STATE OF NEW YORK

8121--A

IN SENATE

March 23, 2020

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs -- committee discharged and said bill committed to the Committee on Commerce, Economic Development and Small Business -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to establishing the state of emergency minority and women owned business enterprises loan and grant program relating to novel coronavirus (COVID-19)

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

Section 1. The executive law is amended by adding a new section 29-l to read as follows:

§ 29-l. State of emergency minority and women owned business enterprises loan and grant program. 1. Definitions. As used in this section, the following terms shall have the following meanings:

(a) "Affected business or organization" means and includes both minority and women owned business enterprises operating and located within this state at the commencement of the state of emergency;

(b) "Bank" means a bank as such term is defined in subdivision one of section two of the banking law;

(c) "Credit union" means a credit union as such term is defined in subdivision nine of section two of the banking law;

(d) "Corporation" means the urban development corporation in cooperation with the empire state development corporation;

(e) "Department" means the department of financial services;

(f) "Eligible financial institution" means a bank or credit union that has a physical presence in this state and is in good standing;

(g) "Grace period" means the ninety-day period after a state of emergency is over; and

(h) "State of emergency" means the period declared by executive order 202 on March 7, 2020 relating to the novel coronavirus (COVID-19).

2. State of emergency minority and women owned business enterprises loan and grant program. (a) The corporation shall administer a state of

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

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emergency minority and women owned business enterprises loan and grant program to guarantee the repayment of loans made by an eligible financial institution to an eligible affected business pursuant to this section. Subject to the cessation of new claim approvals under paragraph (d) of subdivision six of this section, the corporation shall submit all approved claims to the comptroller, who shall pay from the general fund any and all claims submitted by the corporation.

(b) Any bank or credit union may apply to the department to participate in the loan guarantee program. Not later than one business day after receiving the application, the department shall determine whether the financial institution is an eligible financial institution and immediately notify the bank or credit union of such determination. Any eligible financial institution may make loans to affected businesses in accordance with this section.

(c) Each eligible financial institution that makes a loan pursuant to this section, shall notify the department and corporation in writing not later than one business day after making the loan, specifying such information about the borrower as the department and corporation may request.

3. Loan and grant program. An eligible financial institution or corporation may make a loan or grant to an affected business, in the following manner:

(a) A minority and women owned business enterprise with fewer than one hundred employees who have seen sales decreases of twenty-five percent or more will be eligible for zero interest loans of up to seventy-five thousand dollars to help mitigate losses in profit; or

(b) A minority and women owned business enterprise with fewer than five employees will be eligible for a grant to cover forty percent of payroll costs for two months up to ten thousand dollars to help retain employees.

4. Loan and grant eligibility. An eligible financial institution or corporation may make a loan or grant to an affected business, provided:

(a) The affected business has provided to the eligible financial institution or corporation proof satisfactory to such institution or corporation that such affected business is an affected business located within the state of New York.

(b) The amount of the loan shall not exceed seventy-five thousand dollars and the amount of the payroll cost assistance grant shall not exceed ten thousand dollars.

(c) The loan is made in accordance with the eligible financial institution's and the corporation's underwriting policy and standards, provided further that the affected business's creditworthiness shall not be a factor used for the purposes of determining eligibility.

(d) The loan agreement shall not (i) require repayment during the grace period, or (ii) charge interest on the principal amount before or during the grace period or for one hundred eighty days after the grace period, provided after such one hundred eighty-day period, the eligible financial institution or corporation may charge interest or fees in accordance with such financial institution's or corporation's lending policy and the terms of the underlying loan agreement.

(e) The loan agreement shall require that the affected business repay the loan in full not later than one hundred eighty days after the end of the grace period by making at least three, and no more than six, equal installment payments. The loan agreement shall not contain a fee or penalty for the prepayment or early payment of the loan.

(f) The eligible financial institution or corporation shall offer credit counseling services or refer such affected business to nonprofit credit counselors.

5. Additional loans. An affected business who has received a loan pursuant to this section may apply to the same eligible financial institution or corporation for an additional loan for each thirty-day period such minority or women owned business enterprise remains an affected business, provided no affected business may receive more than three loans under the program. Each additional loan shall be made in accordance with subdivision four of this section.

6. Collection of loans. (a) On and after one hundred eighty days from the end of the grace period, an eligible financial institution or corporation that has made a good-faith effort to collect the outstanding principal from a loan issued pursuant to this section may make a claim to the department for recovery of an amount equal to the outstanding principal for such loan. Prior to the department's approving and submitting a claim to the comptroller, such eligible financial institution or corporation shall demonstrate to the satisfaction of the department that the eligible financial institution or corporation has made a good-faith effort to collect the outstanding principal from the affected business in accordance with such financial institution's or corporation's loan servicing and collection policies. Upon payment of a claim, the loan shall be assigned to the state, and the department shall have the right to continue collection efforts on the loan.

(b) The department shall maintain records in the regular course of administration of the loan guarantee program, including a record of loans issued and of payments made to honor loan guarantees issued under this section. The department shall regularly review such records to determine total loans issued and identify duplicative applications.

(c) The department may terminate any loan guarantee if the eligible financial institution misrepresents any information pertaining to the guarantee or fails to comply with any requirements of this section in connection with the guarantee of the underlying loan.

(d) If the amounts expended to honor loan guarantees under the program exceed ten percent of total loans issued, the department shall immediately cease to approve claims and shall notify the comptroller and each eligible financial institution and corporation of the total amount of payments made and that the department has ceased honoring loan guarantees.

(e) Any interest deferred or not charged related to a loan issued pursuant to this section shall be exempt from all state taxes that may be applicable to such interest amounts as they relate to an affected business. Eligible financial institutions and the corporation shall disclose to affected business borrowers in the signed affidavit or loan documents that there may be federal tax consequences to the program loans and grants.

(f) No new loan applications shall be submitted under the program after the state of emergency ends. The program shall expire upon the repayment of all loans made under the program and, for all loans in default, the repayment of claims made under the program, or the cessation of new claim approvals under paragraph (d) of this subdivision.

§ 2. This act shall take effect immediately.