

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 4034 and 4226

STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED JUNE 15, 2020

Sponsored by:

Assemblywoman BRITNEE N. TIMBERLAKE

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Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblywoman ANGELA V. MCKNIGHT

District 31 (Hudson)

Assemblywoman SHANIQUE SPEIGHT

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Co-Sponsored by:

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SYNOPSIS

Provides mortgage payment relief, consumer reporting protection, and eviction protection for residential property owners, tenants, and other consumers, economically impacted during time of coronavirus disease 2019 pandemic.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Housing Committee.

(Sponsorship Updated As Of: 7/2/2020)

1 AN ACT concerning protections for residential property owners and
2 tenants during emergency circumstances and amending
3 P.L.2020, c.1.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. (New section) The Legislature finds and declares that:

9 a. The social distancing measures and associated economic
10 pause, that have been necessary to combat the COVID-19
11 pandemic, have also forced many New Jersey residents to endure
12 job losses and prolonged depletions of income;

13 b. As of May 8, 2020, the unemployment rate of the United
14 States exceeds 14 percent, and is widely expected to grow higher in
15 the coming weeks;

16 c. The residents of New Jersey have not been able to avoid
17 suffering as a result of the COVID-19 pandemic, as the State is
18 widely reported to have the second highest COVID-19-related death
19 rate in the nation, and the economic impact on many State residents
20 appears to be similarly catastrophic;

21 d. This unprecedented situation has made the timely payment of
22 mortgages, rent, and other bills impossible for many State residents;
23 and

24 e. It is, therefore, necessary and in the public interest for the
25 Legislature to enact temporary measures to protect the State's
26 homeowners, residential tenants, student loan borrowers and other
27 vulnerable consumers from foreclosure, eviction, and consumer
28 reporting injustices that are in danger of resulting from this
29 unprecedented emergency.
30

31 2. (New section) As used in P.L. , c. (C.) (pending before
32 the Legislature as this bill):

33 "Creditor" means a person or entity that holds or controls,
34 partially, wholly, indirectly, directly or in a nominee capacity, a
35 mortgage loan securing an owner-occupied residential property,
36 including, but not limited to, an originator, holder, investor,
37 assignee, successor, trust, trustee, nominee holder, Mortgage
38 Electronic Registration System, or mortgage servicer.

39 "Emergency period" means the period during which a public
40 health emergency exists as declared by the Governor in Executive
41 Order No. 103 of 2020, as extended.

42 "Impacted homeowner" means an owner or mortgagor of title to
43 a residential property, which serves as such person's primary
44 residence, and who qualifies for a mortgage forbearance pursuant to
45 section 3 of P.L. , c. (C.) (pending before the Legislature as
46 this bill).

47 "Impacted tenant" means a tenant has suffered a negative
48 financial impact resulting from COVID-19 or the Public Health

1 Emergency or State of Emergency declared in response thereto,
2 including but not limited to a financial hardship from a reduction in
3 hours or loss of employment, loss of income or increased costs
4 incurred in necessary child care resulting from the closure of
5 schools or caring for family members who are ill due to COVID-19
6 or quarantined due to a suspected exposure to COVID-19, or for
7 funeral costs due to COVID-19;

8 “Landlord” means any person, or agent or assignee thereof, who
9 rents or leases or offers to rent or lease, for a term of at least one-
10 month, dwelling units, except dwelling units in hotels, motels or
11 other guest houses serving transient or seasonal guests.

12 “Mortgage forbearance” or “forbearance” means a period during
13 which obligations for mortgage principal and interest payments are
14 suspended.

15 “Non-essential eviction” means an eviction other than for the
16 purpose of removing a residential tenant in the interests of justice
17 whose conduct endangers the health and safety of others.

18 “Residential property” means a property located in the State
19 rented or owned for residential purposes; provided, however, that
20 residential property shall be limited to the principal residence of a
21 person or a residential health care facility. “Residential property”
22 shall not include an investment property or residence other than a
23 primary residence; residential property taken in whole or in part as
24 collateral for a commercial loan; or a property subject to
25 condemnation or receivership.

