

Date of Hearing: May 19, 2020

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Monique Limón, Chair

AB 2501 (Limón) – As Amended May 11, 2020

SUBJECT: COVID-19: homeowner, tenant, and consumer relief

SUMMARY: Provides for temporary forbearance and affordable post-forbearance repayment options for borrowers facing financial hardship during the COVID-19 emergency and 180 days thereafter, related to mortgages, automobile financing, PACE assessment contracts, and deferred deposit transactions, as specified.

Specifically, **this bill:**

- 1) Defines “COVID-19 emergency” as the period that begins upon the date of the enactment of this bill and ends on the date that the state declares the emergency related to the COVID-19 disease has ended.
- 2) Provides for the following related to residential mortgages during the COVID-19 emergency and 180 days thereafter:
 - a. Temporarily prohibits foreclosure actions, as specified.
 - b. Requires a mortgage servicer to provide forbearance of 180 days upon a request from a borrower, which may be extended for an additional 180 days if the borrower affirms that they continue to experience hardship.
 - c. Prohibits a mortgage servicer from misleading a borrower about their options related to forbearance or options for repayment after forbearance provided by state or federal law.
 - d. Requires that a borrower receiving forbearance on a mortgage secured by a dwelling that has a tenant shall provide the tenant with rent relief for a period of not less than the period covered by forbearance.
 - e. Requires a mortgage servicer to automatically grant a 180 day forbearance to a borrower who is 60 or more days delinquent, which may be extended for an additional 180 days if the borrower affirms that they continue to experience hardship.
 - f. Prohibits a mortgage servicer from assessing any fees, penalties, or additional interest beyond the amounts scheduled, as specified, during the forbearance period.
 - g. Requires a mortgage servicer to advance disbursements from an impound account while a borrower is in forbearance and allows the mortgage servicer to collect any deficiency after the forbearance period ends, as specified.
 - h. Requires a mortgage servicer to evaluate a borrower’s ability to return to making regular mortgage payments before the end of a forbearance period.

- i. If the borrower can resume regular payments, requires the mortgage servicer to shift the missed payments to the end of the mortgage term, as specified.
 - ii. If the borrower cannot resume regular payments, requires a mortgage servicer to evaluate all loan modification options and nonhome retention loss mitigation options before considering any foreclosure acts upon the expiration of 180 days after the COVID-19 emergency, as specified.
 - i. Provides enforcement mechanisms to incentivize compliance with the requirements of the law, including:
 - i. Prohibits a mortgage servicer that violates the law from commencing a foreclosure on a borrower that is harmed by the violation. Provides the mortgage servicer with a right to cure the violation, as specified, which would allow the mortgage servicer to reinstate their rights to commence the foreclosure.
 - ii. Provides that a violation of the residential mortgage provisions of this bill is a violation of Section 17200 of the Business and Profession Code related to unfair competition.
 - iii. For state-licensed financial institutions, provides that a violation of the residential mortgage provisions of this bill is a violation of the law pursuant to which a mortgage servicer is licensed.
 - iv. Provides that a borrower may seek injunctive relief to enjoin a material violation of the residential mortgage provisions of this bill and allows a court to award a prevailing borrower reasonable attorney's fees and costs.
 - v. In the event a property has been sold pursuant to a foreclosure action, provides that a mortgage servicer is liable to a borrower for actual economic damages that result from a material violation by the servicer that was not remedied prior to the sale. For intentional or reckless acts or willful misconduct, allows a court to award the greater of treble damages or statutory damages of \$50,000.
- 3) Provides for the following related to multifamily mortgages during the COVID-19 emergency:
 - a. Requires a mortgage servicer to provide a multifamily borrower with forbearance of not less than 180 days upon receipt of a request from the borrower and receipt of documentation related to the financial hardship experienced by the borrower, and requires the forbearance to be extended another 180 days upon the request of the borrower, as specified.
 - b. Requires a multifamily borrower that receives mortgage forbearance to provide unspecified "rent relief" to tenants in the property and prohibits the multifamily borrower from evicting a tenant or applying late fees for nonpayment of rent during the forbearance period.

