

CHAPTER 487

GOVERNMENT - STATE

HOUSE BILL 21-1288

BY REPRESENTATIVE(S) Bacon and Duran, Herod, Amabile, Benavidez, Bennett, Bird, Boesenecker, Cutter, Esgar, Exum, Froelich, Gonzales-Gutierrez, Gray, Hooton, Jackson, Kennedy, Kipp, Lontine, McCluskie, McCormick, Michaelson Jenet, Mullica, Ortiz, Ricks, Roberts, Snyder, Tipper, Titone, Valdez A., Valdez D., Woodrow, Young, Garnett, Jodeh; also SENATOR(S) Coleman, Bridges, Buckner, Danielson, Fenberg, Ginal, Gonzales, Hansen, Jaquez Lewis, Lee, Pettersen, Rodriguez, Simpson, Sonnenberg, Story, Winter, Garcia.

AN ACT

CONCERNING THE CREATION OF THE COLORADO STARTUP LOAN PROGRAM, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 24-48.5-131 as follows:

24-48.5-131. Colorado startup loan program - fund - creation - policies - report - legislative declaration - definitions - repeal. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) THE COVID-19 PANDEMIC HAS HAD DEVASTATING ECONOMIC AND HEALTH CONSEQUENCES ACROSS THE STATE;

(b) THE COVID-19 PANDEMIC HAS AFFECTED ENTREPRENEURS IN MULTIPLE WAYS. MANY WERE FORCED TO CLOSE THEIR BUSINESS PERMANENTLY, OTHERS TEMPORARILY CLOSED OR DOWNSIZED, AND SOME HAD THEIR CREDIT IMPACTED DUE TO NO FAULT OF THEIR OWN.

(c) ENTREPRENEURS AFFECTED BY THE COVID-19 PANDEMIC NEED ACCESS TO CAPITAL TO RESTART, RESTRUCTURE, OR SCALE UP THEIR BUSINESSES;

(d) AS COMMUNITIES RECOVER FROM THE COVID-19 PANDEMIC, THERE IS ALSO AN OPPORTUNITY TO SUPPORT ENTREPRENEURS TRYING TO START NEW BUSINESSES WHO DEMONSTRATE STRONG CHARACTER AND A SUCCESSFUL BUSINESS PLAN BUT HAVE LACKED MEANINGFUL ACCESS TO TRADITIONAL SOURCES OF CAPITAL;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(e) STARTUP AND SMALL BUSINESSES CREATE JOBS, OFTEN TO A GREATER DEGREE THAN LARGE BUSINESSES, AND SUPPORT A HEALTHY AND DIVERSE ECONOMY;

(f) THERE IS A WELL-FUNCTIONING NETWORK OF RESPECTED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS AND OTHER NONPROFIT LENDERS ACROSS COLORADO THAT ARE COMMITTED TO THE HEALTH OF COLORADO'S ECONOMY AND PROVIDE ASSISTANCE TO BUSINESSES AND ENTREPRENEURS THAT CAN DEMONSTRATE A SUCCESSFUL BUSINESS PLAN BUT MAY HAVE LACKED MEANINGFUL ACCESS TO TRADITIONAL SOURCES OF CAPITAL;

(g) CREATING A REVOLVING STARTUP LOAN FUND TO PROVIDE CAPITAL TO ENTREPRENEURS CAN HELP COLORADO COMMUNITIES AND BUSINESSES RECOVER FROM THE COVID-19 PANDEMIC WHILE ALSO SUPPORTING LONG-TERM ECONOMIC GROWTH IN THE STATE;

(h) PURSUANT TO 31 C.F.R. 35.6 (b)(6), PROVIDING ASSISTANCE IN THE FORM OF LOANS AND GRANTS TO ENTREPRENEURS AND SMALL BUSINESSES TO RESPOND TO THE NEGATIVE ECONOMIC IMPACTS OF THE COVID-19 PANDEMIC IS AN ELIGIBLE USE OF MONEY RECEIVED BY THE STATE UNDER THE "AMERICAN RESCUE PLAN ACT OF 2021", PUB.L. 117-2;

