STATE OF NEW YORK

9022

IN SENATE

October 2, 2020

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

AN ACT to amend the executive law, in relation to establishing a temporary state assistance fund to provide legal counsel in certain bankruptcy proceedings and providing for the administration thereof

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

Section 1. Short title. This act shall be known and may be cited as the "save merchants and retail tenants (SMART) act".

§ 2. The executive law is amended by adding a new section 94-d to read as follows:

§ 94-d. Temporary state assistance to fund legal services in certain bankruptcy proceedings. 1. Definitions. As used in this section:

(a) "Administrator" means the New York office of court administration.

(b) "Covered business" means any small business, not-for-profit corporation, limited partnership, limited liability company, limited liability partnership, as well as other miscellaneous businesses, which conducts a majority of its business in the state and was adversely affected by COVID-19 or public health restrictions enforced by the state during the COVID-19 pandemic, which are eligible for relief under the federal Small Business Reorganization Act, as amended by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and files for bankruptcy protection under such act prior to March twenty-seventh, two thousand twenty-one.

(c) "Bankruptcy court" means the United States bankruptcy court for the northern, southern, eastern or western district of the state.

(d) "Legal services" means individualized legal assistance in a single consultation and/or ongoing legal representation, provided by a legal services provider to a covered business, and all legal advice, advocacy, and assistance associated with such service.

(e) "Legal services provider" means an individual, organization, or association that has the authority to provide legal services and is designated by the administrator to provide such services.

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

LBD17046-03-0

2. Temporary access to legal services for small businesses in certain bankruptcy proceedings. All covered businesses shall have access to legal services as provided in this subdivision and made available in a fund maintained by the administrator pursuant to subdivision four of this section.

(a) Covered businesses affected by COVID-19 or public health restrictions enforced by the state during the COVID-19 pandemic, which file for relief under the federal Small Business Reorganization Act, as amended by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, prior to March twenty-seventh, two thousand twenty-one, shall have access to legal services in connection with the filing and prosecution under chapter eleven of the federal bankruptcy code.

(b) In all cases, access to legal services established in paragraph (a) of this subdivision shall terminate:

(i) upon the termination or dismissal of the bankruptcy proceeding;

(ii) at the recommendation of the United States trustee; or

(iii) at the recommendation of the assigned United States bankruptcy judge.

(c) In all cases, the right to counsel established in paragraph (a) of this subdivision shall not extend to appeals.

3. Powers and duties of the administrator. The administrator is charged with implementing the requirements of this section no later than October first, two thousand twenty, and may promulgate such rules, policies, and procedures as may be necessary and appropriate to accomplish such implementation. The administrator shall have the power and responsibility to:

(a) ensure independent, competent, and zealous representation of covered businesses receiving legal services provided pursuant to this section;

(b) examine, evaluate, and monitor legal services provided pursuant to this section;

(c) establish measures of performance to monitor the quality of legal services and the overall effectiveness of such legal services;

(d) target grants in support of innovative and cost-effective solutions that enhance the provision of legal services; and

(e) investigate and monitor any other matters relevant to the provision of legal services which the administrator deems important.

4. Funding. (a) The state shall establish a dedicated fund and shall appropriate sufficient sums into such fund to fully carry out the requirements of this section. Funds necessary to fully carry out the requirements of this section shall be determined by the administrator, in consultation with the director of the division of the budget.

(b) The administrator shall be charged with ensuring that appropriated funds are timely distributed to legal services providers for the provision of legal services.

§ 3. This act shall take effect immediately.