

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 788

Short Title: Save Our Restaurants Act. (Public)

Sponsors: Senators Chaudhuri and Peterson (Primary Sponsors).

Referred to: Rules and Operations of the Senate

May 18, 2020

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE SAVE OUR AUTHENTIC RESTAURANTS ACT AND HOTEL
3 STABILIZATION FUND.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** Transfer of Funds from Reserves to Relief Fund. – The State
6 Controller shall transfer the sum of one hundred twenty-five million dollars (\$125,000,000) for
7 the 2019-2020 fiscal year from the Coronavirus Relief Reserve established in Section 2.1 of S.L.
8 2020-4 to the Coronavirus Relief Fund established in Section 2.2 of S.L. 2020-4.

9 **SECTION 1.(b)** Appropriation of Funds from Relief Fund. – There is appropriated
10 from the Coronavirus Relief Fund to the Office of State Budget and Management the sum of one
11 hundred twenty-five million dollars (\$125,000,000) in nonrecurring funds for the 2019-2020
12 fiscal year to be allocated and used as provided in Sections 2 and 2.1 of this act. The funds
13 appropriated in this section shall not revert at the end of the 2019-2020 fiscal year but shall
14 remain available to expend as provided in Sections 2 and 2.1 of this act.

15 **SECTION 2.(a)** Restaurant Stabilization Program. – Fifty million dollars
16 (\$50,000,000) of the funds appropriated by Section 1(b) of this act shall be allocated to one or
17 more community development financial institutions (CDFI) selected by the Director of the
18 Budget for the purpose of making loans to assist qualifying businesses with business needs during
19 periods of economic hardship occasioned by the COVID-19 pandemic.

20 **SECTION 2.(b)** Definitions. – The following definitions apply in this section:

- 21 (1) Compensation. – Defined in section 3401 of the Internal Revenue Code.
22 (2) Employee. – Defined in G.S. 143B-437.02A.
23 (3) Net loan funds. – The total loan fund appropriated in this act less (i) the cost
24 of administering the loans made under the program, not to exceed five percent
25 (5%) of the total amount loaned under the program, (ii) any amount loan
26 amount forgiven pursuant to subdivision (9) of subsection (c) of this section,
27 and (iii) the State's loan funds that are not recaptured.
28 (4) North Carolina small farm. – A farm that (i) is enrolled in the present-use
29 value program for agricultural or horticultural land under Article 11 of
30 Subchapter II of Chapter 105 of the General Statutes and (ii) has provided an
31 attestation that the farm has neither derived more than eighty-five percent
32 (85%) of its revenue in any of the previous three fiscal years from a contractual
33 relationship with a single business entity nor is directly or indirectly controlled
34 by a business entity that is not an affiliate of the farm.
35 (5) Office. – The Office of State Budget and Management.



1 (6) Qualifying business. – A restaurant or similar establishment located in this
2 State, (ii) with the primary purpose of preparing and serving food subject to
3 the taxes imposed by Article 5 of this Chapter, and (iii) capable of showing
4 economic losses in gross revenue of greater than fifty percent (50%) as a result
5 of the State of Emergency. The term does not include restaurants with more
6 than 25 locations.

7 (7) State of Emergency. – Executive Order No. 116 issued March 10, 2020, by
8 Governor Roy A. Cooper, including any amendments issued by executive
9 order.

10 **SECTION 2.(c)** The following shall apply to loans made under the assistance
11 program authorized by this section:

12 (1) The CDFI shall provide assistance to, or direct to an appropriate entity that
13 provides assistance to, a qualifying business with applying for available
14 federal assistance.

15 (2) The CDFI shall prioritize loans for establishments on the following bases:

16 a. The establishment is independently owned.

17 b. The degree to which the establishment is capable of showing greater
18 economic losses as a result of the State of Emergency. Showing of loss
19 can be through filed tax returns or profit and loss statements or both.

20 (3) The CDFI shall operate the program in two phases. In phase one, loans may
21 be awarded only to qualifying businesses with franchises or restaurants with
22 fewer than five locations and with cumulative gross receipts from business
23 activities for the taxable year of less than ten million dollars (\$10,000,000).
24 Phase one shall be held open for eight weeks. After eight weeks, the CDFI
25 shall open phase two, in which loans may additionally be awarded to
26 qualifying businesses not meeting the eligibility requirement of phase one.

27 (4) The CDFI shall work with the Golden L.E.A.F. (Long-Term Economic
28 Advancement Foundation), Inc., the N.C. Small Business Center Network, the
29 Office of Historically Underutilized Businesses within the Department of
30 Administration, the N.C. Small Business and Technology Development
31 Center, the North Carolina Institute of Minority Economic Development, Inc.,
32 and other similar entities with the goal of ensuring all qualifying businesses
33 are aware of the program.

