AN AMENDMENT
April 21, 2020
Engrossed Version

Rationale:
All of these changes conform the COVID-19 Response Supplemental Temporary Amendment Act of 2020 to the COVID-19 Supplemental Corrections Emergency Amendment Act of 2020. After expiration of the various COVID-19 related emergency acts, this temporary, as amended, will serve as the base for any subsequent Congressional review emergency legislation.

Amendments:
PART A, Section 601(a). Budget submission requirements. [Line 772]
Section 601(a) is amended by striking the phrase “not later than May 6, 2020” and inserting the phrase “not later than May 12, 2020”.

PART B, Section 202. Mortgage relief. [Lines 1032-1110]
Section 202 is amended as follows:
(1) Strike the term “mortgage servicer” everywhere it appears and insert the term “mortgage lender” in its place.
(2) Subsection (a) is amended as follows:
(A) The lead-in language is amended by striking the phrase “that holds mortgage servicing rights to” and inserting the phrase “that makes or holds” in its place.
(B) Paragraph (1) is amended to read as follows:
“(1) Grants at least a 90-day deferment of the monthly payment of principal and interest on a mortgage for borrowers;”.
(3) Subsection (d) is amended by adding a new paragraph (3) to read as follows:
“(3)(A) A mortgage lender who approves an application for deferment pursuant to this section shall, on or before May 8, 2020, provide to the Commission, notice of all approved applications to the Commissioner on a form prescribed by the Commissioner and such notice shall include the percentage of mortgage deferment approved for and accepted by each borrower. After the initial submission prescribed herein, a mortgage lender who approved an application for deferment pursuant to this section shall...
provide the Commissioner with a list of all new approvals in 15-day intervals for the duration of the public health emergency and for 60 days thereafter. The Commissioner may request information on the number and nature of approvals between 15-day intervals.

“(B) The Commissioner shall maintain a publicly available list of approved commercial mortgage loan deferral applications. The requirement of this subparagraph may be satisfied by posting to the Department of Insurance, Securities, and Banking website.”.

(4) Subsection (g) is amended as follows:

(A) The lead-in language is amended by striking the phrase “tenant:" and inserting the phrase “tenant shall, within 5 days of the approval, provide notice of the deferral to all tenants, and:" in its place.

(B) Paragraphs (1) and (2) are amended to read as follows:

“(1) Shall provide a reduction in the rent charged for the property to any qualified tenant during the period of time in which there is mortgage deferral in place. The amount of the reduction shall be proportional to the deferred mortgage amount paid by the borrower to the mortgage lender as a percentage of total expenses reported in the borrower’s 2019 Income and Expense report provided to the Office of Tax and Revenue; and

“(2) May require the qualified tenant to repay the difference in the amount of the rent as stated in the lease and the reduced rent, without interest or fees, within 18 months, or upon cessation of the tenancy, whichever occurs first; and”

(C) A new paragraph (3) is added to read as follows:

“(3) The borrower shall not report to a credit bureau any delinquency or other derogatory information that occurs as a result of a qualified tenant's exercise of and compliance with the terms of this subsection.”.

(5) Subsection (k) is amended as follows:

(A) The existing text is designated as paragraph (1).

(B) A new paragraph (3) of the newly designated subsection (l) is amended to read as follows:

“(3) "Mortgage lender" means any person makes a mortgage loan to any person or who engages in the business of servicing mortgage loans for others or collecting or otherwise receiving mortgage loan payments directly from borrowers for distribution to any other person. A mortgage lender does not include the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association.”.

(C) Paragraph (4) of the newly designated subsection (l) is repealed.

(6) A new subsection (k) is added to read as follows:

“(k) A mortgage lender that violates the provisions of this section shall be subject to penalties prescribed in section 19 of the Mortgage Lender and Broker Act of 1996, effective September 9, 1996 (D.C. Law 11-155; D.C. Official Code § 26-1118).”.

