

# STATE OF NEW YORK

2520--B

2019-2020 Regular Sessions

## IN SENATE

January 25, 2019

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- recommitted to the Committee on Banks in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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 small business loan program

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 small business loan program. 1. Defi-  
4 nitions. As used in this section, the following terms shall have the  
5 following meanings:

6 (a) "Affected small business" means a small business located within  
7 this state during a state of emergency;

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

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

12 (d) "Department" means the department of financial services;

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

15 (f) "Grace period" means the ninety-day period after a state of emer-  
16 gency is over;

17 (g) "Small business" means a business with not more than fifty employ-  
18 ees; and

19 (h) "State of emergency" means the period beginning with a declaration  
20 by the governor that a state of emergency exists.

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

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1 2. State of emergency small business loan program. (a) The department  
2 shall administer a state of emergency small business loan program to  
3 guarantee the repayment of loans made by an eligible financial institu-  
4 tion to an eligible affected small business pursuant to this section.  
5 Subject to the cessation of new claim approvals under paragraph (d) of  
6 subdivision five of this section, the department shall submit all  
7 approved claims to the comptroller, who shall pay from the general fund  
8 any and all claims submitted by the department.

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

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

20 3. Loan eligibility. An eligible financial institution may make a loan  
21 to an affected small business, provided:

22 (a) The affected small business has provided to the eligible financial  
23 institution proof satisfactory to such institution that such small busi-  
24 ness is a small business located within the state of New York.

25 (b) The amount of the loan shall not exceed five thousand dollars.

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

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

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

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

44 4. Additional loans. An affected small business who has received a  
45 loan pursuant to this section may apply to the same eligible financial  
46 institution for an additional loan for each thirty-day period such small  
47 business remains an affected small business, provided no affected small  
48 business may receive more than three loans under the program. Each addi-  
49 tional loan shall be made in accordance with subdivision three of this  
50 section.

51 5. Collection of loans. (a) On and after one hundred eighty days from  
52 the end of the grace period, an eligible financial institution that has  
53 made a good-faith effort to collect the outstanding principal from a  
54 loan issued pursuant to this section may make a claim to the department  
55 for recovery of an amount equal to the outstanding principal for such  
56 loan. Prior to the department's approving and submitting a claim to the

1 comptroller, such eligible financial institution shall demonstrate to  
2 the satisfaction of the department that the eligible financial institu-  
3 tion has made a good-faith effort to collect the outstanding principal  
4 from the eligible small business employee in accordance with such finan-  
5 cial institution's loan servicing and collection policies. Upon payment  
6 of a claim, the loan shall be assigned to the state, and the department  
7 shall have the right to continue collection efforts on the loan.

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

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

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

22 (e) Any interest deferred or not charged related to a loan issued  
23 pursuant to this section shall be exempt from all state taxes that may  
24 be applicable to such interest amounts as they relate to an affected  
25 small business. Eligible financial institutions shall disclose to  
26 affected small business borrowers in the signed affidavit or loan docu-  
27 ments that there may be federal tax consequences to the program loans.

28 (f) No new loan applications shall be submitted under the program  
29 after the state of emergency ends. The program shall expire upon the  
30 repayment of all loans made under the program and, for all loans in  
31 default, the repayment of claims made under the program, or the cessa-  
32 tion of new claim approvals under subdivision (d) of this section.

33 § 2. This act shall take effect immediately.