26

27 3. (New section) a. During the emergency period, a creditor
28 shall grant a mortgage forbearance to an impacted homeowner if the
29 impacted homeowner submits a written request to the creditor
30 affirming the following:

31 (1) the mortgage loan on residential property for which a
32 mortgage forbearance is being requested pursuant to this section
33 was current with respect to payments as of February 1, 2020;

34 (2) the impacted homeowner has suffered a negative financial
35 impact resulting from COVID-19 or the Public Health Emergency
36 or State of Emergency declared in response thereto, including but
37 not limited to a financial hardship from a reduction in hours or loss
38 of employment, loss of income or increased costs incurred in
39 necessary child care resulting from the closure of schools or caring
40 for family members who are ill due to COVID-19 or quarantined
41 due to a suspected exposure to COVID-19, or for funeral costs due
42 to COVID-19;

43 (3) the gross household income of the homeowner does not
44 exceed \$150,000 after hardship, unless this requirement for
45 eligibility is waived by the mortgage lender; and

46 (4) if the impacted homeowner possesses one or more bank
47 accounts, those bank accounts collectively contain less than six
48 months’ reserves of the impacted homeowner’s gross household

1 income for 2019. The creditor may require the impacted
2 homeowner to provide a cash asset certification to demonstrate
3 compliance with this paragraph.

4 b. Upon receipt of a written request for a mortgage forbearance
5 from an impacted homeowner pursuant to subsection a. of this
6 section, a creditor shall provide to the impacted homeowner a
7 mortgage forbearance and confirmation of that forbearance in
8 writing. No additional documentation shall be required from the
9 impacted homeowner by the creditor other than the written request
10 under subsection a. of this section. The minimum initial mortgage
11 forbearance period of an impacted homeowner shall be 90 days. An
12 impacted homeowner may request, and shall be granted, a
13 subsequent forbearance period of at minimum 90 days, for a total of
14 at minimum 180 days. Fees, penalties, or interest, including
15 attorney's fees, shall not be assessed or accrue during and as a
16 result of a mortgage forbearance granted pursuant to this section.
17 Nothing in this section shall be construed to impact property tax
18 and insurance obligations of an owner related to any real property
19 in the State. A mortgagee that grants a mortgage forbearance
20 pursuant to this section shall encourage owners to seek out United
21 States Department of Housing and Urban Development certified
22 housing counseling and shall provide to the property owner
23 confirmation of the approval of the forbearance, information
24 concerning the process for forbearance, and information on how to
25 request a subsequent forbearance.

26 c. (1) Consistent with the provisions of 15 U.S.C. s.1681s-
27 2(a)(1)(F), a creditor shall not furnish negative mortgage payment
28 information to a debt collector or credit reporting agency related to
29 mortgage payments subject to a mortgage forbearance under this
30 section.

31 (2) An impacted homeowner or the Attorney General may bring
32 an action alleging a creditor has violated the provisions of this
33 subsection. Upon a finding that non-compliance by a creditor with
34 this section has occurred, a court of competent jurisdiction may:

35 (a) order the non-compliant creditor to retract the debt reported
36 to the collection or credit reporting agency, bureau, or data
37 collection facility;

38 (b) impose a fine on the non-compliant creditor, not to exceed
39 \$5,000;

40 (c) order the non-compliant creditor to pay a reasonable counsel
41 fee in connection with an impacted homeowner whose debt has
42 been reported to a collection or credit reporting agency, bureau, or
43 data collection facility;

44 (d) provide a copy of the order immediately and at no cost to
45 the impacted homeowner;

46 (e) order the non-compliant creditor to take such steps as are
47 necessary, within 30 days of the order, to rehabilitate the credit
48 record of an impacted homeowner, with a showing made to the

1 court and exact copy provided at no cost to the homeowner of the
2 efforts made in that regard; and

3 (f) order the non-compliant creditor to pay an award of damages
4 to the impacted homeowner not to exceed 25 percent of the debt
5 attempted to be collected or reported by the non-compliant creditor
6 to the collection or credit reporting agency, bureau, or data
7 collection facility, the minimum award being \$350.

