

STATE OF NEW YORK

3033

2023-2024 Regular Sessions

IN SENATE

January 26, 2023

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-four.

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.

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

LBD02339-01-3

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

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

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

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

18 (i) upon the termination or dismissal of the bankruptcy proceeding;
19 (ii) at the recommendation of the United States trustee; or
20 (iii) at the recommendation of the assigned United States bankruptcy
21 judge.

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

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

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

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

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

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

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

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

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

49 § 3. This act shall take effect immediately.