(i) BY PROVIDING ENTREPRENEURS AND BUSINESSES WHO FACE BARRIERS IN ESTABLISHING BORROWER RELATIONSHIPS WITH TRADITIONAL LENDERS TO ACCESS CAPITAL, A STARTUP LOAN PROGRAM CAN PROVIDE FINANCIAL SUPPORT TO UNSERVED OR UNDERSERVED POPULATIONS;

(j) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS AND OTHER NONPROFIT LENDERS ACROSS COLORADO PROVIDE CRITICAL FINANCIAL SUPPORT TO UNSERVED AND UNDERSERVED POPULATIONS WITH MORE FLEXIBLE LOAN CRITERIA NOT REGULARLY OFFERED BY TRADITIONAL FINANCIAL INSTITUTIONS, AND THEIR CUSTOMERS OFTEN OBTAIN LOANS FROM TRADITIONAL FINANCIAL INSTITUTIONS AFTER THEY GROW THEIR BUSINESSES OVER TIME;

(k) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS AND OTHER NONPROFIT LENDERS ACROSS COLORADO HAVE EXPERIENCE AND EXPERTISE IN EVALUATING LOAN APPLICATIONS AND IN DETERMINING WHICH LOAN CRITERIA AN APPLICANT MEETS;

(l) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS AND OTHER NONPROFIT LENDERS ACROSS COLORADO USE THEIR EXPERTISE AND EXISTING RELATIONSHIPS TO REFER APPLICANTS TO TRADITIONAL LENDERS IF THE APPLICANTS MEET TYPICAL TRADITIONAL LENDING CRITERIA AND TRADITIONAL LENDERS WILL PROVIDE MORE FAVORABLE LOAN TERMS TO THE APPLICANT;

(m) A STARTUP LOAN PROGRAM WILL ASSIST UNDERSERVED ENTREPRENEURS AND BUSINESSES IN MAKING CONNECTIONS WITH COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS AND OTHER NONPROFIT LENDERS WHICH PROVIDES AN OPPORTUNITY FOR BUSINESSES AND ENTREPRENEURS TO DEVELOP THEIR FIRST BORROWER RELATIONSHIPS WITH FINANCIAL INSTITUTIONS THAT CAN PROVIDE ACCESS TO CAPITAL AND LEAD THESE BUSINESSES TO EVENTUALLY BECOMING CUSTOMERS OF

TRADITIONAL LENDING INSTITUTIONS LIKE BANKS; AND

(n) A REVOLVING LOAN FUND ENSURES THAT THESE FUNDS ARE EVERGREEN AND RECYCLED MANY TIMES ACROSS MULTIPLE BUSINESSES, THEREBY SUPPORTING NEW ENTREPRENEURS FAR INTO THE FUTURE.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ADMINISTRATOR" MEANS AN ENTITY OR ENTITIES THAT THE OFFICE CONTRACTS WITH PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION TO ADMINISTER THE PROGRAM.

(b) "ELIGIBLE BUSINESS" MEANS A BUSINESS THAT MEETS THE ELIGIBILITY CRITERIA ESTABLISHED BY THE OFFICE IN POLICIES ADOPTED PURSUANT TO SUBSECTION (5) OF THIS SECTION.

(c) "FUND" MEANS THE COLORADO STARTUP LOAN PROGRAM FUND ESTABLISHED IN SUBSECTION (9) OF THIS SECTION.

(d) "OFFICE" MEANS THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT CREATED IN SECTION 24-48.5-101.

(e) "PROGRAM" MEANS THE COLORADO STARTUP LOAN PROGRAM CREATED IN SUBSECTION (3) OF THIS SECTION.