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PART B, Section 203. Tenant Protections. [Line 1176-1177]

Section 203 is amended by adding a new subsection (e) to read as follows:

“(e) Notwithstanding any other provision of law, a rent increase for a commercial property shall be prohibited during a period for which a public health emergency has been declared pursuant to section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01), and for 30 days thereafter.

PART B, Section 207(b), Debt collection. [Line 1375]

Subsection (b), amendatory paragraph (m) is amended as follows:

(a) Paragraph (1) is amended by striking the phrase “debtor for the communication” and inserting the phrase “debtor for the communication or is the mailing of monthly statements or payment receipts related to an existing payment plan” in its place.

(b) Paragraph (2) is amended as follows:

(1) Subparagraph (B) is amended by striking the phrase “; or” and inserting a semicolon in its place.

(2) Subparagraph (C) is amended by striking the phrase “real property.” and inserting the phrase “real property; or” in its place.

(3) A new subsection (D) is added to read as follows:

“(D) Receiving and depositing payments the debtor chooses to make during the public health emergency.”

PART B, Section 208(b)(2), Carry out and delivery. [Line 1410]

Amendatory subparagraph (C) is amended by striking the phrase “D/H” and inserting the phrase “D/H, C/N, D/N” in its place.

PART B, Section 401(a)(1)(B), Liability. [Lines 1742-1750]

Amendatory paragraph (3A) is amended to read as follows:

“(3A)(A)(i) Exempt from liability in a civil action a healthcare provider, first responder, or volunteer who renders care or treatment to a potential, suspected, or diagnosed individual with COVID-19 for damages resulting from such care or treatment of COVID-19, or from any act or failure to act in providing or arranging medical treatment for COVID-19 during a declared public-health emergency;

“(ii) Exempt from liability in a civil action a donor of time, professional services, equipment, or supplies for the benefit of persons or entities providing care or treatment for COVID-19 to a suspected or diagnosed individual with COVID-19, or care for the family members of such individuals for damages resulting from such donation during a declared public-health emergency; or
“(iii) Exempt from liability in a civil action a contractor or subcontractor on a District government contract that has contracted to provide health care services related to a declared public health emergency related to the District government’s COVID-19 response.

“(B) The limitation on liability provided by subparagraph (A) of this paragraph applies to any healthcare provider, first responder, volunteer, or District government contractor or subcontractor of a District government contractor (“provider”), including a party involved in the healthcare process at the request of a health-care facility or the District government, and within the scope of the provider’s employment or organization’s purpose, or contractual or voluntary service, even if outside the provider’s professional scope of practice, state of licensure, or with an expired license, who:

“(i) Prescribes or dispenses medicines for off-label use to attempt to combat the COVID-19 virus, in accordance with the federal Right to Try Act, United States Public Law 115-176;

“(ii) Provides direct or ancillary health-care services or health care products, including direct patient care, testing, equipment or supplies, consultations, triage services, resource teams, nutrition services, and physical, mental, and behavioral therapies; or

“(iii) Utilizes equipment or supplies outside of the product’s normal use for medical practice and the provision of health-care services to combat the COVID-19 virus; or

“(C) The limitation on liability provided by subparagraph (A) of this paragraph shall not extend to:

“(i) Acts or omissions that constitute a crime, actual fraud, actual malice, recklessness, breach of contract, gross negligence, or willful misconduct; or

“(ii) Acts or omissions unrelated to direct patient care.

“(D) This limitation on liability extends to acts, omissions, and donations performed or made during a period of time for which the Mayor has declared a public health emergency pursuant to section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01), and to damages that ensue at any time from acts, omissions and donations made during the emergency.

“(E) This paragraph does not limit the applicability of other limitations on liability, including qualified and absolute immunity, that may otherwise apply to a person covered by this section, nor does this section limit the authority of the Mayor under section 5a(d) of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01(d)).
MEMORANDUM

TO: Chairman Phil Mendelson

FROM: Nicole L. Streeter, General Counsel

DATE: April 21, 2020

RE: Legal sufficiency determination for Amendment to Bill 23-734, the COVID-19 Response Supplemental Amendment Act of 2020

The measure is legally and technically sufficient for Council consideration.

