

May 1, 2020

The Honorable Mila M. Jasey
125 West State Street
State House
Trenton, NJ 08625-1101

Re: Proposed amendments to Assembly Bill 3908 - COVID-19 Financial Security for Consumers Act

Dear Assemblywoman Jasey,

I write on behalf of the American Financial Services Association (AFSA)¹ to express our concerns with proposed amendments to AB 3908, the COVID-19 Financial Security for Consumers Act, which would create substantial new requirements for creditors working with consumers in New Jersey. AFSA members share the legislature's goal of providing relief to borrowers facing financial hardship due to the spread of COVID-19 and continue to take steps to work with borrowers to help them stay current on their accounts and keep their vehicles and homes during this emergency.

These comments supplement our prior comments from April 15, that were focused on the consumer reporting provisions of the proposed bill, and we have attached a copy of that letter for your reference.

Because many AFSA members have already voluntarily self-imposed many of the bill's proposed restrictions, we believe the restrictions are unnecessary. Proposed amendments limiting the scope of many of the bill's protections to affected consumers would improve the bill and better allow creditors to continue to focus on providing direct relief to those consumers facing hardship. While the amendments are an improvement, we believe additional changes are necessary to prevent market disruption and significant compliance challenges for creditors at a time when resources should be most focused on providing direct consumer relief. The proposed terms of the bill raise significant concerns for secured creditors, which provide credit to consumers on agreed upon terms and based on the fundamental assumption that payment of the obligation is secured by collateral. Compromising the ability to enforce those transactions on their original terms, may have longer term unintentional consequences on credit markets, far beyond the COVID-19 pandemic.

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

Definitions

Covered coronavirus period

Limiting the covered period to the sooner of 90 days beyond the end of the state of emergency or December 1, 2020, would be a step in the right direction relative to the 120 days previously in the bill; however, extending its application even 90 days would create problems for creditors and consumers and make New Jersey an outlier relative to other states, which have imposed less stringent consumer relief regulations with effective periods limited to the length of the emergency declaration. As noted in the bill, many creditors have already demonstrated a commitment to helping customers through this unprecedented time and provided relief and taken actions to assist New Jersey customers since the start of the COVID-19 pandemic. Extending the period of relief without allowing creditors to balance relief to customers and the impact on their own businesses could adversely affect creditors and credit markets as well.

Extending the covered time period beyond the state of emergency will also present significant challenges under generally accepted accounting principles (GAAP) that require unpaid debt be charged off following a pre-determined number of days of nonpayment (e.g. 120), and any debt charge off has servicing implications for both creditors and consumers. The proposed 90-day extension, combined with the fact that many companies began offering relief more than 30 days ago, would already leave accounts without payment for a significant period of time, not even taking into account the length of the emergency itself.

We also continue to have concerns about enforcement of the bill's provisions retroactive to the beginning of the emergency, which would subject creditors to significant penalties based on compliance with requirements that did not yet exist. Accordingly, any relief provided under the bill should begin upon enactment, rather than retroactively.

Debt Collection

Proposed section 4, formerly section 3, would place new restrictions on debt collection by creditors and debt collectors. As stated above, many AFSA members have already voluntarily self-imposed many of the bill's restrictions, but we believe clarification on several of the restrictions is necessary to ensure consumers don't face possible additional costs and to prevent market disruption.

Importantly, creditors and debt collectors will not know that the consumer faces a hardship until the consumer notifies the creditor or the debt collector. So that there is no confusion as to the creditor or debt collector being notified of the hardship, the notice should be in writing. Once the

notice of hardship is received, the creditor or debt collector can comply with the relief provided in the bill. To allow creditors and debt collectors to determine whether the financial hardship is legitimate, the written notice should also include an explanation of the basis of the hardship. Such an approach would ensure that relief is available to and directed toward those consumers most in need.

Repossession

Part (b)(3) states that a creditor or debt collector shall not: “initiate or threaten to initiate any legal or equitable remedy for the repossession of any vehicle belonging to the affected person.” We respectfully request that the bill be amended to clarify that it would not limit voluntary surrenders—which provide borrowers with the ability to voluntarily turn over a vehicle based on their own assessment of their financial situation and vehicle needs. Moreover, the bill should not prevent recovery by creditors of vehicles at risk due to mechanics liens, fraud, vehicles in impound lots in jeopardy of being sold, abandoned vehicles, seized vehicles, or in other cases where collateral may be in jeopardy. For time-bound transactions that expire on their terms (e.g. leases) during the covered period, creditors should also be allowed to recover any vehicles after the term of a lease has expired.

