

AMENDED IN ASSEMBLY MAY 11, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 2501

Introduced by Assembly Member Limón

February 19, 2020

An act to ~~amend Section 80002 of the Financial Code, relating to financial institutions; add Title 19 (commencing with Section 3273.01) to Part 4 of Division 3 of the Civil Code, and to add Sections 22698 and 23039 to the Financial Code, relating to COVID-19 relief.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2501, as amended, Limón. ~~Bank on California Program: annual report. COVID-19: homeowner, tenant, and consumer relief.~~

(1) Existing law prescribes various requirements to be satisfied before the exercise of a power of sale under a mortgage or deed of trust. In this regard, existing law requires that a notice of default and a notice of sale be recorded and that specified periods of time elapse between the recording and the sale. Existing law establishes certain requirements in connection with foreclosures on mortgages and deeds of trust, including restrictions on the actions mortgage servicers while a borrower is attempting to secure a loan modification or has submitted a loan modification application. Existing law also imposes requirements on loans secured by liens on motor vehicles.

This bill would enact the COVID-19 Homeowner, Tenant, and Consumer Relief Law of 2020. The bill, with respect to residential mortgage loans, would prohibit a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent, as defined, from taking specified actions during the COVID-19 emergency and the 180-day period following the emergency. The bill would prohibit the above persons

from commencing or continuing any judicial foreclosure action, recording a notice of default, or taking any action to evict a person following a foreclosure. The bill would also require the above persons to stay all foreclosure proceedings and time limits in a judicial or nonjudicial foreclosure on a property. The bill would not apply these provisions to a mortgage secured by a dwelling that any of the above persons has determined, after exercising reasonable diligence, is vacant or abandoned.

The bill, with respect to residential mortgage loans, would authorize a borrower experiencing a financial hardship during the COVID-19 emergency or the 180 days thereafter, to seek forbearance from any mortgage obligation by submitting a request to the borrower's mortgage servicer. The bill would require the mortgage servicer to provide the forbearance requested for 180 days and to extend that timeframe if the borrower affirms that they continue to experience hardship. The bill would prohibit a mortgage servicer from misleading or making misrepresentations to a borrower about forbearance and repayment options.

The bill would require a borrower receiving a forbearance with respect to a mortgage secured by a dwelling that has a tenant, regardless of whether the borrower also lives in the dwelling, to provide the tenant with rent relief for not less than the forbearance period. The bill would require a mortgage servicer, during the COVID-9 emergency, to automatically grant a delinquent borrower on a mortgage obligation a 180-day forbearance, subject to extension. The bill would require a mortgage servicer, upon placing a mortgage obligation in forbearance, to provide the borrower written notification of the forbearance terms, treatment of payments, and other options available to the borrower at the end of the forbearance period.

The bill would prohibit a mortgage servicer from assessing, accruing, or applying fees, penalties, or additional interest to the borrower's account beyond specified scheduled or calculated amounts. The bill would require the mortgage servicer, if the borrower in forbearance makes payments to an impound account, to pay or advance the disbursements on or before relevant deadlines to avoid a penalty and would authorize the mortgage servicer to collect any resulting shortage or deficiency on that account for the borrower after the forbearance period ends. The bill would also require the mortgage servicer to evaluate the borrower's ability to return to making regular mortgage payments, and to take various steps to allow for modification of the

borrower's loan. The bill would require a mortgage servicer that claims investor guidelines or applicable law prohibit implementation of postforbearance reinstatement to notify the Commissioner of Business Oversight, as specified, and to present documentation, in accordance with procedures developed by the commissioner, subject to judicial review. The bill would require the mortgage servicer, if the borrower is unable to return to making regular mortgage payments, to evaluate all loan modification options, and, if the borrower qualifies, to implement the option with no penalties, late fees, or additional interest beyond specified scheduled amounts. The bill would also require a mortgage servicer, if a borrower does not qualify for modification, to evaluate the borrower for all available nonhome retention loss mitigation options before considering any foreclosure acts. The bill would require any notices or agreements to be provided in specified languages.

The bill would provide that a mortgage servicer that violates any of the above requirements forfeits their rights to commence a foreclosure on a borrower that is harmed by the violation, subject to the right to cure a violation and reinstate their rights. The bill would also make a violation of the above provisions an unfair and deceptive business practice, as well as a violation of other specified laws. The bill would authorize a borrower, if a trustee's deed upon sale has not been recorded, to bring an action for injunctive relief, and would establish various other legal remedies, including treble damages and attorney's fees and costs.

The bill, with respect to multifamily mortgage loans, would authorize a borrower to submit a request for forbearance to the borrower's mortgage servicers, affirming that the multifamily borrower is experiencing hardship during the COVID-19 emergency. The bill would require a mortgage servicer, upon request from a multifamily borrower, to request documentation of the financial hardship, provide the forbearance for not less than 180 days, subject to extension. The bill would require a multifamily borrower, during the forbearance term, to provide rent relief to tenants living in the property secured by the mortgage and would prohibit eviction for a tenant's nonpayment of rent or application or accrual of fees or other penalties on renters for nonpayment of rent. The bill would require a multifamily borrower to bring a loan placed in forbearance under these provisions current within a specified timeframe.