8 d. During the emergency period and during any period of
9 mortgage forbearance granted pursuant to this section, a creditor
10 shall not, for the purposes of foreclosure of a residential property
11 that is not vacant, abandoned or otherwise subject to P.L.2003,
12 c.210 (C.55:19-78 et seq.):

13 (1) send an impacted homeowner a notice of intention to
14 foreclose pursuant to section 4 of P.L.1995, c.244 (C.2A:50-56); or

15 (2) otherwise initiate the foreclosure process.

16 A deadline or time period for action by a party to the foreclosure
17 process for a residential property filed prior to the effective date of
18 P.L. , c. (C.) (pending before the Legislature as this bill) shall
19 be tolled until the end of the emergency period.

20 e. Notwithstanding the provisions of any law, rule, or
21 regulation to the contrary, the repayment period of any mortgage
22 subject to the forbearance established pursuant to this section shall
23 be extended by the number of months the forbearance is in effect.
24 The payments not made during the months of the forbearance shall
25 instead be due on a monthly basis during the period constituting an
26 extension of the mortgage, unless the property owner has chosen to
27 make these payments earlier. During the time of the forbearance,
28 and during the period constituting an extension of the mortgage, all
29 terms and conditions of the original mortgage, except with regard to
30 default and delinquency during forbearance, shall continue without
31 modification, and there shall be no fees assessed, including
32 attorney's fees, related to the forbearance or late payment, or
33 penalty for early repayment. An impacted homeowner shall have
34 the option to discontinue the mortgage forbearance at any time at
35 the election of the impacted homeowner upon written consent and a
36 written statement that they would have the rights provided herein
37 and knowingly waive those rights.

38 f. An impacted homeowner denied a forbearance under this
39 section by a creditor licensed by the Department of Banking and
40 Insurance may file a complaint with the Department of Banking and
41 Insurance. The department shall investigate the complaint and, if
42 appropriate, shall order the creditor to grant a forbearance to the
43 impacted homeowner pursuant to this section.

44 g. The creditor shall provide the docket numbers, party names,
45 and property addresses as to any pending court actions involving
46 any property granted a forbearance to the Superior Court Clerk's
47 Office at least monthly. The creditor shall submit information on
48 all forbearances that the creditor has provided to the Department of

1 Banking and Insurance on a monthly basis, after removing all
2 personally-identifiable information. This information shall be
3 deemed to be government records and subject to the provisions of
4 P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known as the open
5 public records act.

6 h. To the extent any provision of this section is in conflict with
7 federal laws and guidelines, such provision shall not apply to any
8 mortgage loans made, insured, or securitized by any agency or
9 instrumentality of the United States, any Government Sponsored
10 Enterprise, or a Federal Home Loan Bank.

11 i. It shall be an unlawful discrimination in violation of the
12 “New Jersey Law Against Discrimination,” P.L.1945, c.169
13 (C.10:5-1 et seq.) for a creditor to discriminate in application of the
14 provisions of this section because of an impacted homeowners’
15 race, creed, color, national origin, ancestry, marital status, civil
16 union status, domestic partnership status, pregnancy or
17 breastfeeding, sex, gender identity or expression, affectional or
18 sexual orientation, familial status, disability, liability for service in
19 the Armed Forces of the United States, nationality, or source of
20 lawful income used for mortgage payments.

21 j. This section shall not be construed to prohibit a creditor from
22 considering an oral request for a mortgage forbearance instead of a
23 written request submitted pursuant to subsection a. of this section.
24

25 4. (New section) a. Prior to the 60th day next following the end
26 of the emergency period, a landlord or owner of a residential
27 property shall not, for the purposes of a non-essential eviction for a
28 residential property:

- 29 (1) terminate a tenancy;
30 (2) file a summary dispossess action; or
31 (3) send any notice, including a notice to quit, requesting or
32 demanding that a tenant of a residential property vacate the
33 premises.

34 b. Prior to the 60th day next following the end of the
35 emergency period, a court having jurisdiction over an action for
36 summary dispossess shall not, in a non-essential eviction for a
37 residential property:

- 38 (1) accept for filing a summons or complaint;
39 (2) enter a judgment or default judgment for a plaintiff for
40 possession of a residential property;
41 (3) issue warrant of removal;
42 (4) deny, upon the request of a defendant, a stay of execution, or
43 upon the request by a party, a continuance of a summary dispossess
44 case; or
45 (5) schedule a court event, including a summary dispossess trial.