Leaving creditors without the ability to recover their collateral in instances where it may be at risk could cause a significant disruption in the vehicle finance market, with implications for larger financial markets due to existing securitization and master credit agreements. We do not believe that the legislature intends to prohibit voluntary surrender or recovery of vehicles at risk, but amending the bill on these important points would make the intent clear and prevent such a market disruption. Additionally, while we also do not believe your intent is to prevent the repossession of commercial inventory (i.e. inventory-secured lines of credit used by businesses to purchase vehicles that are repaid upon the sale of that vehicle) or other commercial vehicles, we believe further amendment would clarify the intent.

Prohibition on communications

Part c of this section would prohibit a debt collector from initiating any communication with an affected person by telephone. Because of the definition of debt collector, this broad prohibition would preclude certain creditors from communicating with their own customers, in many cases, preventing these creditors from proactively reaching out to consumers to offer relief and provide information on programs available. Because such outreach is in the consumer’s interest, we believe this section should make clear that it would not prevent creditors from engaging in inbound and outbound customer service and collections calls and correspondence with customers for the purposes of providing customer account support, providing monthly payment reminders, late payment reminders, make payment arrangements, and otherwise working with customers to

resolve past due accounts, understand reasons for delinquency, the potential duration, and what assistance or remedies creditors/lessors may be able to offer to assist the customer.

Private enforcement

This section empowers the Attorney General and affected persons to enforce the restrictions on debt collection. We believe the Attorney General would receive ample enforcement power to bring an action against non-compliant entities, and there is no need to invite unnecessary private litigation with little additional protection for New Jersey residents.

We have attached with our letter, proposed amendments to the bill text, with our changes marked in red (proposed additions underlined and proposed removals struck through). Thank you for your attention to this matter. If you have any questions or if AFSA can be of any further assistance to you as you move forward, please do not hesitate to contact me at 202-469-3181 or mkownacki@afsamail.org.

Sincerely,



Matthew Kownacki
Director, State Research and Policy
American Financial Services Association
919 Eighteenth Street, NW, Suite 300
Washington, DC 20006-5517

cc:

Senator Nellie Pou

Attachments:

- (1) AFSA proposed amendment text
- (2) AFSA April 15 comment letter

ASSEMBLY AMENDMENTS
(Proposed by Assemblywoman JASEY)

to

ASSEMBLY, No. 3908

(Sponsored by Assemblywomen JASEY and REYNOLDS-JACKSON, and Assemblyman MCKEON)

INSERT NEW SECTION 1 TO READ:

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

a. The State of New Jersey faces an unprecedented public health crisis in the form of the coronavirus disease 2019 pandemic;

b. Under Executive Order 107, the Governor has directed all residents to remain at home until further notice, in an effort to promote social distancing and stop the spread of the disease through personal contact;

c. Social distancing has caused considerable commercial disruption, with many businesses closed or operating at a reduced capacity indefinitely, which has caused considerable financial hardship to employees who have been laid off, furloughed, or are working reduced hours, and to business owners who have seen a considerable reduction in income;

d. Financial hardships are causing many individuals to struggle to pay their bills, including many bill owed to creditors and debt collectors;

e. Many creditors have already agreed to provide grace periods on mortgages, suspend credit downgrades and other negative impacts on credit, institute a moratorium on initiating foreclosures and evictions, and provide relief from fees and charges for New Jersey customers during the coronavirus disease 2019 pandemic;

f. Suspending many actions to collect certain debts by creditors and debt collectors during the covered coronavirus period will provide affected persons in the State of New Jersey with much needed relief; and

g. The suspension of debt collection shall be temporary, and affected persons would need to repay their obligations in the future, but would be provided with a period of time in which creditors and debt collectors may not attempt to collect on debts using certain means, such as by filing new lawsuits or having face-to-face meetings.¹

REPLACE SECTION 1 TO READ:

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'[1.] 2.' (New section) As used in sections '[1,]' 2, '[and]' 3 ¹, and 4¹ of this act:

“Affected person” means a **natural** person who is a resident of this State and has suffered **a demonstrated** financial hardship as a result of the coronavirus disease 2019 pandemic.

“Covered coronavirus period” means the period **beginning with date of enactment through beginning with** the Public Health Emergency and State of Emergency declared by the Governor in Executive Order 103 of 2020 **and extending '[120] 90+ days following the end of that public health emergency and state of emergency'**, or extending until December 1, 2020, whichever date is sooner¹.