- c. Requires a multifamily borrower to bring a loan placed in forbearance current within the earlier of 12 months after the conclusion of the forbearance period or within 10 days of receipt of any business interruption proceeds.
 - d. Provides that a mortgage servicer of a federally backed multifamily mortgage loan that complies with Section 4023 of the federal CARES Act (Public Law 116-136) shall be deemed to be in compliance with this article.
- 4) Provides for the following related to vehicle-secured credit obligations during the COVID-19 emergency and 180 days thereafter:
- a. Defines a vehicle-secured credit obligation as either a loan for personal, family, or household purposes that is secured by a mobilehome or motor vehicle; or a conditional sale contract as defined by subdivision (a) of Section 2981.
 - b. Prohibits a servicer of vehicle-secured credit from taking any action to repossess the mobilehome or motor vehicle that secures a loan during the COVID-19 emergency and for the 180-day period following that emergency, including providing a verbal or written notice of intent to repossess the mobilehome or motor vehicle.
 - c. Requires a servicer of vehicle-secured credit to provide forbearance of 90 days upon receipt of a request from a consumer who experiencing hardship during the COVID-19 emergency. Requires the servicer to extend the forbearance period for additional 90-day periods throughout the COVID-19 emergency and 180 days thereafter, if the borrower's hardship continues.
 - d. Prohibits a servicer of vehicle-secured credit from assessing any fees, penalties, or additional interest during the forbearance period, as specified.
 - e. Requires a holder of a vehicle-secured credit obligation to evaluate a consumer's ability to return to making regular payments prior to the completion of a forbearance period.
 - i. If the consumer can resume making regular payments, requires the holder to shift the missed payments to the end of the scheduled term, as specified.
 - ii. If the consumer cannot resume making regular payments, allows the holder to proceed with a written notice of intent to repossess the vehicle after the expiration of the COVID-19 emergency and 180 days thereafter.
 - f. Prohibits a deficiency judgment unless a servicer of a vehicle-secured credit obligation has complied with all provisions of this bill related to vehicle-secured credit obligations, as specified.
- 5) Provides for the following related to PACE assessment contracts during the COVID-19 emergency and 180 days thereafter:
- a. Requires a program administrator, within 60 days of 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 if the property

- owner is facing a financial hardship, directly or indirectly, due to the COVID-19 emergency.
- b. Requires a program administrator to provide forbearance on the next annual PACE assessment owed by a property owner that accepts the offer described in the preceding provision and allows a program administrator to require the property owner to repay the forbore amount in the year following the scheduled end of the assessment contract without additional interest or fees.
 - c. Prohibits a program administrator from exercising any contractual rights of acceleration related to unpaid assessments during the COVID-19 emergency.
- 6) Provides the following related to deferred deposit transactions during the COVID-19 emergency and 180 days thereafter:
- a. Limits the fee that can be charged to 5 percent of the face value of the check.
 - b. Requires a licensee to offer a customer the option to enter into a payment plan that extends the repayment period without additional fees, as specified.
 - c. Prohibits a licensee from entering into a deferred deposit transaction with a customer within 14 days of the customer fully repaying a previous transaction.
 - d. Prohibits a licensee from charging any late fee for the return of a dishonored check by a depository institution.

EXISTING STATE LAW:

- 1) Provides the following protections, among others, for homeowners facing the nonjudicial foreclosure of their homes:
 - a. Prohibits a mortgage servicer from recording a notice of default until at least 30 days after making contact, as specified, with a borrower to discuss options for avoiding foreclosure. (Civil Code Section 2923.5)
 - b. Prohibits a mortgage servicer from taking specified acts related to foreclosure while a borrower's application for a loan modification is pending. (Civil Code Section 2924.11)
- 2) Requires licensure and oversight by Department of Business Oversight (DBO), as specified, for persons who service federally related residential mortgage loans secured by properties with one-to-four family residences. (Division 20 of the Financial Code, commencing with Section 50000)
- 3) Requires licensure and oversight by DBO, as specified, of persons engaged in the business of making consumer loans, including loans secured by a motor vehicle. (Division 9 of the Financial Code, commencing with Section 22000)
- 4) Regulates conditional sales contracts for motor vehicles, and, among other things, requires a person selling or leasing a motor vehicle under a conditional sale contract to disclose certain information to the buyer of the vehicle. (Civil Code Section 2981 et seq.)

- 5) Requires licensure and oversight by DBO, as specified, of a person administering a PACE program on behalf of, and with the written consent of, a public agency. (Division 9 of the Financial Code, commencing with Section 22000)
- 6) Regulates the structure of a deferred deposit transaction and requires licensure and oversight by DBO, as specified, of a person who makes deferred deposit transactions. (Division 10 of the Financial Code, commencing with Section 23000)

EXISTING FEDERAL LAW:

- 1) Provides the National Bank Act (NBA), which establishes the Office of the Comptroller of the Currency that charters and supervises national banks. Pursuant to the NBA, federal law preempts some, but not all, state laws that could apply to a national bank.

