AMENDMENT IN THE NATURE OF A SUBSTITUTE (MENDELSOHN)
April 21, 2020

A BILL

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis, the COVID-19 Response Supplemental Emergency Amendment Act of 2020 to include mortgage lenders as covered entities, require notice of approved deferral applications, and to clarify the amount a landlord may require a tenant to repay following the deferral period; to prohibit commercial rent increases during the public health emergency; to allow nightclubs to deliver food with beer, wine or liquor; to clarify provisions in D.C. Act 23-286 pertaining to debt collection and civil liability; and to set the budget submission date as May 12, 2020.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “COVID-19 Supplemental Corrections Mortgage Relief Emergency Amendment Act of 2020”.

Sec. 2. Section 202 of The COVID-19 Response Supplemental Emergency Amendment Act of 2020, effective April 10, 2020 (D.C. Act 23-286; 66 DCR __), is amended as follows:

(a) Section 202 is amended as follows:

(1a) Strike the term “mortgage servicer” everywhere it appears and insert the term “mortgage lender” in its place.

(2b) Subsection (a) is amended as follows:

(A1) 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.

(B2) Paragraph (1) is amended to read as follows:
“(1) Grants at least a 90-day interest-free deferment of the monthly payment of principal and interest on a mortgage for borrowers; and.”

______(3e) 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 within 15 days after the effective date of this act, 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.”.

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

______(A1) 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.

______(B2) 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 at the end of the lease term, whichever occurs first; and”

(C3) 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 repayment pursuant to subsection (g)(2) of this section.”.

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

(A1) The existing text is designated as paragraph (1).

(B2) 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.”.

(C3) Paragraph (4) of the newly designated subsection (l) is repealed.

(6f) 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).”.

(b) Subsection 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.”

(c) Section 401(b)(1) is repealed:

Sec. 3. Limitation on liability for COVID-19 actions.

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)), is amended as follows:

(a) Paragraph (3) is amended by striking the phrase “; and” and inserting a semicolon in its place.

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

“(3A) Exempt any health-care provider, or first responder, volunteer, donor, or District government contractor or subcontractor providing services arising out of a contract with the District of Columbia from civil liability for damages for actions taken while acting within the scope of their employment or organization’s purpose, voluntary service, or scope of work to implement the provisions of the District of Columbia response plan and of An Act To authorize the Commissioners of the District of Columbia to make regulations to prevent and control the spread of communicable and preventable diseases, approved August 11, 1939 (53 Stat. 1408; D.C. Official Code § 7-131 et seq.), except in instances of gross negligence, and solely for actions taken during the public health emergency; and”

Sec. 4. Carry out and delivery.
Section 25-113(a)(3)(C) of the District of Columbia Official Code is amended by striking the phrase “D/H” and inserting the phrase “D/H, C/N, D/N” in its place.

Sec. 5. Debt collection.

Section 28-3814(m) of the D.C. Official Code 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.”

Sec. 6. Budget submission date.

The Fiscal Year 2021 Budget Submission Requirements Resolution of 2019, effective March 17, 2020 (Res. 23-268; 66 DCR 15372), is amended by striking the phrase “not later than May 6, 2020,” and inserting the phrase “not later than May 12, 2020, unless another date is set by subsequent resolution of the Council” in its place.

Sec. 7. Applicability.

This act shall apply as of March 11, 2020.

Sec. 83. Fiscal impact statement.
The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact
statement required by section 4a of the General Legislative Procedures Act of 1975, approved

Sec. 94. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the
Mayor, action by the Council to override the veto), and shall remain in effect for no longer than
90 days, as provided for emergency acts of the Council of the District of Columbia in section
412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;
D.C. Official Code § 1-204.12(a)).
MEMORANDUM

TO: Chairman Phil Mendelson

FROM: Nicole L. Streeter, General Counsel

DATE: April 21, 2020

RE: Legal sufficiency determination for Amendment in the Nature of a Substitute to Bill 23-735, the Mortgage Relief Emergency Amendment Act of 2020

The measure is legally and technically sufficient for Council consideration.