“Creditor” means any person and any agent, servant, employee, or attorney of a person engaged in collecting a debt **incurred for personal, family or household purposes**, owed or alleged to be owed **to the person** by a '[debtor] person'¹ and shall also include a buyer of delinquent debt who hires a third party or an attorney to collect a debt. A person shall not be deemed to be engaged in collecting a debt, if the person's activities are solely for the purpose of serving legal process on another person in connection with the judicial enforcement of a debt. “Creditor” shall not include any landlord engaged in collecting a debt from a tenant or seeking a tenant's eviction.¹

“Debt collector” means any person or business whose principal purpose is the collection of a debt, or who regularly collects or attempts to collect, directly or indirectly, a debt owed or due or asserted to be owed or due another. The term debt collector shall also include any person who buys or acquires debt that is in default at the time of purchase or acquisition and who seeks to collect that debt. The term debt collector shall include a creditor who, in the process of collecting the creditor's own debt, uses any name other than the creditor's own name which would indicate that a third person is collecting or attempting to collect the debt. The term debt collector shall also include a person in a business the principal purpose of which is the enforcement of security interests.

“User of a consumer report” means any person or entity that is furnished a consumer report for a purpose that is permissible pursuant to section 4 of P.L.1997, c.172 (C.56:11-31).

RENUMBER SECTION 2 AS SECTION 3

REPLACE SECTION 3 TO READ:

'[3.] 4.' (New section) a. 'An affected person may contact any creditor or debt collector and inform the creditor or debt collector **in writing and provide evidence** that the person has experienced financial hardship as a result of the coronavirus disease 2019 pandemic.

b.¹ Except as otherwise provided in subsection '[d.] e.'¹ of this section, with respect to the covered coronavirus period, '[no] a'¹ creditor or debt collector 'that is put on notice pursuant to subsection a. of this

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section by an affected person, **effective upon receipt of written notice,**¹ shall 'not':

(1) initiate, file, or threaten to file any new collection lawsuit 'against the affected person';

(2) initiate, 'or' threaten to initiate¹[, or act upon]¹ any legal or equitable remedy 'against the affected person' for the garnishment, seizure, attachment, or withholding of wages, earnings, property or funds for the payment of a debt to a creditor;

(3) initiate, 'or' threaten to initiate¹[, or act upon]¹ any legal or equitable remedy for the repossession of any vehicle 'belonging to the affected person'; **except that this prohibition and other prohibitions on contact shall not apply in cases of:**

(a) a consumer voluntarily surrendering collateral;

(b) creditors/lessors securing a vehicle at risk (subject to mechanics liens, fraud, impound, abandoned vehicles, seized vehicles, or other cases where collateral may be in jeopardy);

(c) recovery of a leased vehicle after the lease term has expired;
or

(d) commercial vehicles, fleet vehicles, or inventory-secured financing.

(4) visit or threaten to visit the household of '[a debtor] the affected person' at any time;

(5) visit or threaten to visit the place of employment of '[a debtor] the affected person' at any time;

(6) confront or communicate in person with '[a debtor] the affected person' regarding the collection of a debt in any public place at any time¹, except that this prohibition shall not apply in cases of:

(a) serving, filing, or conveying formal legal pleadings, discovery requests, judgments or other documents pursuant to the applicable Rules of Court of the State of New Jersey; or

(b) communicating in, or at the direction of, a court of law or in depositions or settlement conferences or other communications in connection with a pending legal action to collect a debt on behalf of a client¹; or

(7) report any portion of '[a] 'the affected person's' debt which is alleged to be unpaid¹[,]¹ to any debt collector.

¹[b.] c.¹ With respect to the covered coronavirus period, **upon receipt of the written notice of coronavirus hardship,** no debt collector shall initiate a communication with any '[debtor] affected person' via telephone, either in person or by recorded audio message to the '[debtor's] affected person's' residence, cellular telephone, or other telephone number provided by the '[debtor] affected person', except that a debt collector shall not be deemed to have initiated a communication with '[a debtor] the affected person' if the communication by the debt collector is in response to a request made by the '[debtor] affected person' for the communication. **This prohibition shall not apply to a creditor initiating communication with its own customers.**

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¹[c. A debtor] d. ~~An affected person⁺ or~~ the Attorney General may bring an action alleging a creditor or debt collector has violated the provisions of this act. Upon a finding that non-compliance by a creditor or debt collector with this section has occurred, a court of competent jurisdiction may:

(1) order the non-compliant creditor or debt collector to retract the debt reported to the collection or credit reporting agency, bureau, or data collection facility;

(2) impose a fine on the non-compliant creditor or debt collector, not to exceed \$5,000;

(3) ~~order the non-compliant creditor or debt collector to pay a reasonable counsel fee in connection with~~¹[a debtor] ~~an affected person⁺ who has suffered damage as a result of an attempt to collect a debt or damage to a credit rating due to the reporting of a debt to a collection or credit reporting agency, bureau, or data collection facility;~~

~~(4)~~ order the non-compliant creditor or debt collector to take such steps as are necessary, within 30 days of the order, to ~~rehabilitate~~ submit a request to the credit bureau to update the credit record of a claimant, with a showing made to the court of the efforts made in that regard; and

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

¹[d.] e.¹ In the case of an action or proceeding that would otherwise be barred from being brought by the expiration of the statute of limitations as provided in N.J.S.2A:14-1 or N.J.S.12A:2-725, as applicable during the covered coronavirus period, a creditor or debt collector may commence an action or proceeding in a court of competent jurisdiction against ¹[a debtor, provided that the creditor or debt collector includes in any process served on a debtor prominent language putting the debtor on notice that the creditor or debt collector may not attempt to collect on any portion of a debt which is alleged to be unpaid or report any portion of a debt which is alleged to be unpaid, to any collection or credit reporting agency, bureau, or data collection facility, until the conclusion] an affected person within one year of the conclusion¹ of the covered coronavirus period.

RENUMBER SECTIONS 4 THROUGH 8 AS SECTIONS 5 THROUGH 9

REPLACE SECTION 9 TO READ:

¹[9.] 10.¹ (New section) a. (1) Notwithstanding any other law to the contrary, whenever the Governor declares a public health emergency pursuant to the “Emergency Health Powers Act,” P.L.2005, c.222 (C.26:13-1 et seq.), or a state of emergency pursuant to P.L.1942, c.251

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(C.App.A.9-33 et seq.), or both, during that declared emergency the Governor may issue an executive order precluding the issuance of executions or other post-judgment process set forth in chapters 17 and 18 of Title 2A of the New Jersey Statutes used to enforce a judgment recovered in, or enforce an order for the payment of money issued by, the Superior Court, Law Division, including the Special Civil Part of the Law Division, but not including any executions or other post-judgment process to enforce a judgment or order on a matter that, pursuant to the Rules of Court, was instituted in or transferred to the Superior Court, Chancery Division, Family Part, and subsequently transferred to the Superior Court, Law Division, for any judgment or order entered before, on, or after the day the executive order is issued. This executive order shall remain in effect for no longer than ¹[60] 90¹ days following the declared end to the emergency.

(2) With respect to any executive order issued by the Governor pursuant to paragraph (1) of this subsection relating to the Public Health Emergency and State of Emergency declared by the Governor in Executive Order 103 of 2020 concerning the coronavirus disease 2019 pandemic, that executive order shall apply retroactively to any judgment or order described in that paragraph that was entered on or after the date the emergency was declared in Executive Order 103 of 2020, for which an execution or other post-judgment process has not been issued as of the day the executive order is issued.

b. Proceedings on an execution or other post-judgment process used to enforce a judgment recovered in, or enforce an order for the payment of money issued by, the Superior Court, Law Division, including the Special Civil Part of the Law Division, may be continued while the executive order issued pursuant to subsection a. of this section remains in effect, unless a court of competent jurisdiction determines on its own motion, or motion of any party, that enforcement should be stayed in the interest of justice.

c. Sheriffs, Special Civil Part Officers, and their agents shall refrain from acting on any newly issued execution or other post-judgment process as described in subsections a. and b. of this section, unless a court of competent jurisdiction determines on its own motion, or motion of any party, that enforcement is necessary in the interest of justice.

¹d. This section shall not apply to any action initiated by a landlord against a tenant to collect upon a debt or seek the tenant's eviction.¹

RENUMBER SECTIONS 10 AND 12 AS SECTIONS 11 AND 13

REPLACE SECTION 13 TO READ:

¹[13.] 14.¹ This act shall take effect immediately. Sections ¹[5] 6.¹ through ¹[8] 9.¹ of this act shall apply to all health benefits plans currently in effect in the State, or that are delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State

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by the Commissioner of Banking and Insurance, on or after the effective date of this act.

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