EXISTING CONSTITUTIONAL LAW:

- 1) Provides Article I, Section X, Clause I of the US Constitution, which ordinarily limits a state's ability to enact and enforce laws that interfere with contracts, but, as interpreted by the US Supreme Court in *Home Building & Loan Assn. v. Blaisdell* (1934) 290 U.S. 398, permits the state to so interfere in the course of exercising its police power to address emergencies, such as natural disasters and economic crises. *Blaisdell* establishes five main factors that must be considered in determining if a state's exercise of its police power, and consequent interference with contracts, is constitutional: whether an emergency exists that justifies legislative action; whether the legislation protects a basic societal interest, rather than merely advantaging certain individuals; whether the legislative action is appropriate to the emergency; whether the relief from contractual obligations afforded by the legislation is reasonable; and whether the legislation is temporary.

FISCAL EFFECT: Unknown.

COMMENTS:**1) PURPOSE**

According to the author:

The COVID-19 pandemic has severely shocked our state economy. Since the Governor declared a statewide emergency on March 4, 2020, over 4.5 million California workers have filed for unemployment claims, which is 2.4 million more workers compared to the peak of the Great Recession. The Governor's budget proposed for FY2020-21 assumes that the state's unemployment rate will surpass 24.5%, rivaling the peak levels seen nationwide in 1933 during the Great Depression. California is not only experiencing a public health emergency; we are also experiencing an economic emergency.

During an emergency, the state has a heightened responsibility to mitigate the immediate threat to the public health, safety, and welfare. This bill seeks to address the immediate threat to the financial well-being and health of California families. The bill would provide a temporary reprieve from payment obligations related to mortgages, car loans, PACE assessment contracts, and payday loans.

This bill does not cancel or forgive any scheduled payment obligation; rather, it provides a way for borrowers to defer payment to a later date when the immediate dislocation of society has subsided. This bill would give California families a chance to weather the current storm without losing their homes and vehicles or ruining their financial well-being.

2) BACKGROUND

California faces a severe economic challenge due to the COVID-19 pandemic. As stated by the author, unemployment claims have reached unprecedented levels over the last two months, and the metric does not include displaced workers who have not filed claims or who do not qualify because they were engaged in the informal economy. Unemployment claims also fail to consider the economic damage caused by salary and wage reductions that are not accounted for in unemployment data.

Prior to the COVID-19 pandemic, California was already experiencing an affordability crisis, largely driven by the state's high housing costs. According to the California Budget & Policy Center's analysis, 28% of renters and 16% of homeowners with a mortgage were severely cost-burdened in 2017, meaning their shelter costs exceeded half of their household income. An additional 25% of renters and 21% of homeowners with a mortgage were cost-burdened, meaning their shelter costs exceeded thirty percent of their household income.¹

These data show that many California families were in fragile financial situations prior to the pandemic, which significantly exacerbates the effect of the current economic shock on the performance of consumer credit contracts. Many families lack sufficient savings to afford their ongoing obligations if they experience a material change in their incomes. Lenders and borrowers entered into financial contracts based on a generally shared perspective of the strength of the labor market and economy overall. Those assumptions have proven false. With unprecedented job losses and sharp declines in personal income, many households will not be able to meet their financial obligations, which could lead to a wave of foreclosures and repossessions that further prolong and depress the economic recovery.

California remains in the early stages of the economic dislocation caused by the pandemic, and we are only seeing initial evidence of the effects the dislocation has had on personal income and consumer credit performance. As discussed in the next section, lenders are offering various forms of forbearance, or temporary postponements of payments, for borrowers experiencing financial hardships. According to the Mortgage Bankers Association, the share of all U.S. mortgages in forbearance rose to 7.9% during the week of May 3, compared to a share of 0.25% for the week of March 2. According to MBA's estimate, almost 4 million homeowners are now in forbearance plans.² Ally Financial, one of the largest auto lenders with approximately \$80 billion in loans outstanding, reported that 25% of its auto loan customers have asked for payment deferrals.³ If economic activity in the state continues at depressed levels, delinquencies and defaults will likely increase.

¹ <https://calbudgetcenter.org/resources/californias-housing-affordability-crisis-hits-renters-and-households-with-the-lowest-incomes-the-hardest/>

² <https://www.mba.org/2020-press-releases/may/share-of-mortgage-loans-in-forbearance-increases-to-791>

³ <https://www.bloomberg.com/news/articles/2020-04-20/ally-says-25-of-customers-have-asked-for-help-with-auto-loans>

3) PRIVATE AND PUBLIC SECTOR RESPONSES TO-DATE

Both the private and public sectors have responded to the financial pressures that many consumers are experiencing due to the pandemic. As states across the country began to issue stay-at-home orders in March, banks, credit unions, and nondepository lenders announced various forms of relief, including forbearance, waiving late fees and overdraft fees, and committing to no negative credit reporting, as permitted by applicable guidelines. These relief efforts have been beneficial to customers, but it is unclear how long these programs will be available and how widespread these programs will remain across different institutions.