This bill, with respect to vehicle-secured credit obligations, would prohibit a servicer of vehicle-secured credit from taking any action to repossess a mobilehome or motor vehicle that secures a loan during the COVID-19 emergency and for the 180-day period thereafter. The bill would authorize a consumer experiencing a financial hardship during the COVID-19 emergency to request forbearance from any vehicle-secured credit obligation, regardless of delinquency status, by submitting a request to the servicer of vehicle-secured credit, affirming that the borrower is experiencing hardship. The bill would require a servicer of vehicle-secured credit to provide the forbearance requested for a period of 90 days, and to extend the forbearance period upon request, if the borrower affirms that they continue to experience hardship. The bill would prohibit a servicer of vehicle-secured credit from assessing, accruing, or applying fees, penalties, or other interest to a borrower's account beyond the amounts scheduled or calculated, as specified.

The bill would require the holder of a vehicle-secured credit obligation to evaluate a consumer's ability return to making regular payments before the completion of a forbearance period, and if the consumer is able to return to making regular payments, modify the consumer's vehicle-secured credit obligation to extend the term, modify the obligation, notify the borrower, and take other specified actions, including proceeding with a written notice of intent to repossess the vehicle only after the expiration of the COVID-19 emergency and the 180-day period thereafter. The bill would also provide that a deficiency judgment shall not lie after the sale or disposition of a mobilehome or motor vehicle for failure by a consumer to make a payment after the sale or other disposition of a mobilehome or motor vehicle for failure by a consumer to make a payment that was due during the COVID-19 emergency or the 180-day period following the emergency unless the servicer of the vehicle-secured credit obligation has complied with these provisions.

(2) Existing law, commonly known as the Property Assessed Clean Energy (PACE) program, authorizes public agency officials and property owners, as provided, to enter into voluntary contractual assessments, known as PACE assessments, to finance the installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property.

Existing law, the California Financing Law (CFL), requires a program administrator who administers a PACE program on behalf

of, and with the written consent of, a public agency to comply with specified requirements relating to the PACE program. Existing law requires a program administrator to be licensed by the Commissioner of Business Oversight under the CFL.

This bill would require a program administrator, during the COVID-19 emergency and the 180-day period thereafter, within 60 days after enactment of this bill, to notify each property owner with an outstanding assessment contract that the property owner is entitled to forbearance on the next annual PACE assessment owed pursuant to the assessment contract, if the property owner is facing a financial hardship due to the COVID-19 emergency. The bill would require the notification to specify how the property owner may elect to accept the offer of forbearance and would require a program administrator to provide forbearance on the next annual PACE assessment owed by a property owner that accepts such an offer. The bill would permit a program administrator under these circumstances to require the property owner to pay the amount of the forborne PACE assessment in the year following the scheduled end of the assessment contract and would prohibit a program administrator from charging additional fees or interest related to the forborne PACE assessment. The bill would also prohibit a program administrator from exercising any contractual rights of acceleration related to unpaid assessments during the COVID-19 emergency.

(3) The California Deferred Deposit Transaction Law provides for the licensure and regulation by the Commissioner of Business Oversight of persons engaged in the business of making or arranging deferred deposit transactions. A knowing and willful violation of the provisions of this law is a crime.

This bill, during the COVID-19 emergency and the 180-day period thereafter, would prohibit a fee for a deferred deposit transaction from exceeding 5% of the face amount of the check. The bill would require a licensee under that law to offer a customer the option to enter into a payment plan that provides an extension of time for repayment of an existing deferred deposit transaction in accordance with specified procedures. By expanding the scope of an existing crime, the bill would impose a state-mandated local program. The bill would also include related legislative findings.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law establishes the Bank on California Program within the Department of Business Oversight and requires the department to provide the respective chairpersons of the Senate Committee on Banking and Financial Institutions and the Assembly Committee on Banking and Finance with a brief annual summary on the activities of the program on or before August 30 of each year.~~

~~This bill would authorize, but would not require, the department to make the report described above and would delete the August 30, deadline.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. *The Legislature finds and declares the following:*
- 2 (a) *In late December 2019, several cases of unusual pneumonia*
- 3 *began to emerge in the Hubei province of China. On January 7,*
- 4 *2020, a novel coronavirus, SARS-CoV-2, was identified as the*
- 5 *likely source of the acute respiratory disease now known as*
- 6 *COVID-19.*
- 7 (b) *Infections have rapidly spread to other countries throughout*
- 8 *the world, including the United States.*
- 9 (c) *On January 30, 2020, the World Health Organization (WHO)*
- 10 *declared COVID-19 a Public Health Emergency of International*
- 11 *Concern, and on January 31, 2020, the United States Secretary*
- 12 *of Health and Human Services declared a public health emergency.*
- 13 (d) *On March 4, 2020, California Governor Gavin Newsom*
- 14 *declared a state of emergency to make additional resources*
- 15 *available, formalize emergency actions already underway across*
- 16 *multiple state agencies and departments, and help the state prepare*
- 17 *for a broader spread of COVID-19.*
- 18 (e) *On March 19, 2020, California Governor Gavin Newsom*
- 19 *issued a stay at home order to protect the health and well-being*
- 20 *of all Californians and to establish consistency across the state in*
- 21 *order to slow the spread of the virus.*

1 (f) Due to the voluntary and mandatory actions by Californians
2 to slow the spread of COVID-19, economic activity in the state
3 has fallen precipitously.