(3) (a) THE OFFICE SHALL ESTABLISH THE COLORADO STARTUP LOAN PROGRAM AS A REVOLVING LOAN AND GRANT PROGRAM IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION AND THE POLICIES ESTABLISHED BY THE OFFICE PURSUANT TO SUBSECTION (5) OF THIS SECTION. THE PROGRAM MAY PROVIDE LOANS AND GRANTS TO ELIGIBLE BUSINESSES SEEKING CAPITAL ASSISTANCE TO START OR RESTART A BUSINESS OR TO RESTRUCTURE AN EXISTING BUSINESS.

(b) THE OFFICE SHALL CONTRACT WITH A BUSINESS NONPROFIT ORGANIZATION, BANK, NONDEPOSITORY COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION, OR BUSINESS DEVELOPMENT CORPORATION OR OTHER ENTITY AS DETERMINED BY THE OFFICE TO ADMINISTER THE PROGRAM. IF THE OFFICE CONTRACTS WITH AN ENTITY OR ENTITIES TO ADMINISTER THE PROGRAM, THE OFFICE SHALL USE AN OPEN AND COMPETITIVE PROCESS TO SELECT THE ENTITY OR ENTITIES. A CONTRACT WITH AN ADMINISTRATOR MAY INCLUDE AN ADMINISTRATION FEE ESTABLISHED BY THE OFFICE AT AN AMOUNT REASONABLY CALCULATED TO COVER THE ONGOING ADMINISTRATIVE COSTS OF THE OFFICE IN OVERSEEING THE PROGRAM. THE OFFICE MAY ADVANCE MONEY TO AN ENTITY UNDER A CONTRACT IN PREPARATION FOR ISSUING LOANS AND GRANTS AND ADMINISTERING THE PROGRAM. THE OFFICE SHALL NOT HAVE ANY DIRECT LENDING AUTHORITY TO MAKE LOANS TO SMALL BUSINESSES.

(c) AT LEAST FIFTY PERCENT OF THE MONEY APPROPRIATED TO THE PROGRAM PURSUANT TO SUBSECTION (9)(c) OF THIS SECTION MUST BE ENCUMBERED BY JUNE 30, 2022.

(4) A CONTRACT WITH AN ADMINISTRATOR MAY REQUIRE THE ADMINISTRATOR TO REPAY ALL LENDING CAPITAL THAT IS NOT COMMITTED TO LOANS OR GRANTS

UNDER THE PROGRAM AND ALL PRINCIPAL AND INTEREST THAT IS REPAID BY BORROWERS UNDER THE PROGRAM AT THE END OF THE CONTRACT PERIOD IF, IN THE JUDGMENT OF THE OFFICE, THE ADMINISTRATOR HAS NOT PERFORMED SUCCESSFULLY UNDER THE TERMS OF THE CONTRACT. THE OFFICE MAY REDEPLOY MONEY REPAID UNDER THIS SUBSECTION (4) AS GRANTS OR LOANS UNDER THE PROGRAM OR THROUGH ANOTHER ADMINISTRATOR.

(5) (a) THE OFFICE OR AN ADMINISTRATOR SHALL ESTABLISH AND PUBLICIZE POLICIES FOR THE PROGRAM. AT A MINIMUM, THE POLICIES MUST ADDRESS:

(I) THE PROCESS AND DEADLINES FOR APPLYING FOR AND RECEIVING A LOAN OR GRANT UNDER THE PROGRAM, INCLUDING THE INFORMATION AND DOCUMENTATION REQUIRED FOR THE APPLICATION;

(II) ELIGIBILITY CRITERIA FOR BUSINESSES APPLYING TO THE PROGRAM;

(III) MAXIMUM ASSISTANCE LEVELS FOR LOANS AND GRANTS;

(IV) LOAN TERMS, INCLUDING INTEREST RATES AND REPAYMENT TERMS;

(V) REPORTING REQUIREMENTS FOR RECIPIENTS;

(VI) PROGRAM FEES, INCLUDING THE APPLICATION FEE, ORIGINATION FEE, AND CLOSING COSTS POLICIES;

(VII) UNDERWRITING AND RISK MANAGEMENT POLICIES; AND

(VIII) ANY ADDITIONAL POLICIES NECESSARY TO ADMINISTER THE PROGRAM.