46 c. A deadline or time period for action by a party to a non-
47 essential eviction for a residential property shall be tolled until the
48 60th day next following the end of the emergency period.

1 d. Nothing in this section shall relieve a tenant from the
2 obligation to pay rent or restrict a landlord's ability to recover rent
3 consistent with the provisions of section 6 of P.L. , c. (C.)
4 (pending before the Legislature as this bill).

5
6 5. (New section) a. Prior to the 60th day next following the end
7 of the emergency period, a landlord shall not impose a late fee for
8 non-payment of rent for a residential property that was due during
9 the emergency period.

10 b. (1) Consistent with the provisions of 15 U.S.C. s.1681s-
11 2(a)(1)(F), a landlord shall not furnish rental payment data to a
12 collection or credit reporting agency related to the non-payment of
13 rent during the emergency period and the 60 days next following
14 the end of the emergency period.

15 (2) A landlord shall not refuse to rent to a tenant or place, or
16 disseminate a tenant's information for the purpose of placing, a
17 tenant on a list for the use of other landlords, as a result of any
18 record or information reflecting the tenant's non-payment of rent
19 during the emergency period and the 60 days next following the end
20 of the emergency period.

21 c. A tenant or the Attorney General may bring an action
22 alleging a landlord has violated the provisions of subsection b. of
23 this section concerning the furnishing of information to a collection
24 or credit reporting agency. Upon a finding that non-compliance by
25 a landlord with subsection b. of this section has occurred, a court of
26 competent jurisdiction may:

27 (1) order the non-compliant landlord to retract the report of
28 debt provided to the collection or credit reporting agency, bureau,
29 or data collection facility;

30 (2) impose a fine on the non-compliant landlord, not to exceed
31 \$5,000 per tenant;

32 (3) order the non-compliant landlord to pay a reasonable
33 counsel fee in connection with a tenant whose debt has been
34 reported to a collection or credit reporting agency, bureau, or data
35 collection facility;

36 (4) provide a copy of the order immediately and at no cost to
37 the impacted homeowner;

38 (5) order the non-compliant landlord to take such steps as are
39 necessary, within 30 days of the order, to rehabilitate the credit
40 record of a tenant, with a showing made to the court, and exact copy
41 provided to the tenant at no cost, of the efforts made in that regard;
42 and

43 (6) order the non-compliant landlord to pay an award of
44 damages to the impacted tenant not to exceed 25 percent of the debt
45 attempted to be collected or reported by the non-compliant landlord
46 to the collection or credit reporting agency, bureau, or data
47 collection facility, the minimum award being \$350.

1 6. (New section) a. In order to avoid mass evictions and
2 widespread homelessness following the conclusion of the
3 moratorium on evictions required by section 3 of P.L. , c.
4 (C.) (pending before the Legislature as this bill), a landlord shall
5 offer each tenant of the properties owned by the landlord the ability
6 to enter into an agreement pursuant to subsection d. of this section,
7 which shall be an addendum to the lease agreement, for the
8 repayment of any partial or full rent payments not made during the
9 emergency period and the 60 days next following the end of the
10 emergency period, provided the impacted tenant's rent payments
11 were current including payments held in escrow as of the effective
12 date of Executive Order No. 106 of 2020.

13 (1) A tenant shall not accept an offer from a landlord pursuant
14 to this subsection if (a) the tenant's gross household income
15 exceeds \$150,000 after hardship unless the landlord makes an
16 exception; or (b) the tenant possesses one or more bank accounts
17 that collectively contain reserves equaling six months' or more of
18 the tenant's gross household income for 2019. The landlord may
19 require the impacted tenant to provide a cash asset certification to
20 demonstrate compliance with this subparagraph.

21 (2) During the repayment period, a landlord shall not impose
22 any late fees or any other fees, including attorney's fees, for rent
23 payments not made during the emergency period and the 60 days
24 next following the end of the emergency period.