34 (5) The loan shall have an interest rate of three and one-half percent (3.5%).

35 (6) The term of the loan shall not exceed 120 months and shall be amortized over
36 the term of the loan.

37 (7) A qualifying business shall certify in writing that (i) it will use a loan provided
38 under the program for employee compensation, mortgage, rent, utilities, and
39 other operating costs and expenses incurred on behalf of a business located in
40 this State and (ii) it has not and will not seek a duplication of benefits in the
41 form of a loan for small business assistance authorized in S.L. 2020-4 and
42 allocated to the Golden L.E.A.F. (Long-Term Economic Advancement
43 Foundation), Inc., for business needs during periods of economic hardship
44 occasioned by COVID-19.

45 (8) A loan provided under the program is limited to no more than fifty thousand
46 dollars (\$50,000) per qualifying business.

47 (9) The CDFI shall forgive the portion of the amount loaned to a qualifying
48 business in an amount equal to the sum of the following:

49 a. Any portion of the loan that is used by December 30, 2020, by the
50 business to purchase from a North Carolina small farm, directly or
51 indirectly, produce, dairy, meat, or fish. A qualifying business may use

- 1 a large food wholesaler invoice that provides evidence that a portion
2 of the loan should be forgiven pursuant to this subdivision.
- 3 b. The pro rata amount of property taxes owed by the business under
4 Article 11 of Subchapter II of Chapter 105 of the General Statutes for
5 the period of the year to which the State of Emergency applies.
- 6 c. The amount of income tax owed by the business under Part 2 of Article
7 4 of Subchapter I of Chapter 105 of the General Statutes.
- 8 (10) Loans are made pursuant to an agreement with a qualifying business that
9 includes at least the following:
- 10 a. A provision requiring a qualifying business to certify in writing that it
11 will use a loan provided under the program for employee
12 compensation, mortgage, rent, utilities, and other operating costs and
13 expenses incurred on behalf of a business located in this State.
- 14 b. A provision establishing the method for determining compliance with
15 the program.
- 16 c. A provision requiring the qualifying business to (i) first repay the loan
17 amount with any federal assistance received by the business that
18 represents a duplication of benefits; provided, that the repayment does
19 not disqualify or impair the federal assistance available to the business
20 and (ii) reject or return, as applicable, any State assistance offered to
21 or received by the business in the form of a loan from funds authorized
22 by S.L. 2020-4 and allocated to the Golden L.E.A.F. (Long-Term
23 Economic Advancement Foundation), Inc., for business needs during
24 periods of economic hardship occasioned by COVID-19 to the extent
25 the State assistance represents a duplication of benefits.
- 26 d. A provision requiring the loan is secured through a Uniform
27 Commercial Code financing statement.
- 28 e. A provision requiring recapture of loan funds if a business fails to
29 comply with the requirements of the program. The CDFI shall
30 recapture loan funds only if the CDFI determines there is a reasonable
31 expectation that the recovery of funds will exceed the cost of recovery.
- 32 (11) The awarding of new loans shall cease upon six months following the date the
33 State of Emergency ends.
- 34 (12) Every six months, the Office shall submit a report on the program to the Joint
35 Legislative Economic Development and Global Engagement Oversight
36 Committee and the Fiscal Research Division. The duty to report pursuant to
37 this section shall cease after the submission of the report following when the
38 Office has remitted the entirety of the net loan funds to the Coronavirus Relief
39 Reserve. Each report shall contain all of the following:
- 40 a. The number of jobs retained.
- 41 b. The number of loans awarded.
- 42 c. The average loan amount.
- 43 d. The total amount loaned to date.
- 44 e. The total amount of loans repaid to date.
- 45 f. The total amount of loans defaulted on to date.
- 46 g. The total amount of loans defaulted that have been recaptured.

47 Six months following the date the State of Emergency ends and every six months
48 thereafter, each CDFI shall remit the net loan funds that have been received to the Office, which
49 shall deposit the funds into the Coronavirus Relief Reserve. Amounts deposited into the Reserve
50 under this subsection are receipts that do not constitute an "appropriation made by law," as that
51 phrase is used in Section 7(1) of Article V of the North Carolina Constitution.

1 **SECTION 2.1.(a)** Hotel Stabilization Program. – Seventy-five million dollars
2 (\$75,000,000) of the funds appropriated by Section 1(b) of this act shall be allocated to one or
3 more community development financial institutions (CDFI) selected by the Director of the
4 Budget for the purpose of making loans to assist qualifying businesses with business needs during
5 periods of economic hardship occasioned by the COVID-19 pandemic.