(b) THE POLICIES REQUIRED BY THIS SUBSECTION (5) SHALL BE DEVELOPED AND IMPLEMENTED WITH A GOAL OF GENERATING ENOUGH RETURN TO REPLENISH THE PROGRAM FOR FUTURE LOAN ALLOCATIONS.

(6) (a) IN DETERMINING THE ELIGIBILITY OF APPLICANTS AND THE SIZE AND TERMS OF LOANS AND GRANTS, THE OFFICE OR AN ADMINISTRATOR SHALL CONSIDER:

(I) THE NEED OF AN EXISTING BUSINESS TO RESTRUCTURE, REDEFINE ITS BUSINESS MODEL, OR RECAPITALIZE AS A RESULT OF THE COVID-19 PANDEMIC;

(II) THE ABILITY OF A NEW BUSINESS TO FILL GAPS LEFT IN A COMMUNITY OR INDUSTRY BY CLOSURES RESULTING FROM THE COVID-19 PANDEMIC;

(III) THE FINANCIAL LOSSES OR OTHER IMPACTS RESULTING FROM THE COVID-19 PANDEMIC THAT MAY INHIBIT AN ENTREPRENEUR FROM OBTAINING CAPITAL THROUGH TRADITIONAL SOURCES;

(IV) WHETHER THE APPLICANT OR THE COMMUNITY SERVED BY THE APPLICANT'S BUSINESS FACES OTHER BARRIERS TO ACCESSING CAPITAL FROM TRADITIONAL SOURCES OR IS OTHERWISE UNDERSERVED;

(V) THE APPLICANT'S FINANCIAL NEED AND THE LIKELIHOOD THE BUSINESS

WOULD NEED TO BE SUPPORTED BY A NONTRADITIONAL LENDER, INCLUDING WHETHER THE APPLICANT'S CREDIT STANDING WAS NEGATIVELY AFFECTED BY THE COVID-19 PANDEMIC, THE APPLICANT'S EXPENSES RATIOS, AND THE APPLICANT'S REPAYMENT ABILITY OVER AN EXTENDED TIME PERIOD OR WITH ADJUSTED RATES AS DEMONSTRATED THROUGH PROJECTIONS AND BUSINESS PLANS; AND

(VI) ANY TECHNICAL ASSISTANCE THE APPLICANT IS RECEIVING TO HELP THE APPLICANT VALIDATE THE APPLICANT'S BUSINESS PLANS.

(b) TO THE EXTENT PRACTICABLE, THE PROGRAM MAY PRIORITIZE APPLICATIONS FROM ELIGIBLE BUSINESSES THAT HAVE COMPLETED A BUSINESS DEVELOPMENT PROGRAM OFFERED BY THE OFFICE.

(c) IF AN ADMINISTRATOR DETERMINES THAT AN APPLICANT WOULD LIKELY BE ELIGIBLE FOR A LOAN FROM A TRADITIONAL FINANCIAL INSTITUTION AND COULD RECEIVE MORE FAVORABLE LOAN TERMS THROUGH A TRADITIONAL FINANCIAL INSTITUTION, THE ADMINISTRATOR SHALL NOTIFY THE APPLICANT IN A TIMELY MANNER AND REFER THE APPLICANT TO A TRADITIONAL COMMERCIAL LENDER SUCH AS A BANK.

