

SENATE, No. 3617

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MARCH 18, 2019

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

Senator TROY SINGLETON

District 7 (Burlington)

SYNOPSIS

Requires licensing for certain non-bank lenders and certain brokers that make or arrange alternative small business loans.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/14/2019)

1 AN ACT concerning alternative business loans and supplementing
2 P.L.1964, c.162 (C.17:9A-59.25 et seq.).

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. The Legislature finds and declares that:

8 a. In recent years, alternative business lending has become a
9 more prevalent source of capital for small businesses, as
10 institutional lenders have retreated from this market segment.

11 b. Regulatory agencies have also demonstrated increased
12 awareness of a broader group of finance companies and loan
13 products, of which alternative business lending is a subset. In July
14 2015, the U.S. Treasury Department issued a request for
15 information on marketplace lending and, in May 2016, issued a
16 corresponding white paper. In July 2016, the Federal Deposit
17 Insurance Corporation issued guidance, regarding the examination
18 of supervised institutions that partner with online marketplace
19 lenders.

20 c. The availability of alternative business loans provides
21 essential capital for many small businesses; however, the absence of
22 a regulatory framework presents risks which are best addressed by
23 legislative direction.

24 d. Currently, alternative business lending is largely unregulated
25 at the federal level, with a patchwork of applicable regulation at the
26 state level. Existing regulation of interest rates and fees does not
27 adequately consider the risks and economics associated with
28 alternative business loans and, in particular, with their accelerated
29 amortization schedules, and high-risk borrowers or collateral.

30 e. A system of regulation of alternative business loans would
31 increase the flow of capital, while affording small business
32 borrowers with protections in the form of transparency, disclosure,
33 and accountability.

34 f. By leveraging the existing licensing and enforcement
35 infrastructure of the New Jersey Department of Banking and
36 Insurance, a system can be implemented with widespread access for
37 lenders of all sizes.

38

39 2. As used in this act:

40 "Alternative business loan" means a loan or merchant cash
41 advance, the proceeds of which are used primarily for business
42 purposes and not primarily for personal, family, or household
43 purposes, and which contains one or more of the following
44 characteristics:

45 (1) credit approval without reliance on tax returns or financial
46 and related traditional underwriting metrics;

47 (2) an interest rate, or disclosed internal rate of return in the
48 case of a merchant cash advance, in excess of 25 percent;

49 (3) a term to maturity of less than two years; or

1 (4) payment frequency greater than bi-weekly.

2 “Broker” means a person who, for or in expectation of
3 consideration:

4 (1) arranges or offers to arrange an alternative business loan for
5 a non-bank lender; or

6 (2) assists or advises or offers to assist or advise a small
7 business borrower in obtaining or attempting to obtain an
8 alternative business loan.

9 “Commissioner” means the Commissioner of Banking and
10 Insurance.

11 “Department” means the Department of Banking and Insurance.

12 “Non-bank lender” means a lender that is not otherwise regulated
13 by the Office of the Comptroller of the Currency, Federal Deposit
14 Insurance Corporation, National Credit Union Administration, or
15 Federal Reserve.

16 “Small business borrower” means a small business located in this
17 State that receives an alternative business loan from a non-bank
18 lender.

19

20 3. a. Not more than 10 and not less than three days before a
21 non-bank lender makes an alternative business loan to a small
22 business borrower, it shall disclose to the small business borrower
23 the following anticipated components of the alternative business
24 loan:

25 (1) Payment schedule;

26 (2) Term to maturity;

27 (3) Annual interest rate or, in the case of a merchant cash
28 advance, the internal rate of return, before considering lender
29 charges, assuming all payments are made under the contract as
30 anticipated;

31 (4) Annual percentage rate, or, in the case of a merchant cash
32 advance, the internal rate of return, after considering lender
33 charges, assuming all payments are made under the contract as
34 anticipated, calculated using the applicable methodology in 12
35 C.F.R. s.1026 et seq., or any successor law or regulation;

36 (5) Interest cost per dollar borrowed;

37 (6) Total repayment amount to maturity;

38 (7) Any right to prepay and the applicability and calculation of
39 any prepayment charges;

40 (8) Collateral requirements; and

41 (9) Fees, costs and charges.

42 b. At the time a non-bank lender makes an alternative business
43 loan to a small business borrower, it shall disclose to the small
44 business borrower any changes to the information provided in the
45 initial disclosure made pursuant to subsection a. of this section.

46

47 4. a. If a broker is entitled to compensation for introducing a
48 small business borrower to a non-bank lender for the purpose of
49 having the non-bank lender make an alternative business loan to the

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1 small business borrower, then the non-bank lender shall disclose to
2 the small business borrower:

3 (1) The total compensation expected to be paid by the non-bank
4 lender to the broker; and

5 (2) The total compensation expected to be paid by the small
6 business borrower to the broker.