6 **SECTION 2.1.(b)** Definitions. – The following definitions apply in this section:

- 7 (1) Compensation. – Defined in section 3401 of the Internal Revenue Code.
- 8 (2) Employee. – Defined in G.S. 143B-437.02A.
- 9 (3) Net loan funds. – The total loan fund appropriated in this act less (i) the cost
10 of administering the loans made under the program, not to exceed five percent
11 (5%) of the total amount loaned under the program and (ii) the State's loan
12 funds that are not recaptured.
- 13 (4) Office. – The Office of State Budget and Management.
- 14 (5) Qualifying business. – A hotel, motel, or similar establishment located in this
15 State with the primary purpose of providing temporary lodging at a per-night
16 cost that is capable of showing economic losses in gross revenue of greater
17 than fifty percent (50%) as a result of the State of Emergency. The term does
18 not include vacation rentals by owner or other systems by which homeowners
19 lease out space for short-term rentals using a facilitator.
- 20 (6) State of Emergency. – Executive Order No. 116 issued March 10, 2020, by
21 Governor Roy A. Cooper, including any amendments issued by executive
22 order.

23 **SECTION 2.1.(c)** The following shall apply to loans made under the assistance
24 program authorized by this section:

- 25 (1) The CDFI shall provide assistance to, or direct to an appropriate entity that
26 provides assistance to, a qualifying business with applying for available
27 federal assistance.
- 28 (2) The CDFI shall prioritize loans for qualifying businesses based on the degree
29 to which the business is capable of showing greater economic losses as a result
30 of the State of Emergency. Showing of loss can be through filed tax returns or
31 profit and loss statements or both.
- 32 (3) The CDFI shall operate the program in two phases. In phase one, loans may
33 be awarded only to qualifying businesses with cumulative gross receipts from
34 business activities for the taxable year of less than ten million dollars
35 (\$10,000,000). Phase one shall be held open for eight weeks. After eight
36 weeks, the CDFI shall open phase two, in which loans may additionally be
37 awarded to qualifying businesses not meeting the eligibility requirement of
38 phase one.
- 39 (4) The CDFI shall work with the Golden L.E.A.F. (Long-Term Economic
40 Advancement Foundation), Inc., the N.C. Small Business Center Network, the
41 Office of Historically Underutilized Businesses within the Department of
42 Administration, the N.C. Small Business and Technology Development
43 Center, the North Carolina Institute of Minority Economic Development, Inc.,
44 and other similar entities with the goal of ensuring all qualifying businesses
45 are aware of the program.
- 46 (5) The loan shall have an interest rate of three and one-half percent (3.5%).
- 47 (6) The term of the loan shall not exceed 120 months and shall be amortized over
48 the term of the loan.
- 49 (7) A qualifying business shall certify in writing that (i) it will use a loan provided
50 under the program for employee compensation, mortgage, rent, utilities, and
51 other operating costs and expenses incurred on behalf of a business located in

- 1 this State and (ii) it has not and will not seek a duplication of benefits in the
2 form of a loan for small business assistance authorized in S.L. 2020-4 and
3 allocated to the Golden L.E.A.F. (Long-Term Economic Advancement
4 Foundation), Inc., for business needs during periods of economic hardship
5 occasioned by COVID-19.
- 6 (8) A loan provided under the program is limited to no more than fifty thousand
7 dollars (\$50,000) per qualifying business.
- 8 (9) The CDFI shall forgive the portion of the amount loaned to a qualifying
9 business in an amount equal to the sum of the following:
- 10 a. The amount of occupancy taxes collected and remitted pursuant to
11 G.S. 153A-155 and pursuant to G.S. 160A-215.
- 12 b. The pro rata amount of property taxes owed by the business under
13 Article 11 of Subchapter II of Chapter 105 of the General Statutes for
14 the period of the year to which the State of Emergency applies.
- 15 c. The amount of income tax owed by the business under Part 2 of Article
16 4 of Subchapter I of Chapter 105 of the General Statutes.
- 17 (10) Loans are made pursuant to an agreement with a qualifying business that
18 includes at least the following:
- 19 a. A provision requiring a qualifying business to certify in writing that it
20 will use a loan provided under the program for employee
21 compensation, mortgage, rent, utilities, and other operating costs and
22 expenses incurred on behalf of a business located in this State.
- 23 b. A provision establishing the method for determining compliance with
24 the program.
- 25 c. A provision requiring the qualifying business to (i) first repay the loan
26 amount with any federal assistance received by the business that
27 represents a duplication of benefits; provided, that the repayment does
28 not disqualify or impair the federal assistance available to the business
29 and (ii) reject or return, as applicable, any State assistance offered to
30 or received by the business in the form of a loan from funds authorized
31 by S.L. 2020-4 and allocated to the Golden L.E.A.F. (Long-Term
32 Economic Advancement Foundation), Inc., for business needs during
33 periods of economic hardship occasioned by COVID-19 to the extent
34 the State assistance represents a duplication of benefits.
- 35 d. A provision requiring the loan is secured through a Uniform
36 Commercial Code financing statement.
- 37 e. A provision requiring recapture of loan funds if a business fails to
38 comply with the requirements of the program. The CDFI shall
39 recapture loan funds only if the CDFI determines there is a reasonable
40 expectation that the recovery of funds will exceed the cost of recovery.
- 41 (11) The awarding of new loans shall cease upon six months following the date the
42 State of Emergency ends.
- 43 (12) Every six months, the Office shall submit a report on the program to the Joint
44 Legislative Economic Development and Global Engagement Oversight
45 Committee and the Fiscal Research Division. The duty to report pursuant to
46 this section shall cease after the submission of the report following when the
47 Office has remitted the entirety of the net loan funds to the Coronavirus Relief
48 Reserve. Each report shall contain all of the following:
- 49 a. The number of jobs retained.
- 50 b. The number of loans awarded.
- 51 c. The average loan amount.