(7) THE OFFICE SHALL WORK WITH THE MINORITY BUSINESS OFFICE CREATED IN SECTION 24-49.5-102, SMALL BUSINESS DEVELOPMENT CENTERS, COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS, AND STAKEHOLDER PARTNERS TO PROMOTE THE PROGRAM TO BUSINESSES OWNED BY WOMEN, VETERANS, AND MINORITIES AND TO BUSINESSES LOCATED IN RURAL COUNTIES AND OTHER COMMUNITIES THAT ARE UNDERSERVED OR DISADVANTAGED. ON OR BEFORE SEPTEMBER 1, 2021, THE OFFICE SHALL DEVELOP AND ADMINISTER A MARKETING INITIATIVE FOR THE PROGRAM IN COORDINATION WITH THE MINORITY BUSINESS OFFICE CREATED IN SECTION 24-49.5-102, THE SMALL BUSINESS ASSISTANCE CENTER CREATED IN SECTION 24-48.5-102, LOCAL CHAMBERS OF COMMERCE, AND OTHER LOCAL AND REGIONAL ECONOMIC DEVELOPMENT ENTITIES TO PROMOTE THE PROGRAM TO ELIGIBLE BUSINESSES AND TARGET COMMUNITIES. THE MARKETING INITIATIVE SHALL BE CONDUCTED IN THE TOP SPOKEN LANGUAGES IN THOSE COMMUNITIES.

(8) (a) THE OFFICE MAY SEEK, ACCEPT, AND EXPEND GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF THIS SECTION. THE OFFICE SHALL TRANSMIT ALL MONEY RECEIVED THROUGH GIFTS, GRANTS, OR DONATIONS TO THE STATE TREASURER, WHO SHALL CREDIT THE MONEY TO THE FUND.

(b) THE OFFICE MAY EXPEND, DEPLOY, OR LEVERAGE MONEY RECEIVED FROM FEDERAL GOVERNMENT PROGRAMS THAT SUPPORT LOANS AND INVESTMENTS FOR SMALL BUSINESS TO MAKE LOANS AND GRANTS UNDER THE PROGRAM OR TO OTHERWISE MARKET, PROMOTE, OR SUPPORT LOANS AND GRANTS UNDER THE PROGRAM, IF ALLOWED UNDER FEDERAL LAW.

(9) (a) THE COLORADO STARTUP LOAN PROGRAM FUND IS HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF MONEY TRANSFERRED TO THE FUND IN ACCORDANCE WITH SUBSECTION (9)(d) OF THIS SECTION, ANY OTHER MONEY THAT THE GENERAL ASSEMBLY APPROPRIATES OR TRANSFERS TO THE FUND, AND ANY GIFTS, GRANTS, OR DONATIONS CREDITED TO THE FUND PURSUANT TO

SUBSECTION (8)(a) OF THIS SECTION.

(b) THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND TO THE FUND.

(c) MONEY TRANSFERRED TO THE FUND PURSUANT TO SUBSECTION (9)(d) OF THIS SECTION IS CONTINUOUSLY APPROPRIATED TO THE OFFICE FOR THE PURPOSES SPECIFIED IN THIS SECTION. THE OFFICE MAY EXPEND UP TO TWO PERCENT OF THE MONEY IN OR AWARDED BY THE FUND ON AN ANNUAL BASIS TO PAY FOR ITS DIRECT AND INDIRECT COSTS IN IMPLEMENTING AND ADMINISTERING THIS SECTION.

(d) ON THE EFFECTIVE DATE OF THIS SUBSECTION (9)(d), THE STATE TREASURER SHALL TRANSFER THIRTY MILLION DOLLARS FROM THE GENERAL FUND TO THE COLORADO STARTUP LOAN PROGRAM FUND CREATED IN SUBSECTION (9)(a) OF THIS SECTION.

(e) ON THE EFFECTIVE DATE OF THIS SUBSECTION (9)(e), THE STATE TREASURER SHALL TRANSFER ONE MILLION THREE HUNDRED FIFTY THOUSAND DOLLARS FROM THE GENERAL FUND TO THE COLORADO STARTUP LOAN PROGRAM FUND CREATED IN SUBSECTION (9)(a) OF THIS SECTION. THE MONEY TRANSFERRED IN ACCORDANCE WITH THIS SUBSECTION (9)(e) IS RESERVED FOR GRANTS OR LOANS AWARDED UNDER THE COLORADO STARTUP LOAN PROGRAM TO BUSINESSES THAT DEMONSTRATE NEED AND SUCCESS UNDER A SMALL BUSINESS ACCELERATED GROWTH PROGRAM ADMINISTERED BY THE OFFICE.