4 (g) In the seven weeks prior to May 1, 2020, approximately
5 3,900,000 California workers filed claims for unemployment
6 benefits, which represents 20 percent of the state’s workforce.

7 (h) The economic hardships brought on by the COVID-19
8 pandemic mean that many California individuals and households
9 are likely to have difficulty remaining current on monthly debt
10 obligations through no fault of their own.

11 (i) Temporary forbearance benefits not only borrowers, but also
12 other creditors by avoiding downward collateral price spirals
13 triggered by an increase in foreclosure or repossession activity.

14 (j) Without forbearance, many borrowers are unlikely to pay
15 their obligations according to their original terms and are likely
16 to default on obligations or file for bankruptcy, resulting in reduced
17 recoveries for creditors, and in the case of bankruptcy, no recovery
18 of unaccrued interest.

19 (k) With forbearance, creditors are likely to realize greater
20 long-term value because borrowers will be more likely to repay
21 their obligations after the major disaster or emergency has
22 subsided.

23 (l) Ensuring that homeowners and tenants are able to remain
24 in their residences helps to minimize the spread of the novel
25 coronavirus and protects the public health.

26 (m) Providing forbearance and an opportunity to repay amounts
27 owed after the emergency subsides will position California
28 consumers, households, and businesses for a stronger economic
29 recovery than the state would otherwise realize if no action were
30 taken.

31 (n) Without emergency action to prevent it, delinquent loan
32 payments will likely lead to mass foreclosures, evictions, and
33 repossessions that will harm the health, safety, and welfare of
34 Californians today and for years after the pandemic ends.

35 (o) The Legislature hereby finds and declares that there is a
36 current and immediate threat to the public health, safety, and
37 welfare and a need for immediate preservation of the public peace,
38 health, or safety that warrants this urgency legislation, which
39 finding is based upon the facts stated in the recitals above.

1 SEC. 2. Title 19 (commencing with Section 3273.01) is added
2 to Part 4 of Division 3 of the Civil Code, to read:

3
4 TITLE 19. COVID-19 HOMEOWNER, TENANT, AND
5 CONSUMER RELIEF LAW OF 2020

6
7 CHAPTER 1. TITLE AND DEFINITIONS

8
9 3273.01. This title is known and may be cited as the
10 “COVID-19 Homeowner, Tenant, and Consumer Relief Law of
11 2020.”

12 3273.1. For purposes of this title, the following definitions
13 apply:

14 (a) “Borrower” means any natural person who is a mortgagor
15 or trustor and who is potentially eligible for any federal, state, or
16 proprietary foreclosure prevention alternative program offered
17 by, or through, the borrower’s mortgage servicer. “Borrower”
18 shall not include any of the following:

19 (1) An individual who has surrendered the secured property as
20 evidenced by either a letter confirming the surrender or delivery
21 of the keys to the property to the mortgagee, trustee, beneficiary,
22 or authorized agent.

23 (2) An individual who has contracted with an organization,
24 person, or entity whose primary business is advising people who
25 have decided to leave their homes on how to extend the foreclosure
26 process and avoid their contractual obligations to mortgagees.

27 (b) “Consumer” means a person obligated to repay a
28 vehicle-secured credit obligation.

29 (c) “COVID-19 emergency” means the period that begins upon
30 the date of the enactment of this title and ends on the date that the
31 state declares the emergency related to the COVID-19 disease has
32 ended.

33 (d) “Impound account” means a type of account for payment
34 of taxes on real property, insurance premiums, or other purposes
35 relating to the property. Such an account may be structured as an
36 impound, trust, or other type of account.

37 (e) “Mobilehome” means a structure designed for human
38 habitation and for being moved on a street or highway under
39 permit pursuant to Section 35790 of the Vehicle Code. Mobilehome
40 includes a manufactured home, as defined in Section 18007 of the

1 *Health and Safety Code, and a mobilehome, as defined in Section*
2 *18008 of the Health and Safety Code, but, except as provided in*
3 *subdivision (b), does not include a recreational vehicle, as defined*
4 *in Section 799.29 of this code and Section 18010 of the Health and*
5 *Safety Code or a commercial coach as defined in Section 18001.8*
6 *of the Health and Safety Code.*

7 (f) *“Mortgage servicer” means a person or entity who directly*
8 *services a loan, or who is responsible for interacting with the*
9 *borrower, managing the loan account on a daily basis including*
10 *collecting and crediting periodic loan payments, managing any*
11 *escrow account, or enforcing the note and security instrument,*
12 *either as the current owner of the promissory note or as the current*
13 *owner’s authorized agent. “Mortgage servicer” also means a*
14 *subservicing agent to a master servicer by contract. “Mortgage*
15 *servicer” shall not include a trustee, or a trustee’s authorized*
16 *agent, acting under a power of sale pursuant to a deed of trust.*

