

116TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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.

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IN THE SENATE OF THE UNITED STATES

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\_\_\_\_\_ introduced the following bill; which was read twice  
and referred to the Committee on \_\_\_\_\_

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**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.”.