The federal government has also responded, most significantly with the enactment of the Coronavirus Aid, Relief, and Economic Security Act (Pub. Law 116-136), or CARES Act, on March 27, 2020, which authorizes broad federal spending to support businesses, workers, and families. The largest sources of spending that directly benefit household income are enhanced unemployment benefits and means-tested tax credits structured as advance payments of \$1,200 per adult and \$500 per child. In addition to the cash transfers, the CARES Act also provides for mortgage forbearance of up to 12 months in total for borrowers with federally backed loans who are experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency.

In the weeks following enactment of the CARES Act, many homeowners have been confused or received conflicting information from their mortgage servicer about the structure of the forbearance period and the options for repayment after the forbearance period ends. Some homeowners have been surprised that they do not qualify for protection under the CARES Act because their mortgage is not a federally backed loan, but instead held by a financial institution or in a private securitization pool. For homeowners who have mortgages that are covered by the CARES Act, media reports have documented misrepresentations by servicers that may be driven by a servicer's desire to protect its profitability and liquidity by inducing borrowers to forego the forbearance options.⁴ The federal Consumer Financial Protection Bureau received a surge of complaints about mortgage servicers in April.⁵ That number may grow as more people fall behind and seek forbearance, or it may decline as servicers improve the accuracy and honesty of their communication with borrowers.

Some federal regulators have taken steps to clarify misunderstandings about forbearance programs. On April 27, the regulator who oversees Fannie Mae and Freddie Mac⁶ issued a news release that stated, "no lump sum required at end of forbearance." The release stated that if a financial hardship has been resolved by the end of a forbearance period, then the servicer will work with a borrower to set up a repayment plan, modify the loan so the borrower's payments are added to the end of the mortgage, or set up a modification plan that reduces the borrower's monthly mortgage payment. Other government agencies that insure mortgages have also provided guidance that no lump sum will be required at the end of

⁴ For example, see: <https://www.latimes.com/homeless-housing/story/2020-04-30/mortgage-forgiveness-coronavirus-confusion>, and <https://www.wsj.com/articles/getting-a-mortgage-payment-break-isnt-the-boon-many-expected-11587634200>.

⁵ <https://www.americanbanker.com/news/cfpb-gets-earful-from-consumers-about-mortgage-servicers>

⁶ Fannie Mae and Freddie Mac are two quasi-governmental entities that play an essential role in mortgage financing by providing a guarantee to investors in the secondary market that the underlying principal and interest on a mortgage will be paid.

forbearance periods. While guidance from federal regulators is helpful, mortgage servicers are borrowers' primary points of contact, and they directly control whether the mortgage is placed into forbearance. If federal regulators do not adequately ensure that servicers are following applicable laws and guidance, then borrowers may continue to receive confusing and inaccurate information about forbearance options and their repayment options post-forbearance.

At the state level, California has taken little action to ease the financial pressures that families are facing. Due to a precipitous fall in state tax revenues, the state budget cannot afford large cash transfers to all families that need help, unless the state identifies additional sources of revenue or redirects expenditures from existing state programs. If cash transfers are not an option, the state may consider other policy changes to temporarily relieve financial burdens. In the financial services area, the state has taken one official action. On April 23, Governor Newsom issued an Executive Order to protect federal stimulus funds from being garnished by debt collectors. Besides that, the Governor has announced that various financial institutions would voluntarily provide forms of forbearance or relief to their customers, but these announcements do not provide legal rights or protections to borrowers, making them unenforceable.

4) HOW THIS BILL APPROACHES THE PROBLEM

Due to coverage gaps in the federal response, this bill proposes a more comprehensive plan to provide temporary payment relief to California families who are struggling to meet their financial obligations. This bill borrows and adapts elements of proposals from House Democrats that have yet to be enacted by the federal government. For the mortgage provisions, this bill relies in part on time-tested legal structures and enforcement mechanisms provided by the California Homeowner Bill of Rights, which the Legislature passed in 2012 and re-authorized in 2018. This bill also extends similar principles of forbearance and extending repayment terms to other credit products and adapts those principles to the product structures for auto loans, PACE assessment contracts, and payday loans.

Provisions of this bill borrowed from the House of Representatives

This bill borrows provisions from the proposal that House Democrats under Speaker Nancy Pelosi offered as a counterproposal to the Senate Republicans and Mitch McConnell's version of the CARES Act. Examples of provisions in the House version that did not make it into the final compromise include:

- Prohibiting a mortgage servicer of a federally backed mortgage from commencing or continuing any foreclosure action during the COVID-19 emergency or 180 days thereafter.
- Requiring a property owner who receives forbearance on their federally backed mortgage to provide rent relief to tenants living in the property for a period not less than the period covered by forbearance.
- Requiring a mortgage servicer of a federally backed mortgage to automatically enroll a borrower in a forbearance program if the borrower is 60 days or more delinquent.

