STATE OF NEW YORK

8538

IN SENATE

June 9, 2020

Introduced by Sen. KAPLAN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general obligations law and the banking law, in relation to providing financial consumer protections for small businesses

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

Section 1. The general obligations law is amended by adding a new section 5-522 to read as follows:

§ 5-522. Application to small businesses. All rights and privileges granted under this title to persons shall also apply to small businesses. For purposes of this section, a small business shall be deemed to be one which is resident in this state, independently owned and operated, not dominant in its field and employs one hundred or less persons.

§ 2. The general obligations law is amended by adding a new section 5-702-a to read as follows:

§ 5-702-a. Requirements for use of plain language in small business loans. a. For the purposes of this section the term "small business" shall mean a business in this state with not more than one hundred employees that is a sole proprietorship, limited liability company or closely held corporation acting without the assistance of counsel.

b. Every written agreement for a loan between a creditor and a borrower who is a small business must be:

1. written in a clear and coherent manner using words with common and every day meanings; and

2. appropriately divided and captioned by its various sections.

Any creditor who fails to comply with this subdivision shall be liable to a small business who is a party to a written agreement governed by this subdivision in an amount equal to any actual damages sustained plus a penalty of fifty dollars. The total class action penalty against any such creditor shall not exceed ten thousand dollars in any class action or series of class actions arising out of the use by a creditor of an agreement which fails to comply with this subdivision. No action under this subdivision may be brought after both parties to the agreement have

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

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fully performed their obligation under such agreement, nor shall any creditor who attempts in good faith to comply with this subdivision be liable for such penalties. This subdivision shall not apply to loans involving amounts in excess of two hundred fifty thousand dollars nor prohibit the use of words or phrases or forms of agreement required by state or federal law, rule or regulation or by a governmental instrumentality.

c. A violation of the provisions of subdivision b of this section shall not render any such agreement void or voidable nor shall it constitute:

1. a defense to any action or proceeding to enforce such agreement; or

2. a defense to any action or proceeding for breach of such agreement.

d. In addition to any other provision of this section, whenever the attorney general finds that there has been a violation of this section, he or she may proceed as provided in subdivision twelve of section sixty-three of the executive law.

§ 3. Section 173 of the banking law is amended by adding a new subdivision 4 to read as follows:

4. All rights and privileges granted under this section to persons shall also apply to small businesses. For purposes of this subdivision, a small business shall be deemed to be one which is resident in this state, independently owned and operated, not dominant in its field and employs one hundred or less persons.

§ 4. Section 380-e of the banking law, as separately amended by chapters 349 and 1072 of the laws of 1968, is amended to read as follows:

§ 380-e. Effect of usury. The knowingly taking, receiving, reserving, or charging by a savings and loan association of interest, as computed pursuant to this article, at a rate greater than such rate of interest as may be authorized by law shall be held and adjudged a forfeiture of the entire interest which the note or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person paying the same or his legal representatives may recover from the savings and loan association twice the entire amount of the interest thus paid. Nothing in this section shall be deemed to affect the powers of any savings and loan association with respect to loans or investments it is authorized to make. The rights and privileges granted under this section shall also apply to small businesses. For purposes of this section, a small business shall be deemed to be one which is resident in this state, independently owned and operated, not dominant in its field and employs one hundred or less persons.

§ 5. This act shall take effect immediately.