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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 94

Session of  
1991

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STURLA, KRUSZEWSKI AND RITTER, JANUARY 29, 1991

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REFERRED TO COMMITTEE ON BUSINESS AND COMMERCE, JANUARY 29, 1991

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AN ACT

1 Providing a loan program for small business in this  
2 Commonwealth; and making an appropriation.

3 TABLE OF CONTENTS

4 Section 1. Short title.

5 Section 2. Definitions.

6 Section 3. Small Business Loan Fund.

7 Section 4. Small Business Loan Program established.

8 Section 5. Eligibility.

9 Section 6. Types of assistance available; loan guarantee,  
10 direct loan.

11 Section 7. Loan guarantees; terms and restrictions.

12 Section 8. Direct loans; terms and restrictions.

13 Section 9. Reporting and inspection.

1 Section 10. Rules and regulations.

2 Section 11. Preferences and priorities.

3 Section 12. Disapproval.

4 Section 13. Default.

5 Section 14. Appropriation.

6 Section 15. Effective date.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the Small  
11 Business Loan Act.

12 Section 2. Definitions.

13 The following words and phrases when used in this act shall  
14 have the meanings given to them in this section unless the  
15 context clearly indicates otherwise:

16 "Department." The Department of Commerce of the  
17 Commonwealth.

18 "Financial institutions." Include, but are not limited to,  
19 banks and other lending institutions whose regular course of  
20 business entails the making of commercial and industrial loans.

21 "Fund." The Small Business Loan Fund established in section  
22 3.

23 "Loan." A direct loan made by the Department of Commerce  
24 pursuant to section 8.

25 "Loan guarantee." When loans are made by financial  
26 institutions to eligible small business, the repayment of which  
27 the Commonwealth guarantees pursuant to the provisions of this  
28 act.

29 "Small business." The business concerns that are defined in  
30 section 2(3) of the Small Business Act (Public Law 85-536, 15

1 U.S.C. § 632), and classified by the Small Business  
2 Administration under 13 CFR §§ 121.3 through 121.10 and which  
3 have fewer than 200 employees.

4 Section 3. Small Business Loan Fund.

5 There is hereby established a separate account in the State  
6 Treasury to be known as the Small Business Loan Fund. All  
7 appropriations made by the General Assembly to implement this  
8 act and all money received as repayment of loans and interest  
9 payments pursuant to this act shall be deposited into the fund.

10 Section 4. Small Business Loan Program established.

11 There is hereby established the Small Business Loan Program  
12 which shall be administered by the department in accordance with  
13 the spirit and intent of this act.

14 Section 5. Eligibility.

15 Consideration for loans under this act shall be extended to  
16 all applicants who meet the following requirements:

17 (1) The applicant must be financially and legally  
18 responsible, based upon criminal history, credit history and  
19 business history.

20 (2) The applicant and any affiliate shall have paid in  
21 full all taxes due and owing the Federal and State  
22 governments and any other level of government or shall  
23 present evidence noting a satisfactory arrangement which has  
24 been agreed to by all parties to make the payment.

25 (3) The applicant may be a sole proprietorship,  
26 partnership or corporation. Where the enterprise is a  
27 proprietorship, the applicant must be otherwise eligible and  
28 must manage and control the enterprise. Where the applicant  
29 is a proprietorship, the applicant must be a resident of this  
30 Commonwealth or must certify that residency will be

1 established on or before closing of the loan or loan  
2 guarantee. Where the enterprise is a partnership, at least  
3 51% of the partners must be residents of this Commonwealth or  
4 must certify that residency will be established on or before  
5 closing of the loan or loan guarantee. Where the enterprise  
6 is a corporation, its officers and at least 51% of the owners  
7 of the voting stock must be residents of this Commonwealth or  
8 must certify that residency will be established on or before  
9 closing of the loan or loan guarantee.

10 (4) The applicant shall commit to full-time management  
11 and control of the enterprise on a daily basis and shall  
12 commit to work full-time in the enterprise. If the applicant  
13 is otherwise employed, the applicant shall terminate such  
14 employment prior to or at the time of closing.

15 (5) The applicant, if he or she is a natural person,  
16 shall be 18 years of age or older.