- Prohibiting a servicer of a consumer loan secured by a manufactured home or motor vehicle from repossessing such home or vehicle during the COVID-19 emergency and 180 days thereafter.

On May 15, the House of Representatives passed the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, which provides a broad package of financial assistance to the national economy. The HEROES Act includes legal protections for homeowners and tenants, including a prohibition on foreclosures and evictions for non-payment of up to one year and similar forbearance programs as described in the bullets above that would be applicable to all residential mortgage loans, not just those that are federally backed.

Residential Mortgages

Similar to proposals being debated in Congress, this bill seeks to provide payment relief and legal protections for homeowners and tenants during the COVID-19 emergency. The provisions enacted by the CARES Act do not apply mortgages that are not federally backed, which leaves millions of California residents lacking legal protections related to forbearance and the foreclosure moratorium that applies to federally backed mortgages.⁷ The Urban Institute estimates that 30% of residential mortgages nationwide are not covered by the CARES Act.⁸ Because of California's high home prices, a higher share of California mortgages do not qualify for federal mortgage programs than the national average, meaning that significantly more than 30% of California residential mortgages are likely not covered by CARES Act protections.

This bill would place a temporary prohibition on foreclosure activity during the emergency and 180 days thereafter, except if a property is vacant or abandoned. The bill would provide up to 360 days forbearance for borrowers experiencing a financial hardship during which a mortgage servicer could not assess additional fees or interest. At the end of a forbearance period, the bill requires a mortgage servicer to evaluate a borrower's ability to resume paying regular payments and specifies repayment plans or loan modifications based on the borrower's ability to pay. If the borrower cannot qualify for any loan modification, the bill requires the mortgage servicer to evaluate non-foreclosure options, such as a short sale, prior to commencing a foreclosure after the emergency period and 180 days thereafter. The bill provides a variety of enforcement mechanisms, borrowed in part from the California Homeowner Bill of Rights, to ensure that California borrowers have access to legal remedies, regardless of whether a mortgage servicer is licensed by the state or chartered by the federal government.

If the bill advances out of this Committee, the author may consider amendments to ensure that the bill does not directly conflict with the CARES Act related to federally backed mortgages. The author may also consider whether guidance from federal housing regulators are sufficiently protective of California borrowers of federally backed mortgages. If the author determines that federal guidance is appropriately protective, the author could consider adding a provision that states a mortgage servicer in compliance with federal law and

⁷ Note that the Emergency Rules of California Rules of Court issued on April 6, 2020, suspend judicial foreclosures. Foreclosures in California, however, are overwhelmingly conducted through the non-judicial foreclosure process.

⁸ <https://www.urban.org/urban-wire/price-tag-keeping-29-million-families-their-homes-162-billion>

guidance related to federally backed mortgages shall be deemed to be in compliance with the state law. The author could also add an enforcement provision to ensure California borrowers are not solely reliant on federal regulators to ensure mortgage servicers are compliant. State-level regulation could be focused on ensuring that servicers of federally backed mortgages communicate accurately and thoroughly with California borrowers about their forbearance and repayment options provided by federal law and guidance. Additionally, to prevent unintended consequences and moral hazard, the author may consider narrowing the scope of residential mortgages covered by the bill to those mortgages that are outstanding when the bill is enacted or some date prior to enactment.

Multifamily mortgages

This bill provides an option for forbearance to a borrower of a multifamily mortgage, meaning a mortgage secured by a property with five or more dwelling units. The CARES Act provides a similar forbearance option for federally backed loans, which covers approximately half of units in multifamily properties nationwide, according to the Urban Institute.⁹ This bill would extend similar protections to multifamily properties with a mortgage that is not federally backed. A borrower that receives forbearance would be required to become current on the loan within 12 months of the end of the forbearance period or upon receipt of business interruption insurance, whichever is earlier. This bill provides that a servicer of a federally backed multifamily mortgage that complies with the CARES Act shall be deemed to be in compliance with the state law.

This bill requires a multifamily borrower who receives forbearance on a non-federally backed loan to provide rent relief to tenants in the property. The bill does not define “rent relief,” and the author acknowledges this is an important provision that will need to be negotiated with stakeholders. This bill does not forgive or cancel any payment obligations for the property owner, so it is likely that stakeholders will need to work out a compromise that allows a tenant to repay over time the amount of rent that is temporarily relieved.