17 (g) *“Motor vehicle” means a vehicle required to be registered*
18 *under the Vehicle Code that is bought for use primarily for*
19 *personal or family purposes, and does not mean any vehicle that*
20 *is bought for use primarily for business or commercial purposes*
21 *or a mobilehome, as defined in Section 18008 of the Health and*
22 *Safety Code that is sold on or after July 1, 1981. “Motor vehicle”*
23 *does not include any trailer that is sold in conjunction with a vessel*
24 *and that comes within the definition of “goods” under Section*
25 *1802.1.*

26 (h) *“Multifamily borrower” means a borrower of a residential*
27 *mortgage loan that is secured by a lien against a property*
28 *comprising five or more dwelling units.*

29 (i) *“Servicer of vehicle-secured credit” means either:*

30 (1) *The entity that is servicing the vehicle-secured credit*
31 *obligation for the holder.*

32 (2) *The holder, if it is servicing the obligation.*

33 (j) *“Vehicle-secured credit obligation” means either:*

34 (1) *A loan for personal, family, or household purposes that is*
35 *secured by a mobilehome or motor vehicle.*

36 (2) *A conditional sale contract as defined by subdivision (a) of*
37 *Section 2981.*

38 3273.2. (a) *The provisions of this title apply to specified*
39 *obligations, as follows:*

1 (1) Article 1 (commencing with Section 3273.10) of Chapter 2
2 shall apply to a mortgage or deed of trust that is secured by
3 residential property containing no more than four dwelling units.

4 (2) Article 2 (commencing with Section 3273.20) of Chapter 2
5 shall apply to a mortgage or deed of trust that is secured by
6 residential property containing five or more dwelling units.

7 (b) The provisions of this title apply to the specified persons,
8 as follows:

9 (1) Chapter 2 (commencing with Section 3273.10) shall apply
10 to a depository institution chartered under federal or state law, a
11 person licensed pursuant to Division 9 (commencing with Section
12 22000) or Division 20 (commencing with Section 50000) of the
13 Financial Code, or a person licensed pursuant to Part 1
14 (commencing with Section 10000) of Division 4 of the Business
15 and Professions Code.

16 (2) Chapter 3 (commencing with Section 3273.30) shall apply
17 to a holder of a conditional sales contract as defined by the
18 Automobile Sales Finance Act (Chapter 2b (commencing with
19 Section 2981) of Title 14), a person licensed pursuant to Division
20 9 (commencing with Section 22000) of the Financial Code, or a
21 depository institution chartered under federal or state law.

22
23 *CHAPTER 2. MORTGAGES*

24
25 *Article 1. Residential Mortgage Loans*

26
27 3273.10. (a) A mortgage servicer, mortgagee, trustee,
28 beneficiary, or authorized agent shall not do any of the following
29 during the COVID-19 emergency and the 180-day period following
30 that emergency:

- 31 (1) Commence or continue any judicial foreclosure action.
 - 32 (2) Record a notice of default pursuant to Section 2924.
 - 33 (3) Take any action to evict a person following a foreclosure.
- 34 (b) A mortgage servicer, mortgagee, trustee, beneficiary, or
35 authorized agent shall stay all foreclosure proceedings and time
36 limits in a judicial or nonjudicial foreclosure on a property during
37 the COVID-19 emergency and the 180-day period following that
38 emergency. All time periods established under the state foreclosure
39 law for a borrower to respond, cure a default, redeem, or take any

1 *action shall be stayed during the COVID-19 emergency and the*
2 *180-day period following that emergency.*

3 *(c) This section does not apply to a mortgage that is secured by*
4 *a dwelling that the mortgage servicer, mortgagee, trustee,*
5 *beneficiary, or authorized agent has determined, after exercising*
6 *reasonable diligence, is vacant or abandoned.*

7 *3273.11. (a) A borrower experiencing a financial hardship*
8 *during the COVID-19 emergency or the 180 days following that*
9 *emergency may request forbearance from any mortgage obligation,*
10 *regardless of delinquency status, by submitting a request to the*
11 *borrower's mortgage servicer, either orally or in writing, affirming*
12 *that the borrower is experiencing hardship during the COVID-19*
13 *emergency. A borrower shall not be required to provide any*
14 *additional documentation to receive a forbearance.*

15 *(b) A mortgage servicer shall provide the forbearance requested*
16 *pursuant to subdivision (a) for a period of 180 days. If the*
17 *borrower affirms that they continue to experience hardship within*
18 *the 30 days prior to the expiration of the initial forbearance period,*
19 *the mortgage servicer shall extend the forbearance period upon*
20 *request of the borrower for an additional 180 days. At the*
21 *borrower's request, either the initial or extended period of*
22 *forbearance may be shortened.*

23 *(c) A mortgage servicer shall not mislead or make*
24 *misrepresentations to a borrower about any of the following:*

25 *(1) Options for forbearance provided by state or federal law.*

26 *(2) Options for repayment after a forbearance period ends*
27 *provided by state or federal law.*

28 *(d) A borrower receiving a forbearance under this article with*
29 *respect to a mortgage secured by a dwelling that has a tenant,*
30 *whether or not the borrower also lives in the dwelling, shall*
31 *provide the tenant with rent relief for a period of not less than the*
32 *period covered by the forbearance.*