17 (6) The applicant, if he or she has previously received  
18 loans from the fund, shall be current with respect to all  
19 amounts due under the loans.

20 (7) The applicant shall show, through experience,  
21 training or education, or a combination thereof, that he or  
22 she is capable of performing his or her responsibilities in  
23 connection with the ownership, management or control of the  
24 small business.

25 (8) The applicant and the small business shall not be  
26 involved as a debtor in any bankruptcy proceeding.

27 (9) The applicant is a small business authorized to do  
28 business in this Commonwealth.

29 (10) The applicant has applied for but has not been able  
30 to obtain the desired loan from at least one financial

1 institution and furnishes proof of the refusal, and the  
2 reasons thereof.

3 (11) The applicant furnishes information to show that he  
4 has or will have the ability to repay the loan out of income  
5 from the business. A preview of the business's first 36  
6 months of operation must accompany the application.

7 (12) Not more than 75% of the loan may be financed  
8 through this act. A financial institution must provide the  
9 remaining 25% of the loan.

10 (13) If the applicant is an existing firm, the applicant  
11 must furnish financial statements which shall show the  
12 applicable date of the information given, and shall be signed  
13 and certified by the proprietor, partner or corporation and a  
14 certified public accountant. The department shall require  
15 that the statements be audited and shall ask for financial  
16 statements for the past three years.

17 (14) If the applicant is a new small business concern, a  
18 signed detailed proposal of the applicants planned business  
19 activities and how the loan funds will be spent. The proposal  
20 shall include projected budgets and projected financial  
21 statements for the first 36 months of business operations. An  
22 audit of the business by a certified public accountant must  
23 be made available every 12 months.

24 (15) The purpose of the loan must be in conformity with  
25 the provisions of this act.

26 (16) The applicant must agree that if they expand the  
27 business, through subsidiaries or otherwise, the expansion  
28 will be done within this Commonwealth if requested by the  
29 department.

30 Section 6. Types of assistance available; loan guarantee,

1 direct loan.

2 The Small Business Loan Program shall include:

3 (1) Loan guarantees made to financial institutions for  
4 the benefit of small business persons who have received loans  
5 from the financial institutions in accordance with the  
6 provisions of this act.

7 (2) Direct loans, which shall be made by the department  
8 pursuant to the provisions of section 8 from the fund when  
9 another commercial loan is not available and a loan guarantee  
10 under this act is also not available.

11 Section 7. Loan guarantees; terms and restrictions.

12 (a) Guarantees.--The department may guarantee loans made by  
13 private lending institutions to eligible small businesses  
14 provided that each loan guaranteed shall be approved by the  
15 department under such terms and conditions consistent with the  
16 intent and purpose of this act.

17 (b) Loans in default.--Funds for the payment of loans in  
18 default shall come from the fund.

19 (c) Provisions for guaranteed loans.--Each loan that is  
20 guaranteed pursuant to the provisions of this act shall:

21 (1) Be for a term not to exceed the greater of the  
22 useful life of the asset being financed, or ten years if used  
23 for the purchase of capital assets.

24 (2) Be for a term not to exceed five years if used for  
25 working capital.

26 (3) Bear regular interest rates which shall be no more  
27 than the average interest rates charged by the financial  
28 institution to commercial borrowers for the same type of  
29 loan.

30 (4) For any business that after a period of five years

1 provides a financial statement that demonstrates its ability  
2 to secure conventional financing for the loan balance, be  
3 required to convert to conventional financial institution  
4 financing.

5 (d) Guarantee fee may be charged.--The department may charge  
6 the borrower a reasonable guarantee fee which shall be computed  
7 as a percentage of the loan principal outstanding at the  
8 beginning of each year. The guarantee fee shall not be more than  
9 1% and may be as low as a fraction of a percentage point of the  
10 loan principal a year. The fee shall be deposited in the fund.

11 (e) Security interest to be promised.--The department shall,  
12 to the extent possible, obtain and perfect a security interest,  
13 in accordance with the provisions of 13 Pa.C.S. Div. 9 (relating  
14 to secured transactions; sales of accounts, contract rights and  
15 chattel paper) in the assets of the small business and, when  
16 reasonable, in the personal assets of the applicant, provided  
17 that:

18 (1) The security interest shall be made secondary to all  
19 other necessary commercial loans obtained from financial  
20 institutions prior to or after the approval of the loan  
21 guarantee when the subordination is required in order to  
22 obtain such loans.