Vehicle-secured credit obligations

The automobile is the most valuable asset for many low- and middle-income tenants and the second most valuable asset for many low- and middle-income homeowners. For people who reside in mobilehomes, these structures carry an obviously more pronounced importance for their safety and well-being. This bill would place a moratorium on repossessions of motor vehicles and mobilehomes during the COVID-19 emergency and 180 days thereafter, in order to allow families to hold onto these valuable assets.

This bill requires a servicer of vehicle-secured credit to provide forbearance of 90 days to a consumer who states they are experiencing hardship during the COVID-19 emergency and requires the servicer to rollover the 90 day forbearance periods if the borrower’s hardship continues. During the forbearance periods, the consumer would not be charged fees, penalties, or additional interest. Prior to the completion of a forbearance period, the consumer would be evaluated for their ability to return to making regular payments. If the consumer can resume making regular payments, the missed payments would be shifted to the end of the

⁹ <https://www.urban.org/urban-wire/cares-act-eviction-moratorium-covers-all-federally-financed-rentals-thats-one-four-us-rental-units>

scheduled term. If the consumer cannot resume making regular payments, the bill allows the repossession process to proceed after the expiration of the COVID-19 emergency and 180 days thereafter.

As the author negotiates with stakeholders, the author may consider that unlike real estate, vehicles depreciate over time, which can expose a vehicle-secured creditor to increasing levels of risk as forbearance periods extend over time. The author may also consider whether certain eligibility thresholds, such as the income of the consumer or the value of a motor vehicle, would adequately protect vulnerable consumers, while mitigating risk exposure to creditors. Importantly, to prevent unintended consequences and moral hazard, the author may consider narrowing the scope of vehicle-secured credit obligations covered by the bill to those obligations that are outstanding when the bill is enacted or some date prior to enactment.

PACE assessment contracts

While not technically or legally a loan, a PACE assessment contract is a form of real estate-secured credit. As with real estate-secured loans, failure to repay the scheduled obligations pursuant to a PACE assessment contract can ultimately lead to the property owner losing their home. This bill would require that a PACE program administrator provide forbearance on the next annual assessment for property owners that are experiencing a financial hardship, directly or indirectly, due to the COVID-19 emergency. The bill would allow the program administrator to require the property owner to repay the forborne payment in the year after the PACE contract expires.

According to PACE program administrators, the provisions in this bill related to PACE are not necessary because Governor Newsom's executive order related to waiving the state requirement that a tax collector impose penalties and fees on unpaid property taxes.¹⁰ This argument fails to acknowledge that a property owner will need to pay their next annual assessment prior to the expiration of the executive order on May 6, 2021, in order to avoid penalties and interest. A property owner experiencing a financial hardship may be unable to catch up with the next annual assessment prior to the following year's assessment coming due. Moving the missed payment to the end of the contract term would be more protective of consumers.

Payday loans

Payday loans are an expensive form of short-term credit. State law caps the loan amount at \$300, of which \$45 is the lender's fee, leaving the consumer with \$255 of loan proceeds. Many borrowers are unable to repay the loan without reborrowing prior to their next paycheck. Data provided by payday lenders to state regulators show that three-quarters of industry revenue, or \$300 million annually, is generated from Californians who take out seven or more loans from the same lender in a given year, with 85% of those transactions occurring within two weeks of the prior loan.

In times of such economic stress and volatility, it is difficult to see how high-cost, short-term credit is responsive to a consumer's needs. Even when the economy is more predictable,

¹⁰ <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.6.20-EO-N-61-20-text.pdf>

many payday transactions lead to a subsequent transaction within one pay period, generating \$90 of fees in one month for what is equivalent to a \$255 loan with a one-month repayment period. This bill would reduce the permitted fee, which would allow a payday borrower to access \$285 in return for repayment of \$300, assuming a payday lender would make a loan at this price. The bill would also require a payday lender to offer extended repayment terms for borrowers who cannot repay the entire \$300 on their next payday.

5) LEGAL CLAIMS BY OPPONENTS MAY NOT CONSIDER RELEVANT CASE LAW

In position letters submitted to the Committee, opponents raise concerns about the constitutionality of some provisions of this bill or suggest that the bill may be preempted by federal law. Some of these assertions identify certain provisions that raise concerns, while other assertions make general claims. The author has acknowledged that the bill needs refinement and further negotiation, and some provisions that raise concerns from opposition may be addressed through subsequent amendments to the bill. As the bill is refined, the author may consult with the Attorney General and Legislative Counsel for feedback on some of opposition's concerns.

