

# STATE OF NEW YORK

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## IN SENATE

January 25, 2022

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

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:

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

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

5 § 94-d. Temporary state assistance to fund legal services in certain  
6 bankruptcy proceedings. 1. Definitions. As used in this section:

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

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

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

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

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

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

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

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

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

15     (i) upon the termination or dismissal of the bankruptcy proceeding;  
16     (ii) at the recommendation of the United States trustee; or  
17     (iii) at the recommendation of the assigned United States bankruptcy  
18 judge.

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

21     3. Powers and duties of the administrator. The administrator is  
22 charged with implementing the requirements of this section no later than  
23 October first, two thousand twenty-one, and may promulgate such rules,  
24 policies, and procedures as may be necessary and appropriate to accom-  
25 plish such implementation. The administrator shall have the power and  
26 responsibility to:

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

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

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

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

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

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

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

46     § 3. This act shall take effect immediately.