33 *3273.12. (a) Notwithstanding any other state law governing*
34 *forbearance relief, during the COVID-19 emergency, a mortgage*
35 *servicer shall automatically grant a borrower who is or becomes*
36 *60 days or more delinquent on a mortgage obligation a 180-day*
37 *forbearance, which may be extended upon request of the borrower*
38 *for an additional 180 days. Such a borrower may elect to continue*
39 *making regular payments by notifying their mortgage servicer of*
40 *their election.*

1 **(b)** Upon placing a mortgage obligation in forbearance pursuant
2 to subdivision (a), a mortgage servicer shall provide the borrower
3 written notification of the forbearance terms, including treatment
4 of payments to an impound account during the forbearance period,
5 and a complete and accurate description of the loss mitigation
6 and reinstatement options that will be available to the borrower
7 at the end of the forbearance period.

8 **(c)** Any payments made by the borrower during the forbearance
9 period shall be credited to the borrower's account in accordance
10 with Section 129F of the Truth in Lending Act (15 U.S.C. Sec.
11 1639f) or as the borrower may otherwise instruct that is consistent
12 with the terms of the mortgage loan contract.

13 3273.13. **(a)** Upon receiving a request for forbearance from
14 a borrower under Section 3273.11 or placing a borrower in
15 automatic forbearance under Section 3273.12, a mortgage servicer
16 shall provide the forbearance for not less than 180 days, and an
17 additional 180 days at the request of the borrower, provided that
18 the borrower will have the option to discontinue the forbearance
19 at any time.

20 **(b)** During the period of a forbearance under this article, a
21 mortgage servicer shall not assess, accrue, or apply to a
22 borrower's account any fees, penalties or additional interest
23 beyond the amounts scheduled or calculated as if the borrower
24 made all contractual payments on time and in full under the terms
25 of the mortgage contract in effect at the time the borrower enters
26 into the forbearance.

27 **(c)** If a borrower in forbearance under this article is required
28 to make payments to an impound account, the mortgage servicer
29 shall pay or advance the disbursements on or before any relevant
30 deadlines to avoid a penalty, regardless of the status of the
31 borrower's payments. The mortgage servicer may collect any
32 resulting shortage or deficiency in the impound account from the
33 borrower after the forbearance period ends in any of the following
34 manners at the borrower's election:

- 35 **(1)** In a lump sum.
- 36 **(2)** Amortized over 60 months.
- 37 **(3)** Capitalized into the loan.

38 3273.14. **(a)** Before the completion of a forbearance period
39 provided by this article, a mortgage servicer shall evaluate the
40 borrower's ability to return to making regular mortgage payments.

1 ***(b) If the borrower is able to return to making regular mortgage***
2 ***payments based on the evaluation required by subdivision (a), the***
3 ***mortgage servicer shall:***

4 ***(1) Either:***

5 ***(A) Modify the borrower's loan to extend the term for the same***
6 ***period as the length of the forbearance, with all payments that***
7 ***were not made during the forbearance distributed at the same***
8 ***intervals as the borrower's existing payment schedule and evenly***
9 ***distributed across those intervals, with no penalties, late fees,***
10 ***additional interest accrued beyond the amounts scheduled or***
11 ***calculated as if the borrower made all contractual payments on***
12 ***time and in full under the terms of the mortgage contract in effect***
13 ***at the time the borrower entered into the forbearance, and with***
14 ***no modification fee charged to the borrower, or***

15 ***(B) If the borrower elects to modify the loan to capitalize a***
16 ***resulting impound account shortage or deficiency, the mortgage***
17 ***servicer may modify the borrower's loan by reamortizing the total***
18 ***unpaid principal balance and extending the term of the loan***
19 ***sufficient to maintain the regular mortgage payments.***

20 ***(C) A mortgage servicer that claims investor guidelines or any***
21 ***applicable law prohibits the mortgage servicers from implementing***
22 ***a postforbearance reinstatement option described in subparagraphs***
23 ***(A) and (B) shall notify the borrower and the Commissioner of***
24 ***Business Oversight of the claim at the time of an offer of***
25 ***forbearance. Failure to make that disclosure shall have the effect***
26 ***of a designation by the servicer that it has the authority to***
27 ***implement the provisions of this section. At the time of an offer of***
28 ***forbearance, the servicer claiming such an exception shall present***
29 ***documentation of the ground for the exception to the borrower***
30 ***and the Commissioner of Business Oversight. The Commissioner***
31 ***of Business Oversight shall develop a procedure for reviewing and***
32 ***determining the validity of such exception requests and an affected***
33 ***borrower shall have the opportunity to participate in the review.***
34 ***Determinations by the Commissioner of Business Oversight shall***
35 ***be subject to judicial review.***

36 ***(2) Notify the borrower in writing of the extension or***
37 ***modification required by paragraph (1), including provision of a***
38 ***new payment schedule and date of maturity, and that the borrower***
39 ***shall have the election of prepaying the suspended payments at***
40 ***any time, in a lump sum or otherwise.***

1 (c) If the borrower is unable to return to making regular
2 mortgage payments based on the evaluation required by
3 subdivision (a):

4 (1) The mortgage servicer shall evaluate the borrower for all
5 loan modification options, without regard to whether the borrower
6 has previously requested, been offered, or provided a loan
7 modification or other loss mitigation option and without any
8 requirement that the borrower come current before that evaluation
9 or as a condition of eligibility for the modification. A modification
10 may include any of the following:

11 (A) Further extending the borrower's repayment period.

