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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 354      Session of  
1993

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INTRODUCED BY LESCOVITZ, COLAIZZO, MARKOSEK, FAIRCHILD, MELIO,  
PETRARCA, CARONE, STAIRS, PESCI, STISH, E. Z. TAYLOR,  
GODSHALL AND VAN HORNE, FEBRUARY 10, 1993

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REFERRED TO BUSINESS AND ECONOMIC DEVELOPMENT, FEBRUARY 10, 1993

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AN ACT

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

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3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Small  
7 Business Loan Act.

8 Section 2. Definitions.

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

12 "Department." The Department of Commerce of the  
13 Commonwealth.

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

17 "Fund." The Small Business Loan Fund established in section  
18 3.

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

21 "Loan guarantee." When loans are made by financial  
22 institutions to eligible small business, the repayment of which  
23 the Commonwealth guarantees pursuant to the provisions of this  
24 act.

25 "Small business." The business concerns that are defined in  
26 section 2(3) of the Small Business Act (Public Law 85-536, 15  
27 U.S.C. § 632), and classified by the Small Business  
28 Administration under 13 CFR Part 121 (relating to small business  
29 size regulations) and which have fewer than 200 employees.

30 Section 3. Small Business Loan Fund.

1       There is hereby established a separate account in the State  
2 Treasury to be known as the Small Business Loan Fund. All  
3 appropriations made by the General Assembly to implement this  
4 act and all money received as repayment of loans and interest  
5 payments pursuant to this act shall be deposited into the fund.  
6 Section 4. Small Business Loan Program established.

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

10 Section 5. Eligibility.

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

13           (1) The applicant must be financially and legally  
14 responsible, based upon criminal history, credit history and  
15 business history.

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

21           (3) The applicant may be a sole proprietorship,  
22 partnership or corporation. Where the enterprise is a  
23 proprietorship, the applicant must be otherwise eligible and  
24 must manage and control the enterprise. Where the applicant  
25 is a proprietorship, the applicant must be a resident of this  
26 Commonwealth or must certify that residency will be  
27 established on or before closing of the loan or loan  
28 guarantee. Where the enterprise is a partnership, at least  
29 51% of the partners must be residents of this Commonwealth or  
30 must certify that residency will be established on or before

1 closing of the loan or loan guarantee. Where the enterprise  
2 is a corporation, its officers and at least 51% of the owners  
3 of the voting stock 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.

6 (4) The applicant shall commit to full time management  
7 and control of the enterprise on a daily basis and shall  
8 commit to work full time in the enterprise. If the applicant  
9 is otherwise employed, the applicant shall terminate such  
10 other employment prior to or at the time of closing.

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

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

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

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

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

25 (10) The applicant has applied for but has not been able  
26 to obtain the desired loan from at least one financial  
27 institution and furnishes proof of the refusal, and the  
28 reasons thereof.

29 (11) The applicant furnishes information to show that he  
30 has or will have the ability to repay the loan out of income

1 from the business. A preview of the business's first 36  
2 months of operation must accompany the application.

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

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

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

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

22 (16) The applicant must agree that if they expand the  
23 business, through subsidiaries or otherwise, the expansion  
24 will be done within this Commonwealth if requested by the  
25 department.

26 Section 6. Types of assistance available; loan guarantee,  
27 direct loan.

28 The Small Business Loan Program shall include:

29 (1) Loan guarantees made to financial institutions for  
30 the benefit of small business persons who have received loans

1 from the financial institutions in accordance with the  
2 provisions of this act.

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

7 Section 7. Loan guarantees; terms and restrictions.

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

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

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

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

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

22 (3) Bear regular interest rates which shall be no more  
23 than the average interest rates charged by the financial  
24 institution to commercial borrowers for the same type of  
25 loan.

26 (4) For any business that after a period of five years  
27 provides a financial statement that demonstrates its ability  
28 to secure conventional financing for the loan balance, be  
29 required to convert to conventional financial institution  
30 financing.

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

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

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

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

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

27 (f) Other sources of funds or credit.--The department need  
28 not consider an application for a loan guarantee if the amount  
29 required is obtainable:

30 (1) on reasonable terms through the public offering or

private placing of securities of the applicant;

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

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

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

#### Section 8. Direct loans; terms and restrictions.

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

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

(c) Security interest to be provided.--The department shall, to the extent possible, obtain and perfect a security interest, in accordance with the provisions of 13 Pa.C.S. Div. 9 (relating to secured transactions; sales of accounts, contract rights and



chattel paper), in the assets of the small business and, when reasonable, in the personal assets of the applicant, provided that:

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

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

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

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

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

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

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

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

(5) Each loan shall bear a simple interest rate for the full term of the loan. The interest rate shall be no more than the average interest rates charged by the financial institution to commercial borrowers for the same type of

1 loan. The rate shall not exceed 15%.

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

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

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

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

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

19 (3) To refund a debt owed to a small business investment  
20 company.

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

23 (5) To effect a change in the ownership of the business,  
24 unless the ownership change will promote the sound  
25 development or preserve the existence of the business.

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

28 (7) To be received by a charitable institution or other  
29 nonprofit enterprise.

30 (8) To provide funds to an applicant primarily engaged

1 in the business of lending money.

2 (9) To provide funds for financing investments not  
3 related or essential to the otherwise eligible small  
4 business.

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

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

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

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

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

## 21 Section 9. Reporting and inspection.

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

26 (b) Information to be updated.--Each loan or guarantee  
27 applicant shall update the information given the department if  
28 the application should be changed or present conditions cause  
29 the information given to be inaccurate or misleading.

30 (c) Annual financial report to be filed.--Each loan or

1 guarantee recipient must provide the department with annual  
2 financial reports until such time as the loan is paid off.

3 Section 10. Rules and regulations.

4 In the performance of, and with respect to the purposes of  
5 this act, the department may prescribe reasonable rules and  
6 regulations to carry out the purposes of this act.

7 Section 11. Preferences and priorities.

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

10 (1) The financial condition of the applicants.

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

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

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

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

17 Section 12. Disapproval.

18 The department may disapprove the loan or loan guarantee  
19 application for any of, but not limited to, the following  
20 reasons:

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

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

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

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

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

4   Section 13.   Default.

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

13   Section 14.   Appropriation.

14      There is hereby appropriated the sum of \$5,000,000, or as  
15      much thereof as may be necessary, to the Department of Commerce  
16      to be used for the establishment, development and operation of  
17      the Small Business Loan Program established in section 4.

18   Section 15.   Effective date.

19      This act shall take effect in 60 days.