The amendment would amend the engrossed version of the COVID-19 Response Supplemental Amendment Act of 2020 as follows:

- Amends Part A, section 601(a) to clarify that the Fiscal Year 2021 Budget Submission Requirements Resolution of 2019, effective March 17, 2020 (Res. 23-268; 66 DCR 15372), is amended to require that the Mayor submit to the Council the proposed Fiscal Year 2021 budget no later than May 12, 2020, unless another date is set by subsequent resolution of the Council.

- Amends Part B, section 202 to provide that: 1) its mortgage-deferment requirements apply to mortgage lenders, which includes certain entities that hold, as well as make, mortgages; 2) the required 90-day deferment of mortgage payments applies to monthly payments of principal and interest; 3) a mortgage lender who approves an application for deferment pursuant to section 202 shall provide notice to the Commissioner of Insurance, Securities, and Banking of all approved deferment applications on or before May 8, 2020 and on a regular basis thereafter; 4) the Commissioner of Insurance, Securities, and Banking shall maintain a publicly available list of approved commercial mortgage loan deferral applications; 5) a borrower receiving a mortgage deferral shall provide notice to tenants within 5 days; 6) a rent reduction based on a borrower’s mortgage deferment shall be proportional to the deferred mortgage amount paid by the borrower to the mortgage lender as a percentage of total expenses reported in the borrower’s 2019 Income and Expense report; 7) a qualified tenant who is required to repay the difference between rent as stated in the lease and reduced rent, as provided for in section
202(g), must do so no later than upon cessation of the tenancy; 8) a borrower is precluded from reporting to a credit bureau any delinquency or other derogatory information that occurs as a result of a qualified tenant's exercise of and compliance with the terms of section 202(g); and 9) a mortgage lender that violates the terms of the section shall be subject to the penalties prescribed in section 19 of the Mortgage Lender and Broker Act of 1996, effective September 9, 1996 (D.C. Law 11-155; D.C. Official Code § 26-1118).

• Amends Part B, section 203 by adding a new subsection (e), providing that a rent increase for a commercial property shall be prohibited during a period for which a public health emergency has been declared pursuant to section 5a of the District of Columbia Public Emergency Act of 1980, effective March 5, 1981 (D.C. Law 3-149; D.C. Official Code § 7-2304.01), and for 30 days thereafter.

• Amends Part B, section 207(b), which amends D.C. Official Code § 28-3814, to clarify that: 1) a debt collector shall not be deemed to have initiated a communication with a debtor if the communication consists of the mailing of monthly statements or payment receipts related to an existing payment plan; and 2) the requirement that a debt collector not initiate certain communications with a debtor shall not apply to receiving and depositing payments that a debtor chooses to make during a public health emergency.

• Amends Part B, section 208(b)(2), which amends D.C. Official Code § 25-113(a)(3)(C), to add C/N and D/N licensees to the licensees permitted to sell beer, wine, and spirits, on a carry-out or delivery basis.

• Amends Part B, section 401(a)(1)(B), which amends section 5a(d) of the District of Columbia Public Emergency Act of 1980, effective March 5, 1981 (D.C. Law 3-149; D.C. Official Code § 7-2304.01(d)), to provide that a public health emergency executive order may include terms that exempt certain health care providers, first responders, volunteers, donors, and District government contractors and subcontractors from liability in civil actions related to the public health emergency declared in connection with COVID-19. The amendment further: 1) sets forth specific examples of conduct to be immunized; 2) carves out certain actions from the immunity conferred; 3) clarifies the scope of the immunity as it relates to the declaration of a public health emergency pursuant to section 5a of the District of Columbia Public Emergency Act of 1980, effective March 5, 1981 (D.C. Law 3-149; D.C. Official Code § 7-2304.01), and 4) clarifies that this immunity does not limit either the applicability of other forms of immunity under District law or the authority of the Mayor under section 5a of the District of Columbia Public Emergency Act of 1980,
I am available if you have any questions.
COUNCIL OF THE DISTRICT OF COLUMBIA
Office of the Budget Director