12 (B) Reducing the principal balance of the loan.

13 (C) Any other modification or loss mitigation options available
14 to the servicer under the terms of any investor requirements and
15 existing laws and policies.

16 (2) If the borrower qualifies for a modification described in
17 paragraph (1), the mortgage servicer shall implement the option,
18 with no penalties, late fees, additional interest beyond the amounts
19 scheduled or calculated as if the borrower made all contractual
20 payments on time and in full under the terms of the mortgage
21 contract in effect at the time the borrower entered into the
22 forbearance, and with no modification fees charged to the
23 borrower.

24 (d) If a mortgage servicer determines that a borrower does not
25 qualify for a modification after the mortgage servicer conducts
26 the evaluations required by this section, the mortgage servicer
27 shall evaluate the borrower for all available nonhome retention
28 loss mitigation options before considering any foreclosure acts
29 upon the expiration of 180 days after the COVID-19 emergency.

30 3273.15. (a) Any notices or agreements required by this article
31 shall be provided in the languages described in Section 1632.

32 (b) A mortgage servicer shall communicate about forbearance
33 and loan modification options described in this article in the
34 borrower's preferred language when the mortgage servicer
35 regularly communicates with the borrower in that language.

36 3273.16. Nothing in this article shall relieve a mortgage
37 servicer of its obligations under Section 2923.5, 2923.55, 2923.6,
38 2923.7, 2924.9, 2924.10, 2924.11, 2924.17, or 2924.18.

39 3273.17. (a) The Legislature finds and declares that any duty
40 mortgage servicers may have to maximize net present value under

1 *their pooling and servicing agreements is owed to all parties in a*
2 *loan pool, or to all investors under a pooling and servicing*
3 *agreement, not to any particular party in the loan pool or investor*
4 *under a pooling and servicing agreement, and that a mortgage*
5 *servicer acts in the best interests of all parties to the loan pool or*
6 *investors in the pooling and servicing agreement if it agrees to or*
7 *implements a forbearance, loan modification or workout plan for*
8 *which both of the following apply:*

9 *(1) The loan is in payment default, or payment default is*
10 *reasonably foreseeable.*

11 *(2) Anticipated recovery under the forbearance and loan*
12 *modification plan exceeds the anticipated recovery through*
13 *foreclosure on a net present value basis.*

14 *(b) It is the intent of the Legislature that a mortgage servicer*
15 *offer a borrower a forbearance and loan modification or workout*
16 *plan if such a plan is consistent with the mortgage servicer's*
17 *contractual or other authority.*

18 *3273.18. (a) (1) A mortgage servicer that violates any of the*
19 *requirements of this article shall forfeit any rights to commence*
20 *a foreclosure on a borrower that is harmed by the violation.*

21 *(2) Notwithstanding paragraph (1), the mortgage servicer shall*
22 *have a right to cure any violation and reinstate their rights to*
23 *commence a foreclosure on the borrower. In order to cure the*
24 *violation, the mortgage servicer shall provide the borrower with*
25 *compensation, which may include refunds, forbearance, or any*
26 *other form of compensation, so that the borrower is returned to a*
27 *state similar to that which the borrower would have been if the*
28 *mortgage servicer did not violate this article.*

29 *(b) A violation of any provision of this article shall be deemed*
30 *an unfair and deceptive business practice pursuant to Section*
31 *17200 of the Business and Professions Code. Such violations*
32 *include, but are not limited to, the following:*

33 *(1) A false statement, misrepresentation, or concealment by a*
34 *mortgage servicer related to the availability of postforbearance*
35 *payment options.*

36 *(2) A misrepresentation or concealment related to a requirement*
37 *that a borrower pay a lump sum at the end of a forbearance period.*

38 *(3) A claim of a restriction placed on a mortgage servicer by*
39 *an investor that is not provided accurately or timely according to*
40 *the provisions of this article.*

1 (c) A violation of a provision of this article shall be deemed a
2 violation of the law pursuant to which a mortgage servicer is
3 licensed, and such a violation shall be subject to the enforcement
4 authority provided to the licensing agency by the licensing law.

5 (d) A violation of Section 4022 of the federal CARES Act (Public
6 Law 116-136) shall be a violation of the state licensing law
7 pursuant to which a mortgage servicer is licensed.

8 3273.19. (a) (1) If a trustee's deed upon sale has not been
9 recorded, a borrower may bring an action for injunctive relief to
10 enjoin a material violation of this article.

11 (2) Any injunction shall remain in place and any trustee's sale
12 shall be enjoined until the court determines that the mortgage
13 servicer has corrected and remedied the violation or violations
14 giving rise to the action for injunctive relief. An enjoined entity
15 may move to dissolve an injunction based on a showing that the
16 material violation has been corrected and remedied.

