

# STATE OF NEW YORK

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3190

2021-2022 Regular Sessions

## IN ASSEMBLY

January 22, 2021

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Introduced by M. of A. EPSTEIN, GOTTFRIED, SIMON, CARROLL, STECK, FRONTUS, SEAWRIGHT, BARRON, PERRY, DICKENS, TAYLOR, BRONSON, RICHARDSON, HUNTER, DE LA ROSA, KIM, BARNWELL, ANDERSON, ROZIC, KELLES -- read once and referred to the Committee on Small Business

AN ACT to suspend rent payments for certain tenants in response to the outbreak of coronavirus

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

- 1 Section 1. For the purposes of this act:
- 2 (a) "actual income" means for a not-for-profit corporation employing
- 3 twenty-five or less full-time employees or full-time equivalent employ-
- 4 ees or for a small business incorporated and resident in this state,
- 5 independently owned and operated, not dominant in its field, and employs
- 6 twenty-five or less full-time employees or full-time equivalent employ-
- 7 ees, all revenue, including emergency federal, state or local assist-
- 8 ance, or any other form of income that may be used to pay rent, but
- 9 excluding restricted grants;
- 10 (b) "landlord" means the person or entity to whom a covered tenant
- 11 owes rent;
- 12 (c) "rent" means the amount charged in consideration for the use and
- 13 occupancy of real property pursuant to a written or oral rental agree-
- 14 ment or statute;
- 15 (d) "state of emergency" means the state of emergency declared by
- 16 executive order 202 that began on March 7, 2020 and any further amend-
- 17 ments or modifications, and as may be further extended pursuant to
- 18 section 28 of the executive law;
- 19 (e) "covered tenant" includes a tenant that is a not-for-profit corpo-
- 20 ration employing twenty-five or less full-time employees or full-time
- 21 equivalent employees, or a tenant that is a small business incorporated
- 22 and resident in this state, independently owned and operated, not domi-

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

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1 nant in its field, and employs twenty-five or less full-time employees  
2 or full-time equivalent employees; and

3 (f) "covered period" means March 7, 2020 until the date on which none  
4 of the provisions that closed or otherwise restricted public or private  
5 businesses or places of public accommodation, or required postponement  
6 or cancellation of all non-essential gatherings of individuals of any  
7 size, for any reason in Executive Orders 202.3, 202.4, 202.5, 202.6,  
8 202.7, 202.8, 202.10, 202.11, 202.13 or 202.14, as extended by Executive  
9 Orders 202.28 and 202.31 and as further extended by any future Executive  
10 Order, issued in response to the COVID-19 pandemic continue to apply in  
11 the county in which the covered tenant is located.

12 § 2. (a) (i) Notwithstanding any other provision of law, rule or regu-  
13 lation to the contrary, any covered tenant in the state that has been  
14 forced to close their place of business, or whose business activities  
15 have been substantially curtailed resulting in a loss of income as a  
16 result of government ordered restrictions in response to the outbreak of  
17 coronavirus disease 2019 (COVID-19), shall be responsible for rent  
18 payments up to twenty percent of the covered tenant's actual income for  
19 the thirty days prior to the date such rent was due or one-third of  
20 their contractual rent, whichever is less, per month for the duration of  
21 the covered period through one hundred eighty days following the final  
22 day of the covered period. A landlord of a covered tenant shall waive  
23 twenty percent of the contractual rent per month for the duration of one  
24 hundred eighty days following the final day of the covered period.

25 (ii) Where a covered tenant is authorized to pay an amount that is  
26 less than their contractual or statutory rent pursuant to this act, the  
27 covered tenant shall provide the landlord and the department of economic  
28 development with a sworn affidavit affirming the covered tenant's actual  
29 income for the thirty days prior to the date such rent was due for each  
30 month for which the tenant is seeking a reduced payment of rent due to  
31 loss of income as a result of government ordered restrictions in  
32 response to the outbreak of coronavirus disease 2019 (COVID-19). Upon  
33 the verification of such statement by the commissioner of the department  
34 of economic development or his or her agent, such payment shall absolve  
35 the covered tenant of any further obligation to pay rent and any differ-  
36 ence between the rent that would have been contractually or statutorily  
37 owed and the amount paid pursuant to this paragraph shall be waived,  
38 except where a covered tenant later receives additional income, such  
39 rent obligations shall be recalculated.

40 (iii) In a summary proceeding for the non-payment of rent under arti-  
41 cle 7 of the real property actions and proceedings law, a covered tenant  
42 may raise a payment made pursuant to this act as a defense to non-pay-  
43 ment. If the amount of the covered tenant's actual income is in dispute,  
44 the court shall review documentation of the covered tenant's income in  
45 camera, unless otherwise deemed necessary by the court. Notwithstanding  
46 any other provision of law to the contrary customary documentation of  
47 income shall constitute prima facie evidence of the covered tenant's  
48 actual income and shall be presumptively admissible in such summary  
49 proceeding.

50 (b) Any covered tenant whose lease expires during the covered period  
51 shall have the option of extending such lease under the terms existing  
52 prior to the expiration of the lease for a period of up to one hundred  
53 eighty days after the expiration of the state of emergency.

54 (c) Late fees, interest or other penalties shall not be collectable  
55 for rent accrued during the existence of the state of emergency.

1 § 3. (a) The commissioner of the department of economic development is  
2 hereby authorized and directed to establish and implement an interim  
3 commercial rent relief program to support covered tenants and landlords  
4 impacted by the COVID-19 pandemic. Such program shall be provided at  
5 least \$500,000,000, including but not limited to monies that have been  
6 allocated to the state of New York by the federal government.

7 (b) Notwithstanding any other law to the contrary, a landlord that has  
8 lost rental income pursuant to this act and has not been fully compen-  
9 sated by emergency federal, state or local assistance, may apply to the  
10 department of economic development for relief. The commissioner of the  
11 department of economic development may, upon satisfaction of the veraci-  
12 ty of the landlord's application and to the extent possible, authorize  
13 the distribution of funds, including but not limited to any unrestricted  
14 federal emergency assistance monies provided to the state that have not  
15 otherwise been obligated, to any such landlord in the amount of the  
16 balance of rental income lost after the twenty percent of the contractu-  
17 al rent waived by the landlord and any amount paid by a covered tenant  
18 pursuant to section two of this act.

19 (c) The commissioner of the department of economic development shall  
20 promulgate rules and regulations to effectuate the provisions of this  
21 act. The regulations promulgated pursuant to this subdivision shall  
22 include provisions designed to ensure full access to the services and  
23 financial assistance required under this section by individuals for whom  
24 English is not the primary language.

25 § 4. Notwithstanding any other law to the contrary, no court shall  
26 accept for filing a petition to commence a new summary proceeding to  
27 recover possession of real property under article 7 of the real property  
28 actions and proceedings law for non-payment of rent due to loss of  
29 income as a result of government ordered restrictions in response to the  
30 outbreak of coronavirus disease 2019 (COVID-19) for at least thirty days  
31 following the expiration of the state of emergency; provided any statute  
32 of limitations applicable to such summary proceedings shall be tolled  
33 for thirty days; provided further, however, that the tenant shall  
34 provide a sworn affidavit affirming the covered tenant's loss of income  
35 as a result of government ordered restrictions in response to the  
36 outbreak of coronavirus disease 2019 (COVID-19). In no event shall late  
37 or reduced rent payments during the state of emergency constitute the  
38 basis for a summary holdover proceeding for the chronic nonpayment of  
39 rent.

40 § 5. This act shall take effect immediately and shall be deemed to  
41 have been in full force and effect on and after March 7, 2020.