indirect benefits from macroeconomic stabilization, is appropriate.

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

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

“§812A. Restrictions on collections of debt during national disaster or emergency

“(a) **DEFINITIONS.**—In this section:

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

“(2) The term ‘covered period’—

“(A) means—

“(i) the period beginning on the date that is 1 day after the date on which a major disaster is declared by the President under section 401 of the Robert T.

Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), where assistance is authorized under section 408 of that Act (42 U.S.C. 5174), and ending 120 days after the end of the incident period for that disaster; or

“(ii) the period beginning on the date that is 1 day after the date on which an emergency involving Federal primary responsibility is determined to exist by the President under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191(b)) that simultaneously covers all States for a single incident, event, or emergency, and ending 120 days after the end of the incident period for that emergency; and

“(B) includes the period beginning on the date that is 1 day after the date of enactment of this Act and ending on the date that is 120 days after the end of the incident period with respect to the emergency involving Federal primary responsibility determined to exist by the President under the section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191(b)) with respect to the coronavirus disease 2019 (COVID-19).

“(3) The term ‘creditor’ means—

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

“(B) any lessor of real or personal property; or

“(C) any provider of utility services.

“(4) The term ‘debt’—

“(A) means any obligation or alleged obligation that is or during the covered period becomes past due—

“(i) for which the original agreement, or if there is no agreement, the original obligation to pay was created before the covered period, whether or not such obligation has been reduced to judgment; and

“(ii) that arises out of a transaction—

“(I) with a consumer; or

“(II) with a small business; and

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

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

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

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

“(A) a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), where assistance is authorized under section 408 of such Act (42 U.S.C. 5174); or

“(B) an emergency involving Federal primary responsibility that is determined to exist by the President under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191(b)) that simultaneously covers all States for a single incident, event, or emergency.

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

“(b) PROHIBITIONS.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, no debt collector may during a covered period, relating to a debt owed by a consumer or small business—

“(A) capitalize unpaid interest;

“(B) apply a higher interest rate triggered by the nonpayment of the debt to the debt balance;

“(C) charge a fee triggered by the nonpayment of the debt;

“(D) sue or threaten to sue for nonpayment of a debt;

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

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

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

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

“(I) commence or continue any action to cause or to seek to cause the collection of a debt, including pursuant to a court order issued before the covered period, from wages, Federal benefits, or other amounts due to a consumer or small business, by way of garnishment, deduction, offset, or other seizure;

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

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

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

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

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

“(1) not add to the past due balance any interest or fee prohibited by subsection (b);

“(2) for any debt with a defined payment period, extend the time period to repay the past-due balance of the debt by 1 payment period for each payment that a consumer or

small business missed during the covered period, with the payments due in the same amounts and at the same intervals as the pre-existing payment schedule;

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

“(4) shall, if the debt has no payment periods, allow the consumer or small business a reasonable time in which to repay the debt in affordable payments.

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

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

“(2) REQUIRED DISCLOSURES.—

“(A) IN GENERAL.—All written communications under paragraph (1) shall inform the consumer or small business that the communication is for informational purposes and is not an attempt to collect a debt.

“(B) REQUIREMENTS.—The disclosure required under subparagraph (A) shall be made—

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

“(ii) separate from any other disclosure; and

“(iii) in a manner designed to ensure that the recipient sees the disclosure clearly.

“(e) VIOLATION.—Any person who violates this section shall—

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

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

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

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

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

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

“(B) seeking a declaratory judgment regarding the constitutionality of this section.

“(2) EXCLUSIVE JURISDICTION.—The bankruptcy courts of the United States shall have exclusive jurisdiction over an action brought under this subsection.

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

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

“(B) may issue a report and recommendation, which shall be subject to de novo review in the appropriate district court of the United States.

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

“(A) with consideration of the likelihood of full and timely payment of the obligation without the actions taken pursuant to this section; and

“(B) without consideration of any assistance provided directly or indirectly to the consumer or small business from under any legislation enacted in response to a major disaster or emergency.

“(5) SCOPE OF JUST COMPENSATION.—In an action under this subsection, any assistance or benefit provided directly or indirectly to the any creditor or debt collector under any legislation enacted in response to a major disaster or emergency shall be deemed to be compensation for the property taken, even if such assistance or benefit is not specifically provided as compensation for property taken by this section.

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

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

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

(b) SEVERABILITY.—If any provision of this Act or the application of such provision to any person or circumstance is held to be invalid or unconstitutional, the remainder of this Act and the application of the provisions of this Act to any person or circumstance shall not be affected thereby.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents for the Fair Debt Collection Practices Act is amended by inserting after the item relating to section 812 the following:

“812A. Restrictions on collections of debt during national disaster or emergency.”.