25 b. The Department of Community Affairs shall, as soon as
26 practicable following the effective date of P.L. , c. (pending
27 before the Legislature as this bill), prepare and make available on
28 its Internet website a statement of the rights and responsibilities of
29 impacted tenants and landlords for the repayment of missed rent
30 payments pursuant to this section and an explanation of, and model
31 template for, the default repayment plans available pursuant to
32 subsection d. of this section. This statement and templates shall be
33 printed in the English, Spanish, Arabic, French, Russian, Korean,
34 Chinese, and Vietnamese languages. Every landlord shall distribute
35 one copy of the statement and templates prepared and made
36 available pursuant to this subsection to each of their tenants within
37 10 business days after it has been made available by the department,
38 and landlords may not demand payment of unpaid rent until after
39 the statement and templates have been distributed to each tenant. If
40 a landlord fails to comply with this subsection, this failure may be
41 used by the tenant as an affirmative defense to liability for payment
42 of the applicable interest due in any monetary judgment action
43 against the tenant, if brought by the landlord to recover rent due
44 during the emergency period.

45 c. (1) Within 10 business days following the conclusion of the
46 60 days next following the end of the emergency period, a landlord
47 shall calculate all partial or full rent payments legally owed and not
48 made during the emergency period and the 60 days next following

1 the end of the emergency period by each impacted tenant liable for
2 rent repayment pursuant to subsection a. of this section. After
3 determining the amount of the missed payments and applying all
4 credits, if any, due to the impacted tenant, the landlord shall provide
5 each impacted tenant with a written notice, using the template to be
6 prepared and made available on its website by the department, of
7 the amount owed by the impacted tenant in a form that specifies, in
8 detail, the amount claimed to be due and an itemization of all
9 credits to which the impacted tenant is entitled. All amounts shall
10 be legal and in compliance with all applicable laws, including local
11 rent control ordinances.

12 (2) If the impacted tenant does not agree with the amount
13 claimed due, the notice shall provide that the impacted tenant shall
14 notify the landlord within 25 days after the date on which the rent
15 and arrearage repayments are to commence; provided, however, that
16 the impacted tenant shall still begin repayment of missed rent
17 pursuant to the repayment agreement. The impacted tenant may
18 assert any and all additional objections to the amount claimed due,
19 including diminished habitability, payment by the impacted tenant
20 or by others on behalf of the impacted tenant, or other legal and
21 equitable setoffs or defenses. If the landlord fails to demonstrate
22 the correctness of the amount assessed of rent due and owing by the
23 impacted tenant, then the landlord shall refund any incorrectly
24 assessed amount paid by the impacted tenant plus a penalty of 20
25 percent of such amount.

26 d. Any unpaid rent during the emergency period shall be paid
27 in accordance with whichever repayment plan set forth in
28 paragraphs (1) and (2) of this subsection results in the lowest
29 average monthly payments for the impacted tenant, or a plan agreed
30 to between the landlord and impacted tenant so long as that plan has
31 lower monthly payments than either option in paragraphs (1) or (2)
32 of this subsection.

33 (1) Repayment Plan A shall provide that any unpaid rent during
34 the emergency period shall be repaid in equal installments over the
35 remainder of the lease and shall constitute no more than 10 percent
36 of the impacted tenant's net household income after taxes. The
37 surrender of property by the tenant shall not relieve the tenant from
38 the obligation to pay any rent missed during the emergency period
39 or restrict a landlord's ability to recover such rent.

40 (2) Repayment Plan B shall provide a tenant with six months to
41 repay each months' rent that was unpaid, whether in full or in part,
42 during the emergency period. The surrender of property by the
43 tenant shall not relieve the tenant from the obligation to pay any
44 rent missed during the emergency period or restrict a landlord's
45 ability to recover such rent.

46 e. An agreement entered into pursuant to subsection d. of this
47 section shall be null and void upon full payment of the monies
48 stipulated in the agreement. Nothing in this section shall prohibit a

1 landlord from filing an action for eviction for the failure to pay rent
2 in accordance with a repayment plan in effect pursuant to
3 subsection a. or b. of this section after the eviction moratorium
4 period required by section 4 of P.L. , c. (C.) (pending
5 before the Legislature as this bill) has ended.

6 f. Any payments made for or on behalf of an impacted tenant
7 by other entities, including government agencies, non-profit
8 organizations, or in any other manner, shall be credited against the
9 amount due from that impacted tenant.

