

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:

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

3 § 29-1. State of emergency minority and women owned business enter-
4 prises loan and grant program. 1. Definitions. As used in this section,
5 the following terms shall have the following meanings:

6 (a) "Affected business or organization" means and includes both minor-
7 ity and women owned business enterprises operating and located within
8 this state at the commencement of the state of emergency;

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

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

13 (d) "Corporation" means the urban development corporation in cooper-
14 ation with the empire state development corporation;

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

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

18 (g) "Grace period" means the ninety-day period after a state of emer-
19 gency is over; and

20 (h) "State of emergency" means the period declared by executive order
21 202 on March 7, 2020 relating to the novel coronavirus (COVID-19).

22 2. State of emergency minority and women owned business enterprises
23 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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1 emergency minority and women owned business enterprises loan and grant
2 program to guarantee the repayment of loans made by an eligible finan-
3 cial institution to an eligible affected business pursuant to this
4 section. Subject to the cessation of new claim approvals under para-
5 graph (d) of subdivision six of this section, the corporation shall
6 submit all approved claims to the comptroller, who shall pay from the
7 general fund any and all claims submitted by the corporation.

8 (b) Any bank or credit union may apply to the department to partic-
9 ipate in the loan guarantee program. Not later than one business day
10 after receiving the application, the department shall determine whether
11 the financial institution is an eligible financial institution and imme-
12 diately notify the bank or credit union of such determination. Any
13 eligible financial institution may make loans to affected businesses in
14 accordance with this section.

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

20 3. Loan and grant program. An eligible financial institution or corpo-
21 ration may make a loan or grant to an affected business, in the follow-
22 ing manner:

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (d) If the amounts expended to honor loan guarantees under the program
35 exceed ten percent of total loans issued, the department shall imme-
36 diately cease to approve claims and shall notify the comptroller and
37 each eligible financial institution and corporation of the total amount
38 of payments made and that the department has ceased honoring loan guar-
39 antees.

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

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

52 § 2. This act shall take effect immediately.