Jennifer Budoff
Budget Director

FISCAL IMPACT STATEMENT

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jennifer Budoff, Budget Director

DATE: April 20, 2020

SHORT TITLE: Bill 23-734, the “COVID-19 Response Supplemental Temporary Amendment Act of 2020” (engrossed version)

TYPE: Amendment

REQUESTING OFFICE: Councilmember Phil Mendelson

Conclusion
The amendment does not have an adverse impact on the District’s budget and financial plan because there are no costs associated with implementing this amendment.

Background
On March 11, 2020, the Mayor of the District of Columbia issued Mayor’s Order 2020-45 and 2020-46, declaring a public emergency and a public health emergency (PHE) in the District due to the imminent threat to the health, safety, and welfare of District residents posed by the spread of COVID-19. That order is currently in effect through May 15, 2020.


On April 20, Councilmember McDuffie filed Bill 23-735, the Mortgage Relief Program Emergency Amendment Act of 2020, which would amend the mortgage relief provided in section 202 of the second COVID-19 emergency. Later that day, Chairman Mendelson circulated an Amendment in the Nature of a Substitute for Bill 23-735, which renamed the measure the “COVID-19 Supplemental Corrections Emergency Amendment Act of 2020” in order to reflect the additional changes made therein to the second COVID-19 emergency.
The present amendment to the engrossed version of Bill 23-734, the COVID-19 Response Supplemental Temporary Amendment Act of 2020 includes all the provisions of the ANS for Bill 23-735:

1. Amends Part A, section 601(a) (budget submission requirements) to change the date for the Fiscal Year 2021 budget submission no later than May 6, 2020 to no later than May 12, 2020;

2. Amends Part B, section 202 (mortgage relief) to reflect all the changes to the mortgage relief provisions made in Bill 23-735, as amended by the ANS:
   a. Replaces the term “mortgage servicer” with “mortgage lender” wherever it appears and defines the latter term;
   b. Clarifies that the deferment applies to the borrower’s monthly payment of principal and interest;
   c. Provides a start date and subsequent timeline for a mortgage lender to provide notice to the Department of Insurance, Securities, and Banking of the mortgage deferrals they have issued, including the percentage of applications approved;
   d. Requires a landlord to notify tenants within 5 days of receiving a mortgage deferral and clarifies the rent reduction that tenants are entitled to if their landlord received a mortgage deferral;
   e. Authorizes the landlord to require repayment within a certain timeframe, but without interest or fees, and prohibits the landlord from negative reporting to a credit bureau; and
   f. Establishes penalties for mortgage lenders who violate the provisions of section 202;

3. Amends Part B, section 203 (tenant protections) to extend rent increase prohibitions to commercial properties;

4. Amends Part B, section 207(b) (debt collection) to clarify that prohibited communication pertaining to debt collection does not include the mailing of monthly statements or payment receipts related to an existing payment plan or receiving and depositing payments the debtor chooses to make during the PHE;

5. Amends Part B, section 208(b)(2) (carry out and delivery) to expand the ability to provide alcoholic beverages in closed containers through carry-out and delivery, provided such beverages accompany prepared food, to holders of an on-premises retailer class C/N or D/N license (nightclubs);

6. Amends Part B, section 401(a)(1)(B) (liability) to narrow the exemptions from liability in a civil action related to certain categories of individuals; delineate the circumstances in which each category of individual must be operating; enumerate the activities that are covered under the limitation of liability; and place other restrictions on the limited liability.

There were no costs associated with implementing the provisions of the ANS to Bill 23-735. Accordingly, there are no costs to this corresponding amendment to Bill 23-734.