10 g. It shall be an unlawful discrimination in violation of the
11 “New Jersey Law Against Discrimination,” P.L.1945, c.169
12 (C.10:5-1 et seq.) for a landlord to discriminate in application of the
13 provisions of this section because of a tenant’s race, creed, color,
14 national origin, ancestry, marital status, civil union status, domestic
15 partnership status, pregnancy or breastfeeding, sex, gender identity
16 or expression, affectional or sexual orientation, familial status,
17 disability, liability for service in the Armed Forces of the United
18 States, nationality, or source of lawful income used for rental
19 payments.

20

21 7. Section 1 of P.L.2020, c.1 (C.2A:18-59.3) is amended to read
22 as follows:

23 1. a. Notwithstanding any other law to the contrary, whenever
24 a Public Health Emergency, pursuant to the "Emergency Health
25 Powers Act," P.L.2005, c.222 (C.26:13-1 et seq.), or a State of
26 Emergency, pursuant to P.L.1942, c.251 (C.App.A.9-33 et seq.), or
27 both, has been declared by the Governor and is in effect, the
28 Governor may issue an executive order to declare that a lessee,
29 tenant, homeowner or any other person shall not be removed from a
30 residential property as the result of an eviction or foreclosure
31 proceeding. This executive order shall remain in effect for no
32 longer than two months following the end of the Public Health
33 Emergency or State of Emergency. An executive order issued
34 pursuant to this subsection may be adjusted by a subsequent
35 executive order.

36 b. Eviction and foreclosure proceedings may be initiated or
37 continued during the time of an executive order issued pursuant to
38 this section **【, but enforcement】** , unless provided pursuant to a
39 subsequently-enacted statute, or in an executive order issued
40 pursuant to subsection a. of this section, that eviction actions may
41 not be initiated or continued for nonpayment or habitually late
42 payment of rent, or for another reason, during a period of time
43 overlapping that of the initial executive order. Enforcement of all
44 judgments for possession, warrants of removal, and writs of
45 possession shall be stayed during this period if the Governor has
46 issued an executive order prohibiting certain removals from
47 residential property pursuant to subsection a. of this section, unless

1 the court determines on its own motion or motion of the parties that
2 enforcement is necessary in the interest of justice.

3 c. Sheriffs, court officers, and their agents shall refrain from
4 acting to remove individuals from residential properties through the
5 eviction or foreclosure processes during the time of an executive
6 order issued by the Governor prohibiting certain removals from
7 residential property pursuant to subsection a. of this section, unless
8 the court determines on its own motion or motion of the parties that
9 removal is necessary in the interest of justice.

10 d. As used in this section, "residential property" means any
11 property rented or owned for residential purposes, including, but
12 not limited to, any house, building, mobile home or land in a mobile
13 home park, or tenement leased for residential purposes, but shall not
14 include any hotel, motel, or other guest house, or part thereof,
15 rented to a transient guest or seasonal tenant, or a residential health
16 care facility.

17

18 8. (New section) a. The powers granted and duties imposed by
19 this act shall be construed to be independent and severable. If any
20 provision of this act or the application thereof to any person or
21 circumstance is held invalid, the invalidity shall not affect other
22 provisions or applications of the sections which can be given effect
23 without the invalid provision or application, and to this end the
24 provisions of this act are severable. All laws and parts of law in
25 conflict with any of the provisions of this act are hereby construed
26 to be inferior to this act, to the extent so in conflict.

27 b. It shall be an unlawful discrimination in violation of the
28 "New Jersey Law Against Discrimination," P.L.1945, c.169
29 (C.10:5-1 et seq.) for a creditor or landlord to discriminate in
30 application of the provisions of this act because of an impacted
31 homeowners' or tenant's race, creed, color, national origin,
32 ancestry, marital status, civil union status, domestic partnership
33 status, pregnancy or breastfeeding, sex, gender identity or
34 expression, affectional or sexual orientation, familial status,
35 disability, liability for service in the Armed Forces of the United
36 States, nationality, or source of lawful income used for rental or
37 mortgage payments.

38

39 9. This act shall take effect immediately and shall apply
40 retroactively to rent and mortgage payments missed subsequent to
41 March 9, 2020.