- 1 d. The total amount loaned to date.
- 2 e. The total amount of loans repaid to date.
- 3 f. The total amount of loans defaulted on to date.
- 4 g. The total amount of loans defaulted that have been recaptured.

5 Six months following the date the State of Emergency ends and every six months
6 thereafter, each CDFI shall remit the net loan funds that have been received to the Office, which
7 shall deposit the funds into the Coronavirus Relief Reserve. Amounts deposited into the Reserve
8 under this subsection are receipts that do not constitute an "appropriation made by law," as that
9 phrase is used in Section 7(1) of Article V of the North Carolina Constitution.

10 **SECTION 3.(a)** Appropriation & Reimbursement. – There is appropriated from the
11 General Fund to the ABC Commission the sum of seven million dollars (\$7,000,000) in
12 nonrecurring funds for the 2019-2020 fiscal year to be used to provide a one-time reimbursement
13 of fees paid under G.S. 18B-902(d) to permittees with a valid ABC permit during the months of
14 March, April, May, or June of the year 2020. To the extent possible, the amount reimbursed
15 under this section shall be a pro-rata share for the months of March, April, May, or June of the
16 year 2020, of the amount paid under G.S. 18B-902(d) for the applicable permit or permits. A
17 permittee shall only be reimbursed under this section for the month or months in which the
18 permittee had a valid ABC permit.

19 **SECTION 3.(b)** Reversion. – The funds appropriated in subsection (a) of this section
20 shall not revert at the end of the 2019-2020 fiscal year, but shall remain available to expend in
21 accordance with this act until June 30, 2021.

22 **SECTION 3.(c)** Report. – By October 1, 2020, the ABC Commission shall submit a
23 report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research
24 Division on (i) the amount of funds reimbursed, (ii) the number of permittees reimbursed, (iii)
25 the amount each permittee received as a reimbursement, and (iv) if the funds appropriated in
26 subsection (a) of this section were insufficient to provide a pro-rata share, the amount of funds
27 needed to do so.

28 **SECTION 3.(d)** This section is effective when it becomes law.

29 **SECTION 4.(a)** A local ABC board that chooses to purchase from a mixed
30 beverages permittee any unopened bottles of spirituous liquor, which were purchased by the
31 mixed beverage permittee on or after January 1, 2020, shall remit to the mixed beverages
32 permittee the full purchase price of the spirituous liquor pursuant to G.S. 18B-804(b), including
33 the mixed beverage tax assessed pursuant to G.S. 18B-804(b)(8), plus the amount of sales tax
34 collected pursuant to G.S. 105-164.4(a)(7). The sales tax may be remitted to the mixed beverage
35 permittee as a credit on the permittee's account with the local ABC board.

36 **SECTION 4.(b)** This section is retroactively effective to March 10, 2020, and
37 applies to purchases of unopened bottles of spirituous liquor by a local ABC board from a mixed
38 beverages permittee on or after that date. This section expires on the later of June 30, 2020, or
39 30 days after Executive Order 116, a Declaration of a State of Emergency to Coordinate Response
40 and Protective Actions to Prevent the Spread of COVID-19, is rescinded.

41 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
42 law.