7 b. In order to comply with the disclosure required pursuant to
8 this section, a broker shall enter into a written agency, fee and
9 disclosure agreement with the small business borrower that provides
10 the compensation agreed to by the small business borrower.

11 c. The agency and fee agreement shall be provided to the non-
12 bank lender when the application for the alternative business loan is
13 submitted by the small business borrower for its consideration.

14

15 5. a. Any alternative business loan shall provide economic
16 benefit to the small business borrower, including, without
17 limitation, any of the following:

18 (1) Lower payments through the payoff of outstanding debt
19 balances;

20 (2) Funding the purchase of equipment or inventory;

21 (3) Payoff of tax liens or judgments adversely impacting
22 business operations, or limiting access to collateral to support
23 funding;

24 (4) Funding of business expansion, acquisition, or combination
25 that is projected to generate revenue growth and future profitability;

26 (5) Funding of working capital to support continued business
27 operations; or

28 (6) Completion of construction.

29 b. The economic benefit to a small business borrower shall be
30 documented by the small business borrower.

31 c. Non-bank lenders shall provide to a small business borrower
32 the most favorable loan product offered by the non-bank lender and
33 for which the small business borrower qualifies.

34

35 6. a. The jurisdiction for commencing an action to enforce the
36 terms of an alternative business loan contract between a small
37 business borrower and a non-bank lender pursuant to this act shall
38 be New Jersey.

39 b. A non-bank lender shall maintain a record that identifies all
40 alternative business loans to New Jersey small business borrowers
41 for each calendar year.

42 c. A non-bank lender shall maintain:

43 (1) Staff dedicated to address complaints;

44 (2) Clear disclosure of the contact for complaint resolution; and

45 (3) A separate file for each complaint that identifies each
46 complainant and the nature and disposition of that complaint.

47

48 7. a. The department shall establish a process for issuing
49 alternative business loan licenses to non-bank lenders to make

- 1 alternative business loans to small business borrowers and licenses
2 to brokers of alternative business loans.
- 3 b. Beginning 90 days after the department establishes the
4 licensing process required pursuant to subsection a. of this section,
5 a non-bank lender shall apply for a license before making
6 alternative business loans to small business borrowers.
- 7 c. During the period after a non-bank lender has applied for an
8 alternative business loan license and the date on which an
9 application is rejected or a license is issued, the non-bank lender
10 may make alternative business loans to small business borrowers.
- 11 d. A license to a non-bank lender to make alternative business
12 loans to small business borrowers shall be issued only if the non-
13 bank lender meets the following requirements:
- 14 (1) The non-bank lender shall have a net worth of not less than:
15 (a) for an annual closed alternative business loan volume equal
16 to or less than \$10,000,000, \$250,000;
17 (b) for an annual closed alternative business loan volume of
18 greater than \$10,000,000 and equal to or less than \$20,000,000,
19 \$500,000; and
20 (c) for an annual closed alternative business loan volume of
21 greater than \$20,000,000, \$1,000,000;
- 22 (2) The non-bank lender shall secure a bond in an amount of not
23 less than:
24 (a) for an annual closed alternative business loan volume equal
25 to or less than \$10,000,000, \$250,000;
26 (b) for an annual closed alternative business loan volume of
27 greater than \$10,000,000 and equal to or less than \$20,000,000,
28 \$500,000; and
29 (c) for an annual closed alternative business loan volume of
30 greater than \$20,000,000, \$1,000,000; and
- 31 (3) Each employee of the non-bank lender involved in non-
32 ministerial functions shall:
33 (a) Satisfactorily complete a criminal history record background
34 check within 90 business days of commencement of employment;
35 (b) Pass a written examination regarding industry compliance,
36 credit criteria, and ethical practices within 90 business days of
37 commencement of employment; and
38 (c) Complete at least 10 hours of continuing education each
39 calendar year, two of which shall cover business ethics.
- 40 e. A non-bank lender that has an alternative business loan
41 license, or that has applied for an alternative business loan license
42 and has not been rejected, shall be exempt from the usury laws of
43 this State with respect to alternative business loan products.
- 44 f. Beginning 90 days after the department establishes the
45 licensing process required pursuant to subsection a. of this section,
46 a broker of alternative business loans shall be licensed to broker
47 alternative business loans to a non-bank lender.