The amendment in the nature of a substitute would amend the introduced version of the Mortgage Relief Emergency Amendment Act of 2020 as follows:

- Amends section 2 by designating the existing text, which amends section 202 of the COVID-19 Response Supplemental Emergency Amendment Act of 2020, effective April 10, 2020 (D.C. Act 23-286; 67 DCR ___) (“COVID-19 Supplemental Emergency Act”), as subsection (a) of section 2 and clarifying that: 1) the entities that must develop a deferment program for borrowers pursuant to section 202(a) include mortgage lenders that hold, as well as make, mortgages; 2) a mortgage lender who approves an application for deferment pursuant to section 202 provides notice, pursuant to section 202(d), of all approved applications on or before May 8, 2020; 3) 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; and 4) 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).

- Adds a new section 2(b) that amends section 203 of the COVID-19 Supplemental Emergency Act 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.
• Adds a new section 2(c) that repeals section 401(b)(1) of the COVID-19 Supplemental Emergency Act, which had amended 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 could include terms that exempt certain persons from civil liability for certain actions.

• Adds a new section 3 to amend 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 any health-care provider, or first responder, volunteer, donor, or District government contractor or subcontractor providing services arising out of a contract with the District of Columbia from civil liability for damages for actions taken while acting within the scope of their employment or organization’s purpose, voluntary service, or scope of work to implement the provisions of the District of Columbia response plan and of An Act To authorize the Commissioners of the District of Columbia to make regulations to prevent and control the spread of communicable and preventable diseases, approved August 11, 1939 (53 Stat. 1408; D.C. Official Code § 7-131 et seq.), except in instances of gross negligence, and solely for actions taken during the public health emergency.

• Adds a new section 4 to amend 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.

• Adds a new section 5 to amend D.C. Official Code § 28-3814(m) 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.

• Adds a new section 6 to amend the Fiscal Year 2021 Budget Submission Requirements Resolution of 2019, effective March 17, 2020 (Res. 23-268; 66 DCR 15372), 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.

• Adds a new section 7 to make the Mortgage Relief Emergency Amendment Act of 2020 applicable as of March 11, 2020.
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 23-735, the “Mortgage Relief Program Emergency Amendment Act of 2020” now the “COVID-19 Supplemental Corrections Emergency Amendment Act of 2020”

TYPE: Amendment in the Nature of a Substitute

REQUESTING OFFICE: Councilmember Phil Mendelson

Conclusion
The amendment in the nature of a substitute (ANS) does not have an adverse impact on the District’s budget and financial plan because there are no costs associated with its implementation.

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.


The ANS makes several changes to Bill 23-735:

1. Renames the measure the COVID-19 Supplemental Corrections Emergency Amendment Act of 2020, as the ANS expands the provisions of Bill 23-735 with other amendments to the second COVID-19 emergency;
2. Makes minor clarifying changes to the mortgage relief provisions of Bill 23-735, including providing a date certain for a mortgage lender to provide notice to the Department of Insurance, Securities, and Banking;

3. Amends section 203 of the second COVID-19 emergency to extend the prohibition on rent increases to commercial tenants for the duration of the PHE and for 30 days thereafter;

4. Repeals section 401(b)(1) of the second COVID-19 emergency, related to civil liability during a PHE for actions taken during the PHE, and replaces it with language that exempts any “health-care provider, or first responder, volunteer, donor, or District government contractor or subcontractor” providing certain services, rather than to any “person, employee of the District of Columbia not otherwise exempt under existing law, or contractor” providing certain services;

5. Expands 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. Clarifies 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;

7. Sets the date for the Fiscal Year 2021 budget submission as May 12, 2020; and

8. Includes an applicability date of March 11, 2020 for all the provisions of Bill 23-735.

These provisions do not impose any implementation costs upon the District government.