While negotiations may resolve some or all of opposition's concerns related to outstanding legal issues, the Committee should be aware of the *Blaisdell* decision summarized in the Existing Constitutional Law section on page 5 of this analysis. The *Blaisdell* case examined a law enacted by the state of Minnesota in 1933 that temporarily extended the time allowed by existing law for redeeming real property from foreclosure and sale under existing mortgages. The statute was enacted during the Great Depression at a time when the state legislature declared the existence of an emergency demanding an exercise of the police power for the protection of the public and to promote the general welfare of the people. Plaintiffs challenged the constitutionality of the law pursuant to the contracts clause. The Supreme Court held that the state law was constitutional. *Blaisdell* establishes five main factors that must be considered in determining if a state's exercise of its police power, and consequent interference with contracts, is constitutional:

- whether an emergency exists that justifies legislative action;
- whether the legislation protects a basic societal interest, rather than merely advantaging certain individuals;
- whether the legislative action is appropriate to the emergency;
- whether the relief from contractual obligations afforded by the legislation is reasonable; and
- whether the legislation is temporary.

To the extent that opponents assert that a provision of this bill is unconstitutional as viewed through *Blaisdell*, the author may consider such arguments and, in consultation with the Attorney General or Legislative Counsel, decide whether any amendments are appropriate.

6) FURTHER NEGOTIATION AND REFINEMENT NECESSARY

This bill was drafted under very short deadlines in order to be heard by this Committee. The author has committed to negotiating with stakeholders to consider amendments and alternative approaches that fulfill her objectives of providing temporary payment relief and

affordable options for repaying missed payments to borrowers who are facing financial hardship, directly or indirectly, due to the COVID-19 emergency. In addition to substantive amendments, the author recognizes the need to address technical and drafting errors contained in the bill.

7) ARGUMENTS IN SUPPORT

Organizations representing consumers and low-income Californians write in support of the bill. The letters generally acknowledge the unprecedented economic shock caused by COVID-19, express concern about the fragile financial positions of many California families, and argue that the bold provisions of AB 2501 are an appropriate response. Many of the letters acknowledge that some provisions of AB 2501 need further refinement and that the organizations are ready engage in stakeholder discussions.

Housing and Economic Rights Advocates (HERA) is a legal services and advocacy non-profit dedicated to helping vulnerable Californians build a safe, sound financial future, free of discrimination and economic abuses. HERA writes:

HERA supports AB 2501 as a much-needed response to the perilous and unpredictable conditions we now face. Current economic conditions threaten to morph into a replay of the calamitous loss of family homes during the foreclosure crisis, potentially rivaling even the Great Depression. The news headlines of just the past several days are harbingers for the Legislature of the following facts:

- The perils that now threaten the housing market and home ownership due to massive unemployment and an impending wave of new foreclosures are not to be awaited; they are here now.
- HERA is already receiving a large volume of calls from homeowners all over California who have defaulted or are about to default on their mortgage payments. There is already an almost 8% default rate nationwide on federally backed mortgages alone, which represent about half of the California market. The protections of the federal CARES Act thus do not apply to about half (or more) of the home mortgages in California.
- It will be too late for the Legislature to require payment forbearances, loan modifications, and other measures to prevent the loss of homes once property values have begun to cascade due to a protracted and serious economic downturn and a glut of foreclosed homes on the market; we are already at the eleventh hour for enacting protective measures as soon as possible.
- California cannot depend on the federal government to take the necessary steps to protect Californians; our Legislature must act in the face of a federal process that is acutely compromised by partisanship.

HERA believes that AB 2501 can be refined and amended to better address the needs of homeowners.

Several letters express support for the bill to include additional provisions, including:

- The addition of an urgency clause.
- A stay on debt collection activities during the emergency and 60 days thereafter.

- Specific rent relief available to tenants, including a ban on post-forbearance lump sum payments.
- A right of first refusal to enable tenants, first time homebuyers, community land trusts, and other nonprofit organizations to buy REO properties.
- Making enrollment in forbearance automatic after 60 days of missed payments under a vehicle-secured credit obligation.

The California Reinvestment Coalition and 38 community groups across the state submitted a Support if Amended letter, with support conditioned on the aforementioned provisions related to a right of first refusal on REO properties, ensuring relief is granted automatically after 60 days delinquency, and ensuring strong enforcement provisions.

8) ARGUMENTS IN OPPOSITION

A broad range of financial services providers and business interests related to real estate and car sales write in opposition to the bill. In general, opponents raise concerns that various provisions of the bill will lead to a contraction of credit or similar unintended consequences. Many of the letters focus on one of the following four products covered by the bill: mortgages, automobile financing, PACE assessment contracts, and payday loans.