23 (2) The security interest shall not interfere with the  
24 efficient and effective operation of the business.

25 (3) The applicant shall have assets of at least 25% of  
26 the loan and 75% of the loan shall be secured by tangibles  
27 like land, building or equipment. The security interest may  
28 be equity in a home or other real estate, chattel mortgages,  
29 personal guarantees or assignment of current receivables.

30 (f) Other sources of funds or credit.--The department need

1 not consider an application for a loan guarantee if the amount  
2 required is obtainable:

3 (1) on reasonable terms through the public offering or  
4 private placing of securities of the applicant;

5 (2) through the disposal at fair price of assets not  
6 required by the applicant in the conduct of its existing  
7 business or not reasonably necessary to its potential healthy  
8 growth;

9 (3) without undue hardship through utilization of the  
10 personal credit or resources of the owner, partners,  
11 management or principal shareholders of the applicant; or

12 (4) where there is reason to believe that credit is  
13 otherwise available on reasonable terms from sources other  
14 than financial institutions such as local or regional venture  
15 capital programs, corporations or authorities, other than  
16 financial institutions.

17 Section 8. Direct loans; terms and restrictions.

18 (a) Direct loans.--The department may make direct loans to  
19 eligible small businesses pursuant to section 6, for the  
20 financing of plant construction, conversion, expansion, the  
21 acquisition of land for expansion, the acquisition of equipment,  
22 machinery, inventory supplies, or materials, or for the  
23 supplying of working capital. At no time is the loan to be used  
24 for payment of existing debts of the applicant or his business.

25 (b) Loans may be in conjunction with other loans.--The  
26 direct loans may be made in conjunction with loans made by other  
27 financial institutions, including the Federal Small Business  
28 Administration, and loans guaranteed under the provisions of  
29 section 7.

30 (c) Security interest to be provided.--The department shall,



1 to the extent possible, obtain and perfect a security interest,  
2 in accordance with the provisions of 13 Pa.C.S. Div. 9 (relating  
3 to secured transactions; sales of accounts, contract rights and  
4 chattel paper), in the assets of the small business and, when  
5 reasonable, in the personal assets of the applicant, provided  
6 that:

7 (1) The security interest shall be made secondary to all  
8 other necessary commercial loans obtained from financial  
9 institutions prior to or after the approval of the loan when  
10 the subordination is required in order to obtain such loans.

11 (2) The security interest shall not interfere with the  
12 efficient and effective operation of the business.

13 (3) The applicant shall have assets of at least 25% of  
14 the loan and 75% of the loan shall be secured by tangibles  
15 like land, building or equipment. The security interest may  
16 be equity in a home or other real estate, chattel mortgages,  
17 personal guarantees or assignment of current receivables.

18 (d) Restrictions and limitations.--The loans shall be  
19 subject to the following restrictions and limitations:

20 (1) The applicant must meet all the requirements of  
21 section 5.

22 (2) The amount of the loan or loans to any one applicant  
23 at any one time shall not exceed a total of \$150,000 or 75%  
24 of the total investment needed.

25 (3) The loan term shall not exceed the greater of the  
26 useful life of the asset being financed or ten years for  
27 those funds used to purchase capital assets.

28 (4) The loan term shall not exceed five years if used  
29 for working capital.

30 (5) Each loan shall bear a simple interest rate for the

1 full term of the loan. The interest rate shall be no more  
2 than the average interest rates charged by the financial  
3 institution to commercial borrowers for the same type of  
4 loan. The rate shall not exceed 15%.

5 (6) The commencement date for the repayment of the first  
6 installment on the principal of each loan may be deferred by  
7 the department for up to two years. Interest must be paid at  
8 once.

9 (7) The applicant must show a demonstrated need for the  
10 service, product or business in the area or region, which  
11 need may be determined by the small business center within  
12 the region.

13 (e) Prohibited use of loan funds.--Loan funds shall not be  
14 used for any of the following purposes:

15 (1) To pay off a creditor or creditors of the applicant  
16 who are inadequately secured and are in a position to sustain  
17 a loss.