1 g. A license to a broker of alternative business loans to small
2 business borrowers shall be issued only if the broker meets the
3 following requirements:

- 4 (1) A minimum net worth of \$100,000; and
5 (2) The broker shall secure a bond in an amount, based upon
6 annual loan applications taken, as follows:
7 (a) for equal to or less than 100 applications, \$150,000;
8 (b) for greater than 100 and equal to or less than 300
9 applications, \$250,000;
10 (c) for greater than 300 and equal to or less than 500
11 applications, \$350,000; and
12 (d) for greater than 500 applications, \$500,000.

13 h. Non-ministerial employees of brokers shall be subject to the
14 same requirements as employees of lenders.

15

- 16 8. The department shall promulgate rules and regulations for:
17 a. the establishment of appropriate standards for the
18 safeguarding and sharing of information by non-bank lenders;
19 b. the investigation and enforcement of violations of this act,
20 which shall include regulations detailing the process for audits,
21 initial warnings, cure periods, probation, rescission, and penalties;
22 c. standards for the written examination and continuing
23 education programs established pursuant to this act; and
24 d. any purpose the commissioner determines necessary to
25 enforce the provisions of this act.

26

27 9. This act shall take effect on the 120th day next following
28 enactment.

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30

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STATEMENT

32

33 This bill requires licensing for certain non-bank lenders and
34 brokers that make or arrange alternative small business loans to
35 small businesses located in the State.

36 Under the bill, a non-bank lender is a lender that is not otherwise
37 regulated by the Office of the Comptroller of the Currency, Federal
38 Deposit Insurance Corporation, National Credit Union
39 Administration, or Federal Reserve. Non-bank lenders fall under
40 the provisions of the bill when they make alternative business loans
41 to small businesses. An alternative business loan is a loan or
42 merchant cash advance, the proceeds of which are used primarily
43 for business purposes, and not primarily for personal, family, or
44 household purposes, and which contains one or more of the
45 following characteristics:

- 46 (1) credit approval without reliance on tax returns or financial
47 and related traditional underwriting metrics;
48 (2) an interest rate, or disclosed internal rate of return in the
49 case of a merchant cash advance, in excess of 25 percent;

1 (3) a term to maturity of less than two years; or

2 (4) payment frequency greater than bi-weekly.

3 The bill provides that, not more than 10 and not less than three
4 days before a non-bank lender makes an alternative business loan to
5 a small business borrower, the lender is required to disclose to the
6 small business borrower various anticipated components of the
7 alternative business loan.

8 The bill provides that, at the time a non-bank lender makes an
9 alternative business loan to a small business borrower, it is required
10 to disclose to the small business borrower any changes to the
11 information provided in that initial disclosure.

12 Under the bill, if a broker is entitled to compensation for
13 introducing a small business borrower to a non-bank lender for the
14 purpose of having the non-bank lender make an alternative business
15 loan to the small business borrower, then the non-bank lender shall
16 disclose to the small business borrower:

17 (1) The total compensation expected to be paid by the non-bank
18 lender to the broker; and

19 (2) The total compensation expected to be paid by the small
20 business borrower to the broker.

21 The bill requires any alternative business loan to provide
22 economic benefit to the small business borrower, including, without
23 limitation, any of the following:

24 (1) Lower payments through the payoff of outstanding debt
25 balances;

26 (2) Funding the purchase of equipment or inventory;

27 (3) Payoff of tax liens or judgments adversely impacting
28 business operations, or limiting access to collateral to support
29 funding;

30 (4) Funding of business expansion, acquisition, or combination
31 that is projected to generate revenue growth and future profitability;

32 (5) Funding of working capital to support continued business
33 operations; or

34 (6) Completion of construction.

35 Under the bill, the economic benefit to a small business borrower
36 of the financing is to be documented by the small business
37 borrower.

38 The bill also requires non-bank lenders to provide small business
39 borrowers the most favorable loan product offered by the non-bank
40 lender and for which the small business borrower qualifies.

41 The bill provides that the jurisdiction for commencing an action
42 to enforce the terms of an alternative business loan contract
43 between a small business borrower and a non-bank lender is New
44 Jersey.

45 The bill requires non-bank lenders to maintain a record that
46 identifies all alternative business loans to New Jersey small
47 business borrowers for each calendar year. Non-bank lenders must
48 maintain:

49 (1) Staff dedicated to address complaints;

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- 1 (2) Clear disclosure of the contact for complaint resolution; and
2 (3) A separate file for each complaint that identifies each
3 complainant and the nature and disposition of that complaint.

4 The bill requires the Department of Banking and Insurance to
5 establish a process for issuing alternative business loan licenses to
6 non-bank lenders to make alternative business loans to small
7 business borrowers and licenses to brokers of alternative business
8 loans. The bill provides for certain requirements for non-bank
9 lenders, including provisions for net worth and bonding, and
10 bonding requires for brokers.