17 (b) After a trustee's deed upon sale has been recorded, a
18 mortgage servicer shall be liable to a borrower for actual economic
19 damages pursuant to Section 3281, resulting from a material
20 violation of this article by that mortgage servicer where the
21 violation was not corrected and remedied prior to the recordation
22 of the trustee's deed upon sale. If the court finds that the material
23 violation was intentional or reckless, or resulted from willful
24 misconduct by a mortgage servicer, the court may award the
25 borrower the greater of treble actual damages or statutory
26 damages of fifty thousand dollars (\$50,000).

27 (c) No violation of this article shall affect the validity of a sale
28 in favor of a bona fide purchaser and any of its encumbrancers
29 for value without notice.

30 (d) The rights, remedies, and procedures provided to borrowers
31 by this section are in addition to and independent of any other
32 rights, remedies, or procedures under any other law. Nothing in
33 this section shall be construed to alter, limit, or negate any other
34 rights, remedies, or procedures provided to borrowers by law.

35 (e) A court may award a prevailing borrower reasonable
36 attorney's fees and costs in an action brought pursuant to this
37 section. A borrower shall be deemed to have prevailed for purposes
38 of this subdivision if the borrower obtained injunctive relief or
39 was awarded damages pursuant to this section.

1 Article 2. Multifamily Mortgage Loans

2
3 3273.20. (a) A multifamily borrower may submit a request for
4 forbearance to the borrower's mortgage servicer, either orally or
5 in writing, affirming that the multifamily borrower is experiencing
6 hardship during the COVID-19 emergency.

7 (b) A multifamily borrower shall have the option to discontinue
8 the forbearance at any time.

9 3273.21. Upon receipt of an oral or written request for
10 forbearance from a multifamily borrower, a mortgage servicer
11 shall request documentation of the financial hardship, provide the
12 forbearance for not less than 180 days, and provide the
13 forbearance for an additional 180 days upon the request of the
14 borrower at least 30 days prior to the end of the initial forbearance
15 period.

16 3273.22. During the term of forbearance under this article, a
17 multifamily borrower shall provide rent relief to any tenants living
18 in the property that secures the mortgage and may not evict a
19 tenant for nonpayment of rent or apply or accrue any fees or other
20 penalties on renters for nonpayment of rent.

21 3273.23. A multifamily borrower shall bring a loan placed in
22 forbearance under this article current within the earlier of 12
23 months after the conclusion of the forbearance period or within
24 10 days of the receipt by the multifamily borrower of any business
25 interruption insurance proceeds.

26 3273.24. A mortgage servicer of a federally backed multifamily
27 mortgage loan that complies with Section 4023 of the federal
28 CARES Act (Public Law 116-136) shall be deemed to be in
29 compliance with this article.

30
31 CHAPTER 3. VEHICLE-SECURED CREDIT OBLIGATIONS

32
33 3273.30. A servicer of vehicle-secured credit may not take any
34 action to repossess the mobilehome or motor vehicle that secures
35 a loan during the COVID-19 emergency and for the 180-day period
36 following that emergency, including providing a verbal or written
37 notice of intent to repossess the mobilehome or motor vehicle.

38 3273.31. (a) A consumer experiencing a financial hardship
39 during the COVID-19 emergency may request forbearance from
40 any vehicle-secured credit obligation, regardless of delinquency

1 status, by submitting a request to the servicer of vehicle-secured
2 credit, either orally or in writing, affirming that the borrower is
3 experiencing hardship during the COVID-19 emergency. A
4 borrower shall not be required to provide any additional
5 documentation to receive such forbearance.

6 (b) A servicer of vehicle-secured credit shall provide the
7 forbearance requested pursuant to subdivision (a) for a period of
8 90 days. If the borrower affirms that they continue to experience
9 hardship within the 30 days prior to the expiration of the initial
10 forbearance period, the servicer of vehicle-secured credit shall
11 extend the forbearance period upon request of the borrower for
12 an additional 90 days. Those forbearance periods shall continue
13 to be extended upon request of the borrower throughout the
14 duration of the COVID-19 emergency and the 180-day period
15 following that emergency.

16 (c) During the period of a forbearance under this chapter, a
17 servicer of vehicle-secured credit shall not assess, accrue, or apply
18 to a borrower's account any fees, penalties, or additional interest
19 beyond the amounts scheduled or calculated as if the borrower
20 made all contractual payments on time and in full under the terms
21 of the vehicle-secured credit obligation contract in effect at the
22 time the borrower enters into the forbearance.

23 3273.32. (a) Before the completion of a forbearance period
24 provided by this article, the holder of a vehicle-secured credit
25 obligation shall evaluate a consumer's ability to return to making
26 regular payments.

27 (b) If the consumer is able to return to making regular payments
28 based on the evaluation required by subdivision (a), the holder of
29 the vehicle-secured credit obligation shall:

30 (1) Modify the consumer's vehicle-secured credit obligation to
31 extend the term for the same period as the length of the
32 forbearance, with all payments that were not made during the
33 forbearance distributed at the same intervals as the consumer's
34 existing payment schedule and evenly distributed across those
35 intervals, with no penalties, late fees, or additional interest accrued
36 beyond the amounts scheduled or calculated as if the consumer
37 made all contractual payments on time and in full under the terms
38 of the vehicle-secured credit obligation contract in effect at the
39 time the consumer entered into the forbearance, and with no
40 modification fee charged to the consumer.

