

STATE OF NEW YORK

10901

IN ASSEMBLY

August 17, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Epstein) --
read once and referred to the Committee on Small Business

AN ACT to suspend rent payments for certain tenants in response to the
outbreak of coronavirus

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. For the purposes of this act:
- 2 (a) "actual income" means for a not-for-profit corporation employing
3 twenty-five or less full-time employees or full-time equivalent employ-
4 ees or for a small business incorporated and resident in this state,
5 independently owned and operated, not dominant in its field, and employs
6 twenty-five or less full-time employees or full-time equivalent employ-
7 ees, all revenue, including emergency federal, state or local assist-
8 ance, or any other form of income that may be used to pay rent, but
9 excluding restricted grants;
- 10 (b) "landlord" means the person or entity to whom a covered tenant
11 owes rent;
- 12 (c) "rent" means the amount charged in consideration for the use and
13 occupancy of real property pursuant to a written or oral rental agree-
14 ment or statute;
- 15 (d) "state of emergency" means the state of emergency declared by
16 executive order 202 that began on March 7, 2020 and any further amend-
17 ments or modifications, and as may be further extended pursuant to
18 section 28 of the executive law;
- 19 (e) "covered tenant" includes a tenant that is a not-for-profit corpo-
20 ration employing twenty-five or less full-time employees or full-time
21 equivalent employees, or a tenant that is a small business incorporated
22 and resident in this state, independently owned and operated, not domi-
23 nant in its field, and employs twenty-five or less full-time employees
24 or full-time equivalent employees; and
- 25 (f) "covered period" means March 7, 2020 until the date on which none
26 of the provisions that closed or otherwise restricted public or private
27 businesses or places of public accommodation, or required postponement
28 or cancellation of all non-essential gatherings of individuals of any

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD16906-05-0

1 size, for any reason in Executive Orders 202.3, 202.4, 202.5, 202.6,
2 202.7, 202.8, 202.10, 202.11, 202.13 or 202.14, as extended by Executive
3 Orders 202.28 and 202.31 and as further extended by any future Executive
4 Order, issued in response to the COVID-19 pandemic continue to apply in
5 the county in which the covered tenant is located.

6 § 2. (a) (i) Notwithstanding any other provision of law, rule or regu-
7 lation to the contrary, any covered tenant in the state that has been
8 forced to close their place of business, or whose business activities
9 have been substantially curtailed resulting in a loss of income as a
10 result of government ordered restrictions in response to the outbreak of
11 coronavirus disease 2019 (COVID-19), shall be responsible for rent
12 payments up to twenty percent of the covered tenant's actual income for
13 the thirty days prior to the date such rent was due or one-third of
14 their contractual rent, whichever is less, per month for the duration of
15 the covered period through one hundred eighty days following the final
16 day of the covered period. A landlord of a covered tenant shall waive
17 twenty percent of the contractual rent per month for the duration of one
18 hundred eighty days following the final day of the covered period.

19 (ii) Where a covered tenant is authorized to pay an amount that is
20 less than their contractual or statutory rent pursuant to this act, the
21 covered tenant shall provide the landlord and the department of finan-
22 cial services with a sworn affidavit affirming the covered tenant's
23 actual income for the thirty days prior to the date such rent was due
24 for each month for which the tenant is seeking a reduced payment of rent
25 due to loss of income as a result of government ordered restrictions in
26 response to the outbreak of coronavirus disease 2019 (COVID-19). Upon
27 the verification of such statement by the superintendent of the depart-
28 ment of financial services or his or her agent, such payment shall
29 absolve the covered tenant of any further obligation to pay rent and any
30 difference between the rent that would have been contractually or statu-
31 torily owed and the amount paid pursuant to this paragraph shall be
32 waived, except where a covered tenant later receives additional income,
33 such rent obligations shall be recalculated.

34 (iii) In a summary proceeding for the non-payment of rent under arti-
35 cle 7 of the real property actions and proceedings law, a covered tenant
36 may raise a payment made pursuant to this act as a defense to non-pay-
37 ment. If the amount of the covered tenant's actual income is in dispute,
38 the court shall review documentation of the covered tenant's income in
39 camera, unless otherwise deemed necessary by the court. Notwithstanding
40 any other provision of law to the contrary customary documentation of
41 income shall constitute prima facie evidence of the covered tenant's
42 actual income and shall be presumptively admissible in such summary
43 proceeding.

44 (b) Any covered tenant whose lease expires during the covered period
45 shall have the option of extending such lease under the terms existing
46 prior to the expiration of the lease for a period of up to one hundred
47 eighty days after the expiration of the state of emergency.

48 (c) Late fees, interest or other penalties shall not be collectable
49 for rent accrued during the existence of the state of emergency.

50 § 3. (a) The superintendent of the department of financial services is
51 hereby authorized and directed to establish and implement an interim
52 commercial rent relief program to support covered tenants and landlords
53 impacted by the COVID-19 pandemic. Such program shall be provided up to
54 \$500,000,000 of monies that have been allocated to the state of New
55 York by the federal government.

1 (b) Notwithstanding any other law to the contrary, a landlord that has
2 lost rental income pursuant to this act and has not been fully compen-
3 sated by emergency federal, state or local assistance, may apply to the
4 department of financial services for relief. The superintendent of the
5 department of financial services may, upon satisfaction of the veracity
6 of the landlord's application and to the extent possible, authorize the
7 distribution of any unrestricted federal emergency assistance monies
8 provided to the state that have not otherwise been obligated, to any
9 such landlord in the amount of the balance of rental income lost after
10 the twenty percent of the contractual rent waived by the landlord and
11 any amount paid by a covered tenant pursuant to section two of this act.
12 The superintendent of the department of financial services shall promul-
13 gate rules and regulations to effectuate the provisions of this act.

14 § 4. Notwithstanding any other law to the contrary, no court shall
15 accept for filing a petition to commence a new summary proceeding to
16 recover possession of real property under article 7 of the real property
17 actions and proceedings law for non-payment of rent due to loss of
18 income as a result of government ordered restrictions in response to the
19 outbreak of coronavirus disease 2019 (COVID-19) for at least thirty days
20 following the expiration of the state of emergency; provided any statute
21 of limitations applicable to such summary proceedings shall be tolled
22 for thirty days; provided further, however, that the tenant shall
23 provide a sworn affidavit affirming the covered tenant's loss of income
24 as a result of government ordered restrictions in response to the
25 outbreak of coronavirus disease 2019 (COVID-19). In no event shall late
26 or reduced rent payments during the state of emergency constitute the
27 basis for a summary holdover proceeding for the chronic nonpayment of
28 rent.

29 § 5. This act shall take effect immediately and shall be deemed to
30 have been in full force and effect on and after March 7, 2020.