

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:

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

3 § 5-522. Application to small businesses. All rights and privileges
4 granted under this title to persons shall also apply to small busi-
5 nesses. For purposes of this section, a small business shall be deemed
6 to be one which is resident in this state, independently owned and oper-
7 ated, not dominant in its field and employs one hundred or less persons.

8 § 2. The general obligations law is amended by adding a new section
9 5-702-a to read as follows:

10 § 5-702-a. Requirements for use of plain language in small business
11 loans. a. For the purposes of this section the term "small business"
12 shall mean a business in this state with not more than one hundred
13 employees that is a sole proprietorship, limited liability company or
14 closely held corporation acting without the assistance of counsel.

15 b. Every written agreement for a loan between a creditor and a borrow-
16 er who is a small business must be:

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

19 2. appropriately divided and captioned by its various sections.

20 Any creditor who fails to comply with this subdivision shall be liable
21 to a small business who is a party to a written agreement governed by
22 this subdivision in an amount equal to any actual damages sustained plus
23 a penalty of fifty dollars. The total class action penalty against any
24 such creditor shall not exceed ten thousand dollars in any class action
25 or series of class actions arising out of the use by a creditor of an
26 agreement which fails to comply with this subdivision. No action under
27 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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1 fully performed their obligation under such agreement, nor shall any
2 creditor who attempts in good faith to comply with this subdivision be
3 liable for such penalties. This subdivision shall not apply to loans
4 involving amounts in excess of two hundred fifty thousand dollars nor
5 prohibit the use of words or phrases or forms of agreement required by
6 state or federal law, rule or regulation or by a governmental instrumen-
7 tality.

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

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

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

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

17 § 3. Section 173 of the banking law is amended by adding a new subdivi-
18 sion 4 to read as follows:

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

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

26 § 380-e. Effect of usury. The knowingly taking, receiving, reserving,
27 or charging by a savings and loan association of interest, as computed
28 pursuant to this article, at a rate greater than such rate of interest
29 as may be authorized by law shall be held and adjudged a forfeiture of
30 the entire interest which the note or other evidence of debt carries
31 with it, or which has been agreed to be paid thereon. If such greater
32 rate of interest has been paid, the person paying the same or his legal
33 representatives may recover from the savings and loan association twice
34 the entire amount of the interest thus paid. Nothing in this section
35 shall be deemed to affect the powers of any savings and loan association
36 with respect to loans or investments it is authorized to make. The
37 rights and privileges granted under this section shall also apply to
38 small businesses. For purposes of this section, a small business shall
39 be deemed to be one which is resident in this state, independently owned
40 and operated, not dominant in its field and employs one hundred or less
41 persons.

42 § 5. This act shall take effect immediately.