

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 344

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 27, 2022

The Senate Community and Urban Affairs Committee reports favorably and with committee amendments Senate Bill No. 344.

As amended, this bill would provide protections to certain homeowners and small landlords during the COVID-19 pandemic emergency period. Under the bill, “emergency period” means the period during which a public health emergency exists as declared by the Governor in Executive Order No. 103 of 2020, as extended, and the 60 days following the conclusion of this period.

The bill provides that, during the emergency period, a creditor is required to grant a mortgage forbearance to an impacted homeowner if the impacted homeowner submits a written request through postal mail, electronic mail, or an online form provided by the mortgage servicer of the loan to the mortgage servicer affirming the following:

(1) the impacted homeowner has suffered a substantial reduction of income resulting from COVID-19 or the Public Health Emergency or State of Emergency declared in response thereto, including a financial hardship from a reduction in hours or loss of employment, or increased costs incurred in necessary child care resulting from the closure of schools or caring for family members who are ill due to COVID-19 or quarantined due to a suspected exposure to COVID-19, or for funeral costs due to COVID-19;

(2) the gross household income of the impacted homeowner does not exceed 150 percent of the area median income after hardship, unless this requirement for eligibility is waived by the mortgage lender; and

(3) the impacted homeowner’s bank accounts collectively contain less than six months’ reserves of the impacted homeowner’s gross household income for 2019.

Upon receipt of a request for a mortgage forbearance from an impacted homeowner, the bill requires a creditor to provide to the impacted homeowner a mortgage forbearance and confirmation of that forbearance in writing. A creditor has 30 days to approve or deny a request for a forbearance. If the impacted homeowner is not notified within that time period, the request is deemed approved. During this period, a creditor cannot institute any foreclosure proceedings and any proceedings already underway are to be stayed. If a mortgage forbearance request is denied, the creditor is required to provide an

explanation of the reasons for the denial, and, if applicable, reasonable time to remedy any deficiencies in the request

The minimum initial mortgage forbearance period of an impacted homeowner is to be 180 days. An impacted homeowner may request, and is to be granted, a subsequent forbearance period of at minimum 180 days, for a total minimum of 360 days. Fees, penalties, or interest, including attorney's fees, cannot be assessed or accrue during and as a result of a mortgage forbearance.

The bill prohibits a creditor from furnishing negative mortgage payment information to a debt collector or credit reporting agency related to mortgage payments subject to a mortgage forbearance under the bill. In response to a complaint to the Attorney General or the Commissioner of Banking and Insurance from an impacted homeowner, or on the Attorney General's or commissioner's independent initiative, the Attorney General or commissioner may bring an action alleging a creditor has violated this prohibition.

Under the bill, the repayment period of any mortgage subject to the forbearance would be extended by the number of months the forbearance is in effect. The payments not made during the months of the forbearance would instead be due on a monthly basis during the period constituting an extension of the mortgage, unless the property owner chooses to make these payments earlier.

An impacted homeowner denied a forbearance under the bill by a creditor licensed by the Department of Banking and Insurance ("DOBI"), and not a State- or nationally-chartered financial institution, may file a complaint with DOBI. The department would be required to investigate the complaint and issue a ruling within 90 days and, if appropriate, would order the creditor to grant a forbearance to the impacted homeowner. During the pendency of any investigation, no notice of foreclosure shall be filed by any creditor against the same impacted homeowner.

Information about the forbearance program would be posted on the Internet website of the Department of Banking and Insurance within 60 days of the enactment of the bill. Within 90 days of the enactment of the bill, creditors would provide notice to mortgagors about the right of impacted homeowners to file for a forbearance.

Under the bill, if a creditor has already initiated a mortgage forbearance with an impacted homeowner prior to the enactment of the bill, then, as long as the terms of the previously-initiated forbearance comply with the mortgage payment forbearance option under the federal "Coronavirus Aid, Relief, and Economic Security Act," Pub.L.116-136, nothing in the bill is to be construed to require the creditor to change the terms of the impacted homeowner's forbearance, or require the creditor to provide the impacted homeowner with additional forbearance.

This bill would take effect immediately and would apply retroactively to mortgage payments missed subsequent to March 9, 2020.

This bill was pre-filed for introduction in the 2022-2023 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- Adjust the findings and declarations section;
- Remove loan originators from inclusion in the definition of “creditor,” clarify the definition of “residential property,” and clarify that an “impacted homeowner” includes a person who is a resident of New Jersey and owns or resides in a residential building in which there is rented or offered for rent other dwelling units under either a written or oral lease which building contains no more than four dwelling units;
- Clarify the permitted methods of delivery of forbearance requests;
- Change the amount of time a creditor has to approve or deny a forbearance request from 45 days to 30 days;
- Change the minimum initial, and subsequent, forbearance periods to 180 days each, for a total minimum forbearance period of 360 days;
- Provide the Commissioner of Banking and Insurance with similar enforcement authority under the bill as that of the Attorney General regarding violations of the bill’s prohibitions on the furnishing of mortgage payment information to debt collectors and credit reporting agencies and clarify associated penalty provisions;
- Change the amount of time provided to the Department of Banking and Insurance to issue a ruling on an improper forbearance denial from 30 days to 90 days;
- Require the Department of Banking and Insurance to post information about the forbearance program on the department’s Internet website within 60 days of enactment of the bill;
- Remove requirements for the Department of Banking and Insurance to: (1) provide notice of the enactment of the bill to known creditors, and (2) develop a form for creditors to use, in the five most common languages spoken in the State, to notify mortgagors of their rights under the bill; and
- Expressly provide that, if a creditor has already initiated a forbearance with an impacted homeowner prior to the enactment of the bill, then, as long as the terms of the previously-initiated forbearance comply with the forbearance option under the federal “CARES Act,” the bill would not require the forbearance terms to be changed or provide the homeowner with a new forbearance.