Mortgages

A coalition of mortgage servicers writes that AB 2501 suffers from fundamental flaws, including that:

The measure 1) struggles from a broad scope and a lack of definitions that may distract from efforts to focus on those truly in need of financial assistance; 2) fails to acknowledge that mortgage servicers are intermediaries that must adhere to contractual obligations and investor guidelines; 3) raises legal and constitutional issues, such as takings and impairment of contracts; 4) introduces the potential for preemption for federally chartered institutions; 5) imposes punitive penalties that are unevenly applied throughout the measure; and, 6) upends a national approach deployed through the CARES Act and federal agencies.

Opponents of the mortgage provisions expressed concerns about the overall effects of the bill on mortgage financing, stating that the bill could increase interest rates and restrict access to credit. Other groups stated that a disruption in the mortgage financing system would have a negative effect on home sales.

Automobile Financing

A coalition of auto lenders writes in opposition to the bill, expressing concern about the effect of the bill on the market for automobile financing. The letters state concerns related to the length of the forbearance period being tied to the uncertain length of the emergency. Lenders express concern that the bill does not contain eligibility criteria for which consumers can access the forbearance program, such as income qualifiers. Lenders also express concern about losing access to the loan collateral created by the moratorium on repossessions during the emergency period and 180 days thereafter. If enacted as drafted today, opponents express concern about the viability of automobile financing markets and the subsequent effect on vehicle sales.

PACE assessment contracts

A coalition of PACE program administrators write in opposition to the bill, arguing that it is unnecessary to address PACE contracts in the bill because the Governor issued a temporarily waiver of interest and penalties on past-due local tax payments. The coalition also states that the bill could cause local governments to default on municipal bonds or debt obligations tied to PACE financings if many property owners enter forbearance. The program administrators also argue that moving a missed payment to the end of the scheduled PACE contract term would require a property owner to make a payment after the useful life of the properties improvements financed by PACE has expired.

Payday loans

The California Financial Service Providers Association (CFSP), the trade association for payday lenders, writes in opposition to the bill. CFSP states that the provisions related to cutting fees and extending repayment terms would cause its member companies to “cease offering deferred deposit transactions in California as the requirements set forth under AB 2501 would result in operational losses.”

REGISTERED SUPPORT / OPPOSITION:**Support**

California Low-income Consumer Coalition
 Consumer Federation of California
 Consumer Reports
 Consumers for Auto Reliability & Safety
 Greenlining Institute
 Housing and Economic Rights Advocates
 National Housing Law Project
 New Economics for Women
 Public Law Center

Support if Amended

ACT-LA
 Anti-Eviction Mapping Project
 ASIAN, Inc.
 CAARMA (Consumer Advocates Against Reverse Mortgage Abuse)
 California Housing Partnership
 California Reinvestment Coalition
 CCEDA
 CCMCA - Concerned Community Members of Chesapeake Apartments, A Tenant Assoc.
 Civic Center Barrio Housing Corp.
 Consumer Action
 East Palo Alto Community Alliance Neighborhood Development Organization (EPACANDO)
 Ephesians Community Development Center
 Esperanza Community Housing Corporation
 Fair Housing Advocates of Northern California
 Faith and Community Empowerment

HOME PRESERVATION AND PREVENTION INC DBA HPP CARES
Housing Rights Committee of San Francisco
Inquilinos Unidos
KIWA
LA Forward
Mission Economic Development Agency (MEDA)
Montebello Housing Development Corporation
Multicultural Real Estate Alliance' for Urban Change
Neighborhood Partnership Housing Services
Northern California Land Trust
Oakland Community Land Trust
Pahali Community Land Trust in East Palo Alto
Parable of Sower Intentional Community Cooperative
REEM MEDIA
Renaissance Entrepreneurship Center
San Diego County Central Committee of the Peace and Freedom Party of California
San Francisco Housing Development Corp.
SF Public Bank Coalition
Shelter Partnership, Inc.
Strategic Actions for Just Economy (SAJE)
The Public Interest Law Project
Working Partnerships USA
Youth Finance Institute if America

Opposition

Alliance for Automotive Innovation
American Bankers Association
American Financial Services Association
Bank Policy Institute
California Association of Realtors
California Bankers Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Community Banking Network
California Credit Union League
California Financial Service Providers Association
California Financial Services Association
California Land Title Association
California Manufactured Housing Institute
California Mortgage Association
California Mortgage Bankers Association
California New Car Dealers Association
Check into Cash INC.
Community Choice Financial
Credit Union National Association
Curo Financial Technologies Corp
FortiFi Financial

Housing Policy Council
Mortgage Bankers Association
PACE Funding Group
PACENation
Purpose Financial
Renew Financial
Renovate America
Securities Industry and Financial Markets Association
United Trustees Association
Wheels Financial Group, LLC D/b/a Loanmart
Ygrene Energy Fund

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