1 (2) *Notify the borrower in writing of the modification required*
2 *by paragraph (1), including provision of a new payment schedule*
3 *and date of maturity, and that the consumer shall have the election*
4 *of prepaying the suspended payments at any time, in a lump sum*
5 *or otherwise.*

6 (3) *Not require the consumer to waive any other claim provided*
7 *by law in order to accept the terms of a modification.*

8 (c) *If the consumer is not able to return to making regular*
9 *payments based on the evaluation required by subdivision (a), the*
10 *holder of the vehicle-secured credit obligation may proceed with*
11 *a written notice of intent to repossess the vehicle as required by*
12 *law only after the expiration of the COVID-19 emergency and the*
13 *180-day period following that emergency.*

14 3273.33. *Notwithstanding Sections 2983.2 or 2983.8, or any*
15 *other provision of law, no deficiency judgment shall lie in any*
16 *event after the sale or other disposition of a mobilehome or motor*
17 *vehicle for failure by a consumer to make a payment that was due*
18 *during the COVID-19 emergency or the 180-day period following*
19 *that emergency unless the servicer of the vehicle-secured credit*
20 *obligation has complied with all provisions of this chapter.*

21 3273.34. *The provisions of this title are severable. If any*
22 *provision of this title or its application is held invalid, that*
23 *invalidity shall not affect other provisions or applications that can*
24 *be given effect without the invalid provision or application.*

25 SEC. 3. *Section 22698 is added to the Financial Code, to read:*

26 22698. (a) *Notwithstanding any other provision of this chapter,*
27 *the following shall apply during the COVID-19 emergency and*
28 *the 180-day period following that emergency:*

29 (1) *Within 60 days of enactment of this section, a program*
30 *administrator shall notify each property owner with an outstanding*
31 *assessment contract that the property owner is entitled to*
32 *forbearance on the next annual PACE assessment owed pursuant*
33 *to the assessment contract if the property owner is facing a*
34 *financial hardship, directly or indirectly, due to the COVID-19*
35 *emergency. The notification shall specify how the property owner*
36 *may elect to accept the offer of forbearance.*

37 (2) *A program administrator shall provide forbearance on the*
38 *next annual PACE assessment owed by a property owner that*
39 *accepts the offer pursuant to paragraph (1).*

1 (3) A program administrator may require the property owner
2 to pay the amount of the forbore PACE assessment in the year
3 following the scheduled end of the assessment contract. A program
4 administrator may not charge additional fees or interest related
5 to the forbore PACE assessment.

6 (4) A program administrator shall not exercise any contractual
7 rights of acceleration related to unpaid assessments during the
8 COVID-19 emergency.

9 (b) For the purposes of this section, “COVID-19 emergency”
10 means the period that begins upon the date of the enactment of
11 this section and ends on the date that the state declares the
12 emergency related to the COVID-19 disease has ended.

13 SEC. 4. Section 23039 is added to the Financial Code, to read:

14 23039. (a) Notwithstanding any other provision of this division,
15 the following shall apply during the COVID-19 emergency and
16 the 180-day period following such emergency:

17 (1) A fee for a deferred deposit transaction shall not exceed 5
18 percent of the face amount of the check.

19 (2) A licensee shall offer a customer the option to enter into a
20 payment plan that provides an extension of time for repayment of
21 an existing deferred deposit transaction. The payment plan shall
22 include the following terms:

23 (A) The plan shall not contain any additional fee or charge of
24 any kind.

25 (B) The plan shall provide the customer with the option to repay
26 the outstanding amount of the existing deferred deposit transaction
27 over a 60-day period in four equal installments.

28 (3) At least three days prior to the date to which deposit of check
29 has been deferred (due date) according to the agreement provided
30 by the licensee to the customer pursuant to subdivision (e) of
31 Section 23035, a licensee shall notify a customer of their option
32 to enter into a payment plan pursuant to paragraph (1). If at any
33 time, the customer attempts to pay the licensee for an outstanding
34 amount of an existing deferred deposit transaction, the licensee
35 shall immediately notify the customer of their option to enter into
36 a payment plan pursuant to paragraph (1).

37 (4) A licensee shall not enter into a deferred deposit transaction
38 with a customer within 14 days of the customer fully repaying a
39 previous transaction.

1 (5) A licensee shall not charge any late fee for the return of a
2 dishonored check by a depository institution in a deferred deposit
3 transaction.

4 (b) For the purposes of this section, “COVID-19 emergency”
5 means the period that begins upon the date of the enactment of
6 this section and ends on the date that the state declares the
7 emergency related to the COVID-19 disease has ended.

8 SEC. 5. The provisions of this act are severable. If any
9 provision of this act or its application is held invalid, that invalidity
10 shall not affect other provisions or applications that can be given
11 effect without the invalid provision or application.

12 SEC. 6. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.

21 SECTION 1. Section 80002 of the Financial Code is amended
22 to read:

23 80002. The department may provide the respective chairpersons
24 of the Senate Committee on Banking and Financial Institutions
25 and the Assembly Committee on Banking and Finance with a brief
26 annual summary on the activities of the program.