18 (2) To provide funds, directly or indirectly, for  
19 payment, distribution, or as a loan to owners, partners or  
20 shareholders of the applicant's business, except as ordinary  
21 compensation for services rendered.

22 (3) To refund a debt owed to a small business investment  
23 company.

24 (4) To replenish funds heretofore used for any of the  
25 purposes stated in paragraphs (1) through (3).

26 (5) To effect a change in the ownership of the business,  
27 unless the ownership change will promote the sound  
28 development or preserve the existence of the business.

29 (6) To provide or free funds for the speculation in any  
30 kind of property, real or personal, tangible or intangible.

1 (7) To be received by a charitable institution or other  
2 nonprofit enterprise.

3 (8) To provide funds to an applicant primarily engaged  
4 in the business of lending money.

5 (9) To provide funds for financing investments not  
6 related or essential to the otherwise eligible small  
7 business.

8 (10) To finance the acquisition, construction,  
9 improvement, or operation of real property which is, or is to  
10 be, held primarily for sale or investment.

11 (11) To encourage a monopoly or would be inconsistent  
12 with the purposes and intent of this act.

13 (12) To establish, acquire or operate a bar, tavern or  
14 any other enterprise that has as its primary function the  
15 dispensing of alcoholic beverages on a retail basis.

16 (13) To recover expenses incurred in preparing  
17 applications, financial statements and related documents  
18 required by the department.

19 (f) Disapproval of application.--An applicant whose  
20 application has been disapproved by the department may not, for  
21 a period of one year following the date of disapproval, submit  
22 another application, unless the department invites the applicant  
23 to submit another application.

#### 24 Section 9. Reporting and inspection.

25 (a) Books and records to be supplied.--Each loan or  
26 guarantee applicant or recipient shall provide, when requested,  
27 for inspection at the plant, books and records of the small  
28 business which has applied for or has been granted a loan.

29 (b) Information to be updated.--Each loan or guarantee  
30 applicant shall update the information given the department if

1 the application should be changed or present conditions cause  
2 the information given to be inaccurate or misleading.

3 (c) Annual financial report to be filed.--Each loan or  
4 guarantee recipient must provide the department with annual  
5 financial reports until such time as the loan is paid off.

6 Section 10. Rules and regulations.

7 In the performance of, and with respect to the purposes of  
8 this act, the department may prescribe reasonable rules and  
9 regulations to carry out the purposes of this act.

10 Section 11. Preferences and priorities.

11 In determining the preferences and priorities among eligible  
12 applicants, the department shall consider, among other things:

13 (1) The financial condition of the applicants.

14 (2) The possible number of jobs to be created.

15 (3) The general economic condition of the area where the  
16 small business is or will be located.

17 (4) The amount of assets available to secure the loan.

18 (5) The extent to which the loan will carry out the  
19 purposes and intent of this act.

20 Section 12. Disapproval.

21 The department may disapprove the loan or loan guarantee  
22 application for any of, but not limited to, the following  
23 reasons:

24 (1) The purpose of the loan is to accomplish an  
25 expansion or start a business which is unwarranted in light  
26 of the applicant's past experience and management ability.

27 (2) The effect of making the loan would be to subsidize  
28 inefficient management.

29 (3) The applicant cannot meet certain basic practical  
30 credit requirements established by the department.

1           (4) The applicant's character is questionable as  
2       determined and set forth in writing with the specific  
3       reasons, by the department.

4           (5) The applicant fails to meet other basic criteria  
5       deemed necessary by the department in justifying or granting  
6       a loan or guarantee.

7       Section 13. Default.

8       The department shall make every effort to assist loan or  
9       guarantee recipients. A committee that consists of five  
10      individuals appointed by the department would be responsible for  
11      monitoring applicants who are delinquent 60 days or more. When  
12      the committee finds that the borrower is experiencing financial  
13      difficulties that cannot be reversed, then the department shall  
14      move quickly to protect the interests of the department and  
15      minimize the losses to it.

16      Section 14. Appropriation.

17      There is hereby appropriated the sum of \$5,000,000, or as  
18      much thereof as may be necessary, to the Department of Commerce  
19      to be used for the establishment, development and operation of  
20      the small business loan program established in section 4.

21      Section 15. Effective date.

22      This act shall take effect in 60 days.