(f) THE GENERAL ASSEMBLY MAY APPROPRIATE MONEY FROM THE ECONOMIC RECOVERY AND RELIEF CASH FUND CREATED IN SECTION 24-75-228 (2)(a) TO THE COLORADO STARTUP LOAN PROGRAM FUND CREATED IN SUBSECTION (9)(a) OF THIS SECTION. MONEY APPROPRIATED IN ACCORDANCE WITH THIS SUBSECTION (9)(f) IS CONTINUOUSLY APPROPRIATED TO THE OFFICE TO PROVIDE LOANS AND GRANTS UNDER THE PROGRAM TO ENTREPRENEURS AND SMALL BUSINESSES TO RESPOND TO THE NEGATIVE ECONOMIC IMPACTS OF THE COVID-19 PANDEMIC IN ACCORDANCE WITH ANY REQUIREMENTS SET FORTH IN SECTION 24-75-226.

(10) ON OR BEFORE NOVEMBER 1, 2022, AND ON OR BEFORE NOVEMBER 1 OF EACH YEAR THEREAFTER, THE OFFICE SHALL SUBMIT A REPORT DETAILING THE EXPENDITURE OF MONEY APPROPRIATED TO THE PROGRAM TO THE GOVERNOR AND TO THE HOUSE OF REPRESENTATIVES BUSINESS AFFAIRS AND LABOR COMMITTEE AND THE SENATE BUSINESS, LABOR, AND TECHNOLOGY COMMITTEE, OR THEIR SUCCESSOR COMMITTEES. NOTWITHSTANDING THE REQUIREMENT IN SECTION 24-1-136 (11)(a)(I), THE REQUIREMENT IN THIS SUBSECTION (10) TO SUBMIT THE REPORT CONTINUES INDEFINITELY. AT A MINIMUM, THE REPORT MUST INCLUDE INFORMATION FOR THE PAST FISCAL YEAR CONCERNING:

(a) THE NUMBER OF BUSINESSES APPLYING TO THE PROGRAM, INCLUDING A BREAKDOWN OF THE NUMBER OF APPLICANTS THAT ARE OWNED BY WOMEN, MINORITIES, OR VETERANS;

(b) THE PERCENTAGE OF APPLICANTS FUNDED AND THE AVERAGE RATE OF FUNDING UNDER THE PROGRAM, INCLUDING A BREAKDOWN OF THE PERCENTAGE OF APPLICANTS FUNDED AND THE AVERAGE RATE OF FUNDING FOR BUSINESSES THAT

ARE OWNED BY WOMEN, MINORITIES, OR VETERANS;

(c) THE GEOGRAPHIC DISTRIBUTION OF THE APPLICANTS FOR AND RECIPIENTS OF LOANS AND GRANTS; AND

(d) INFORMATION ON THE TYPE AND SIZE OF BUSINESSES THAT APPLIED FOR AND RECEIVED FUNDING UNDER THE PROGRAM.

SECTION 2. Appropriation. For the 2021-22 state fiscal year, \$10,000,000 is appropriated to the Colorado startup loan program fund created in section 24-48.5-131 (9)(a), C.R.S. This appropriation is from the economic recovery and relief cash fund created in section 24-75-228 (2)(a), C.R.S., and of money the state received from the federal coronavirus state fiscal recovery fund. The office of the governor is responsible for the accounting related to this appropriation.

SECTION 3. Effective date. This act takes effect upon passage; except that section 2 of this act and section 24-48.5-131 (9)(f), Colorado Revised Statutes, as enacted in section 1 of this act, take effect only if Senate Bill 21-291 becomes law, in which case section 2 of this act and section 24-48.5-131 (9)(f) take effect either upon the effective date of this act or Senate Bill 21-291, whichever is later.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: July 7, 2021